

POLICY ON THE ACCESS AND USE OF TELECOMMUNICATIONS SYSTEMS

1. PURPOSE

The purpose of this policy is to set in place the standards for the proper and allowed uses of the Town's telecommunications systems including telephones, electronic mail (e-mail), facsimile machines (faxes), and the Internet.

2. OVERVIEW

The Town of Wilbraham provides staff with the ability to send messages and information through landline and wireless phones, facsimile machines, copy machines, computers, printers and other peripherals, software programs and data, local and wide area networks, email and internet. The latter two forms of communication have become increasingly popular due to their ability to instantaneously reach a wide number of people and are provided by the Town as tools to improve the efficiency and effectiveness of municipal operations.

The use of these capabilities and equipment is subject to the same management oversight as any other employee activity. The telecommunication systems are the property of the Town and should be used for appropriate business purposes. Employees and committee members acting in their official capacity should have no expectation of privacy in their use of these telecommunications systems.

3. APPLICABILITY

All Town employees are subject to the provisions of this policy. In addition, members of Town Boards and Committees are strongly advised to comply with the Public Records Law and the Open Meeting Law as discussed below.

4. PRIVACY/PUBLIC ACCESS

4.1 Massachusetts statute broadly defines the term "public record" to include all documentary materials or data, regardless of its physical form or characteristics, created or received by any official or employee of any governmental unit, unless falling within a strictly defined set of exemptions [M.G.L. c. 4, § 7(26)]. E-mail is therefore considered a public record and as such is subject to the requirements of the Public Records Law (M.G.L. c. 66). The Secretary of the Commonwealth's SPR Bulletin No. 1-99 is attached for your reference. Additionally, Federal courts have also held that electronic mail is considered a record for purposes of the Federal Freedom of Information Act.

4.2 All e-mail sent and received as principal addressee at a Town-issued address, or any address (e.g., AOL, MSN, Yahoo, Hotmail or any and all external mail services) when in an official capacity, as well as faxes and Internet postings should be considered a public record subject to legal discovery and record retention policies.

- 4.3 Employees and committee members acting in their official capacity should have no expectation of privacy in their use of these telecommunications systems. The Town Administrator, or the designee of the Town Administrator, reserves the right to monitor e-mail messages, Internet postings and faxes and to access all such messages residing on Town of Wilbraham equipment or property. All messages sent or received by e-mail or the Internet are stored automatically on the Town's computer system and deleting such messages does not guarantee that they cannot be retrieved.
- 4.4 Notwithstanding the Town's right to retrieve and read any e-mail messages, faxes or Internet postings generated from or sent to a Town-issued address, employees shall not retrieve or read any messages that are not sent to them unless express permission is given by the intended recipient.
- 4.5 No employee shall send e-mail under another employee's name nor shall any employee change any portion of a previously sent e-mail message without prior authorization.

5. APPROPRIATE USE

- 5.1 E-mail, and related on-line services, are the property of the Town and are to be used for business matters directly related to the operational activities of the Town and as a means to further the Town's objective to provide efficient, complete, accurate, and timely services.
- 5.2 Users shall act in a professional manner, properly identifying themselves, and shall ensure that they do not misrepresent themselves or the Town.
- 5.3 The telecommunications systems shall not be used for personal gain or to conduct personal business, political activity, fundraising activity, or charitable activity unless sponsored by the Town, with the approval of the Board of Selectmen. The transmission of materials used for commercial promotion, product endorsement or political lobbying is strictly prohibited.
- 5.4 The telecommunications systems shall not be used to distribute chain letters, to participate in "chat rooms" or bulletin boards or to "surf the net" (unless work-related) or to play computer games.
- 5.5 The telecommunications systems shall not be used to promote discrimination on the basis of race, color, national origin, age, sex, political affiliation, religion, disability or sexual preference; to promote, result in, or contribute to sexual harassment; or to promote personal, political or religious business or beliefs.
- 5.6 Email, the internal network and the Internet should not be used for communications that express anger or criticism or which deliver "bad news", such as the denial of an employee request. Such communications, when they are necessary, should be in person, whenever possible, or by telephone or in carefully worded written form when face-to-face communication is impossible or inappropriate.
- 5.7 The telecommunications systems shall not be used for any illegal activity, including but not limited to, the transmission of copyrighted or trade secret material, the transmission of obscene, defamatory, or threatening material, or the propagation of any type of criminal activity.
- 5.8 No user shall violate the computer security systems implemented by the Town or other institutions, organizations, companies or individuals.

- 5.9** No user shall pirate software or download and transfer software for which the user does not have the proper licensing. No user shall bring in and install software from home or install subscription-based software (e.g., web shots). Software installation requests must be made in writing on the "IT Request Form", signed by the Department Head and IT Director. The form is available from the Selectmen's Office.
- 5.10** All users are expected to undertake precautions to prevent infection of Town computers by computer viruses. Executable programs imported from other sites to Town computers may not be used unless they have been authorized by the Town Administrator, or the designee of the TA, and have been subjected to virus detection procedures approved by the TA, or the designee of the TA. Additional restrictions or regulations on the importing of remote files may from time to time be imposed and such restrictions or regulations shall be considered part of this policy including clearance and scheduling time for file transfers.
- 5.11** Users shall not engage in activities that could cause congestion and disruption of networks and systems, including but not limited to consuming excessive system resources, (e.g. Napster, mail bombing and flooding).
- 5.12** For security purposes, employees must either log off or revert back to a password screen saver when leaving their computer for an extended period of time. When leaving for the day, employees must turn off their computers. All electronic media should be kept away from magnets including those found in telephone receivers and paper clip holders.

6. OPEN MEETING LAW COMPLIANCE

- 6.1** The Open Meeting Law (M.G.L. c. 39, § § 23A - 23B) requires that no substantive discussion by a quorum of members of a governmental body about public business within the jurisdiction of the governmental body is permissible except at a meeting held in compliance with the provisions of the Open Meeting Law. Despite the convenience and speed of communication by e-mail, its use by members of a governmental body carries a high risk of violating the Open Meeting Law. As with private conversations held in person or over the telephone, e-mail conversations among a quorum of members of a governmental body that relate to public business violate the Open Meeting Law, as the public is deprived of the opportunity to attend and monitor the e-mail "meeting." Because the very nature of e-mail makes it possible for private, serial conversations to reach a quorum of members without the knowledge of all participants, members of governmental bodies should exercise caution when communicating via e-mail on an individual basis.
- 6.2** Matters of a purely housekeeping or administrative nature, such as scheduling or canceling meetings, announcements, requests to place items on the agenda, or communications by members of a governmental body to department heads or staff may be communicated outside of a meeting, but care should be taken not to use e-mail for the purposes of deliberations.

7. FILING AND RETENTION

- 7.1 As public records, the retention and disposition of e-mail communications are stipulated by retention schedules issued by the Secretary of the Commonwealth. In addition to retaining the actual text of a message and any attachments, transmission data contained in an e-mail communication (full header information including the sender, addressee, date and time of transmission and receipt, and routing instruction) shall also be retained as part of the record, whether the record is printed out or stored electronically.
- 7.2 E-mail may be retained in hard copy, electronically, or by a combination of these two means; however, after two years, the record should be printed with full header information and attachments and retained in paper form. When appropriate, e-mail messages may be filed with program records and will assume the same retention as the records with which they are filed. Attached or enclosed records must be filed according to their function and content, and shall assume the retention schedule of the records with which they are filed. When e-mail records do not relate obviously or directly to a program, they may be filed as correspondence. If a particular record is not described on an existing records retention schedule, the appropriate department head, through the Town Administrator, shall apply to the Supervisor of Public records for authority to dispose of that record, and to add records to existing schedules. Only when e-mail messages are clearly conversational and do not add in any way to the operational records of the department, may they be discarded without adhering to retention schedules.

8. AGREEMENT

All employees shall agree to abide by the Policy on Access and Use of Telecommunications Systems, and shall sign a statement so stating prior to the granting of access (i.e., network account, email, etc.). A signed copy shall be maintained in the employee's personnel file. Any employee who violates this policy or uses the Town's telecommunications systems for improper purposes shall be subject to discipline, up to and including discharge.

ADOPTED:	Personnel Board: 1/10/07, Board of Selectmen: February 26, 2007
REVIEWED:	Labor Counsel review: 2/6/2007
AMENDED:	
ATTACHMENT:	The Secretary of the Commonwealth's SPR Bulletin No. 1-99 (rev. May 21, 2003)
FORM:	Employee Confirmation of Receipt Form

The terms of collective bargaining agreements supersede any provisions of any personnel policies the town establishes. If a collective bargaining agreement is silent on a topic or a subject matter within a topic these policies are intended to apply. Where the provision of a collective bargaining agreement between the town and a union conflict with a provision of a town personnel policy, the collective bargaining agreement provision will govern for those employees covered by the agreement.

SPR Bulletin NO. 1-99 February 16, 1999

REVISED AND REISSUED

May 21, 2003

TO: Public Records Custodians

SUBJECT: **Electronic mail**

EXPIRATION DATE: Until superseded

PURPOSE: This bulletin supersedes SPR Bulletin No. 5-92 and provides information and requirements for the management and disposition of electronic mail sent and received by public officials.

BACKGROUND:

Electronic mail (email) is a document created, transmitted and received by a computer system or other electronic form of written communication. Like the telephone, email allows instant communication. Like traditional mail, it creates a durable written record of messages delivered and received. Email use has grown rapidly and it has emerged as a major means for both communication and business activities in all segments of society.

Messages sent by email vary in substance and content. It may contain formal or informal data and text used supporting or executing business activities and policy decisions. The growth of email and the importance of the messages it carries, make it imperative that government offices take steps to effectively manage and control this medium.

FINDINGS:

1. For the purpose of this bulletin, email is defined as any message created and received on an electronic mail system. An electronic mail system is a service that provides facilities for creating messages, transmitting them through a network and displaying them on a recipient's computer terminal. The email message may be text or word processing documents, spreadsheets or other data compilations transmitted through such a system.
2. All email created or received by an employee of a government unit is a public record. In Massachusetts, the term "public record" is broadly defined to include all documentary materials or data created or received by any officer or employee of any governmental unit, regardless of physical form or characteristics. G. L. c. 4, § 7(26). Email is, therefore, a public record and it is subject to the requirements of the Public Records Law. G. L. c. 66.
3. All email messages are subject to public access and disclosure through the provisions of the Public Records Law. G. L. c. 66, § 10.
4. All email messages may be sought and obtained through the discovery process in litigation and may be admissible as evidence in a court of law.
5. In most cases, simply deleting a message does not actually 'delete' the message. The "delete" key merely removes the electronic pointers to the file. The actual file may remain on the computer system indefinitely unless it is properly expunged from the system. Questions regarding that process should be addressed to your systems administrator. Copies of messages may also be retained independently on system backups. Regardless of the intent to delete the message, as long as it exists, it continues to be subject to discovery.
6. Although email is analogous to paper correspondence, the courts have found that there are indeed, differences between the two records. The contextual data (the "envelope" that contains the mailing address, date/time stamp, routing instructions and transmission and receipt information) that accompanies email messages constitutes an integral part of the record and thus must be retained as a

part of any printed or stored version of the record. *Armstrong v. Executive Office of the President*, 810 F.Supp. 335 (D.D.C. 1993).

7. Email systems are a corporate resource. Email systems in use in government offices are government property installed and maintained for the conduct of government business. The office may and should exercise control over the use of the resource by employees and has the right to monitor and read employee email.

ACTIONS:

1. Any employee or officer of the Commonwealth who creates or receives an email message must review said message for content. Once a determination has been made regarding the subject matter involved in the communication, the employee or officer must consult the retention schedules for his\her agency or municipality in order to determine the lifecycle of that particular record. Necessary and proper records management procedures must then be implemented to ensure that the record is preserved for the proscribed retention period. G. L. c. 4, § 7(26)(a-m).
2. Email must be managed as a part of the office’s records holdings. Email messages are subject to the same records management principles as all other records of the office. Records retention schedules issued by the Supervisor of Public Records (for local governments) and by the Records Conservation Board (for state government offices) must be implemented for email as well as for analogous paper records.
3. Email systems are not record-keeping systems. All email users must screen and evaluate email messages according to “CONTENT”.
4. Once the CONTENT or subject matter of the message is determined, the user must consult their agency’s record retention schedule and the Statewide Disposition Schedule (for State Agencies) or the Records In Common Schedule (for municipalities) to determine how long the record must be preserved.
5. Once the applicable retention period has been determined, the user should print out the email message and file it in accordance with the entity’s paper filing system procedures.
6. Email messages which are too large to print or do not print accurately should be stored electronically, again depending upon content and retention period. These messages should be saved to the office’s electronic record-keeping system. Please consult your agency’s Record Liaison officer, computer technical people or your systems engineer for assistance in this regard.
7. All government offices must establish written policies regarding their email systems. Said policies must ensure that their system is capable of displaying and preserving the contextual data (metadata) associated with the email message to ensure the capture and preservation of a complete record. Any email message which is printed to preserve content must contain the metadata in its complete form.
8. Government offices must ensure that all personnel who will be handling email are properly trained to insure compliance with this policy.

QUESTIONS:

<p>Public Records Division 1 Ashburton Place, Room 1719 Boston, MA 02108 Phone 617-727-2832; Fax 617-727-5914 Web www.sec.state.ma.us/pre</p>

<p>Records Management Unit State Archives at Columbia Point 220 Morrissey Blvd. Boston, MA 02125 Phone 617-727-2816; Fax 617-288-8429 Email recman@sec.state.ma.us Web www.sec.state.ma.us/arc/arcrmu</p>
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Town of Wilbraham

**Access and Use of Telecommunications Systems Policy
Employee Confirmation of Receipt**

The use of the Town's telecommunication system constitutes employee consent to monitoring of systems and is conditioned upon strict adherence to this policy. Any employee who violates this policy or uses the Town's telecommunications system for improper purposes shall be subject to discipline, up to and including discharge.

I certify that I have been given a copy of this policy and provided the opportunity to ask questions about its content. In addition, I certify that I have fully read the policy and agree to abide by its provisions.

Employee Name (Print)

Employee Signature

Date