



New Jersey Libertarian Party

Open Government Advocacy Project

John Paff, Chairman

P.O. Box 5424

Somerset, NJ 08875-5424

Phone: 732-873-1251 - Fax: 908-325-0129

Email: lpsmc@pobox.com

July 11, 2011

Hon. Robert J. Seader, Mayor and members of the
Dunellen Borough Council
355 North Ave
Dunellen, NJ 08812 *(via Hand Delivery)*

Dear Mayor Seader and Council Members:

I write both individually and in my capacity as Chairman of the New Jersey Libertarian Party's Open Government Advocacy Project to learn whether Dunellen Borough has an e-mail retention policy that will ensure that official e-mails are retained and archived consistent with State guidelines.

This inquiry was prompted by my visit to Dunellen's Internet site¹ today where I noticed that the e-mail addresses listed for the Mayor and Council appear to be personal rather than "municipal" e-mail addresses. For example, Borough Council Member Jason Cilento's e-mail address is listed as cilentojason@yahoo.com which is apparently his personal e-mail address.

Compare the Dunellen Council's e-mail directory to Vineland's². If you click on the e-mail link for any of the Vineland City Council members, you'll be given their "Vinelandcity.org" address, which is part of the municipality's domain rather than a personal e-mail address.

The fact that Dunellen's Internet site invites the public to contact its elected officials at their personal e-mail addresses concerns me because it leaves open the possibility that the Mayor and Council may be sending and receiving e-mails that are "government records" in

¹ <http://www.dunellenborough.net/mayor&council.html>

² <http://www.vinelandcity.org/Government.htm>

accordance with the Open Public Records Act (OPRA)³ but which are not being properly retained and archived by the Borough administration.

For example, Councilman Bayer, whose term of office expires at the end of 2011, according to the Borough's Internet site, receives e-mails at kbayer6044@aol.com. Suppose that Mr. Bayer is not re-elected, relocates out of state and that a year or two from now a citizen requests some e-mails that he sent and received during 2011 that dealt with municipal business.


In such a case, would the Borough Clerk be able to produce the requested e-mails from the Borough's own files, or would she need to track down former Councilman Bayer and ask him to produce the e-mails from his own files in order to satisfy the records request? If it's the latter, then what would the Borough Clerk do if former Councilman Bayer's computer had since crashed or if the e-mails were otherwise not available?

Vineland wouldn't have this problem because e-mails that are sent or received by Vinelandcity.com e-mail addresses are presumably preserved on the City's server. So, Vineland's clerk could retrieve any requested e-mails from the City's server without having to contact the Council member who sent or received those e-mails.

As you are probably aware, Dunellen Borough must comply with the New Jersey Division of Archives and Records Management's "Circular Letter No. 03-10-ST" entitled, "Managing Electronic Mail: Guidelines And Best Practices"⁴ which, among other things, makes the Borough responsible for a) archiving e-mails and ensuring that the e-mail system is reliable enough to meet state and federal "Rules of Evidence" requirements (Sec. 2.6); b) ensuring that e-mails are "indexed in an organized and consistent pattern" (Sec. 2.7); and c) setting forth "agency procedures" so that employees can "understand and carry out their role in managing e-mail." (Sec. 2.8).

Are the Dunellen Mayor and Council members communicating official business via their personal e-mail accounts? If so, does it have an e-mail policy that will comply with the Circular Letter. If not, would the Mayor and Council be willing to adopt a resolution for e-mail usage, similar to the attached one enacted by Franklin Township Fire District No. 1? I look forward to hearing from you.

Sincerely,



John Paff

³ E-mails on an elected official's personal computer are government records subject to disclosure under the Open Public Records Act. See Donal Meyers v. Borough of Fair Lawn, GRC Case No. 2005-127 at <http://www.nj.gov/grc/decisions/2005-127.html>

⁴ See, <http://www.njarchives.org/links/circular-letter-03-10-st.html>

**Commissioners of Fire District No. 1
Franklin Township Somerset County
New Jersey
RESOLUTION 11-16
EMAIL POLICY**

WHEREAS, Franklin Township Fire District No. 1 often uses email as a method of communication, and,


WHEREAS, Franklin Township Fire District No. 1 is a public entity governed by laws regarding OPMA and records retention, and,

WHEREAS, Franklin Township Fire District No. 1 has deemed it in the best interest of the Fire District to adopt an Email Policy to clarify and define email usage;

NOW, THEREFORE BE IT RESOLVED, that the Commissioners of Fire District No. 1, Franklin Township, Somerset County, New Jersey, adopts the attached Email Policy:



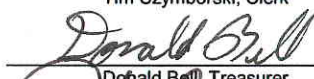
Bernard L. Pongratz, Chairman

	—	—
YES	NO	ABSTAIN


Absent

Tim Szymborski, Clerk

—	—	—
YES	NO	ABSTAIN



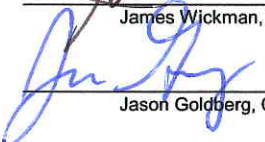
Donald Bell, Treasurer

	—	—
YES	NO	ABSTAIN




James Wickman, Commissioner

	—	—
YES	NO	ABSTAIN



Jason Goldberg, Commissioner

	—	—
YES	NO	ABSTAIN

I HEREBY CERTIFY THAT THIS IS A TRUE COPY OF THE RESOLUTION APPROVED BY THE COMMISSIONERS OF FIRE DISTRICT NO. 1, FRANKLIN TOWNSHIP, SOMERSET COUNTY, NEW JERSEY AT THEIR REGULAR MEETING HELD ON MAY 23, 2011



JASON GOLDBERG, DEPUTY CLERK

FRANKLIN DISTRICT FIRE DISTRICT #1 (SOMERSET COUNTY)

EMAIL POLICY

Emails pertaining to District business are considered public records. Therefore, when employees, elected officials and/or volunteers utilize emails to discuss or communicate regarding District business, such communication is considered a public record. The District is responsible to maintain all public records and therefore, the purpose of this policy is to maintain email communications and to provide for efficient records management not only for the District but for the individuals who utilize email to discuss any District business.

Therefore, the Franklin Township Fire District #1 (Somerset County) Board of Commissioners hereby adopts the following email policy:

1. All office employees and commissioners of the District will be provided with an email account in order to transact communications pertaining to District business.
2. Each individual utilizing an email account will agree as follows:
 - A. The account will only be used for official District business. In the event the individual receives an email on their personal computer or email account relating to District business, they will immediately copy the email together with all attachments to their official District email address. The response to such communication will be from the official District email account.
 - B. The respondent will also notify anyone who communicates to their personal email account regarding District business that all future correspondence and emails pertaining to Franklin Township Fire District #1 (Somerset County) must be sent to their official District email address.
 - C. In the event the individual receives a personal e-mail on their District account, they will immediately advise the sender that personal e-mails should not be sent to their District account.
3. Each individual utilizing an email account agrees never to correspond back and forth with the majority of the Board of Commissioners. Specifically, if a particular Board has 5 members then the individual agrees that they will direct any single communication to no more than 2 members of such Board unless such email is strictly informational in purpose. If the individual wants to communicate back and forth with all members of the Board, they should direct such correspondence to the Chairperson and/or the District Clerk and request to be heard at the next regularly scheduled meeting when the Board of Commissioners convene.
4. The email account and all access information shall be the property of Franklin Township Fire District #1 (Somerset County) and the individual utilizing the email

account understands, acknowledges and consents to the District having access to the account and that all communications contained therein, except where otherwise excluded by law, may be subject to public disclosure.

5. Each individual utilizing the email account will take no action in any way to permanently delete any information or emails that are sent to the District email account.
6. Each individual elected to the Board of Commissioners in the District understands that the use of personal e-mail accounts to engage in District business is prohibited and may result in those personal accounts being subject to the provisions of the Open Public Records Act (OPRA) and/or other statutes pertaining to access to government records.