

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(573) 751-3321

September 26, 2007

Paul Sloca
Communications Director
Missouri Republican Party
204 East Dunklin
Jefferson City, MO 65101

Dear Mr. Sloca:

We have completed our review of records we have that may be responsive to your open records request, and we enclose copies of those responsive documents that are open records.

There are documents that may be responsive to your current request but are not being produced because they fall under Section 610.021. That provision authorizes records to be closed if they relate to litigation, attorney-client communications, and work product. In addition, Section 610.021 authorizes the closing of records relating to personnel issues. Finally, Section 610.021 authorizes closure of records "which are protected from disclosure by law." Examples of provisions of law that may be relevant to your request include personal information that is protected by the Health Insurance Portability and Accountability Act and the Family Medical Leave Act. Some documents that could have been closed under Section 610.021(1) have been provided because it was determined that disclosure would not prejudice the State's legal interests and/or those of the agencies we represent.

As indicated in our initial letter, we will waive the fees associated with responding to your request.

Sincerely,

JEREMIAH W. (JAY) NIXON
Attorney General



Karen King Mitchell
Chief Deputy Attorney General

Enclosures

From: John Watson
To: Madden, Sarah
Date: 1/11/2007 11:16 AM
Subject: Fwd: Re: budget request

The short answer is that we only bill for direct work done on behalf of a board. We do not bill the support staff, administration or any other indirect expenses incurred by Governmental Affairs attorneys in their representation of a board. We could start billing for all of these expenses and the dollars billed would then support 16 fte's. Her choice!

h Madden 1/11/07 10:49 am >>>
John -

This is the point at which our e-mails have arrived. I am not sure how you would like me to proceed, but I am sensing this isn't going anywhere. Do you have a suggestion?

Sarah

>>> <Rochelle.Hendrickson@insurance.mo.gov> 1/11/2007 10:40 AM >>>
If you take say 10,000 billed hours and divide that by 2080 which is the standard yearly hours for an FTE you get 5.00 FTE if you round up.

Maybe I'm confused on what we are doing? AGO is taking a core reduction of \$500,000 in GR appropriation correct? Part of this will be from personal service, part will be EE and the remainder will be fringe which is appropriated in OAs budget. AGO will request new/replacement appropriation from our DIFP Admin fund. This will need to be appropriated into PS, EE and Fringe categories. I'm not sure where the transfer you are referring to comes in that wouldn't require this breakout?

"Sarah Madden"
<Sarah.Madden@ago.mo.gov>
01/11/2007 10:16 AM
To
<Rochelle.Hendrickson@insurance.mo.gov>
cc
Subject
Re: budget request

Rochelle -

We billed Professional Registration the following:

FY '03: 9035.9 hours at \$60.87/hour (\$550,015.23)
FY '04 - 10509.5 hours at \$60.87/hour (\$639,713.27)
FY '05 - 9969.3 hours at \$60.87/hour (\$606,770.42)

-for an average total billing of \$598,832.97, which we rounded down to \$500,000. This is not broken out by personal service/EE/fringe - as I understand it from OA, that would not be needed for a transfer.

Our organizational chart shows 14 AAG attorneys. I assume that the new FTEs would also be AAGs

I hope this information is helpful.

Sarah

From: John Watson
To: JMerritt@greencountymo.org
Date: 8/6/2007 3:19 PM
Subject: Patrol/Sheriff's

Jack, here's the link:

<http://www.mogop.org/wp/2007/08/06/nixon-insults-hard-working-troopers-with-callous-remarks/>

From: John Watson
To: Hatfield, Charles
Date: 8/3/2007 9:08 AM
Subject: Re: 111 questions

I'm assuming this is a fishing expedition but I'm not sure they have their hook baited.

>>> "Hatfield, Charles" <CHatfield@stinson.com> 8/2/07 11:14 PM >>>
What the hell is this and what does it have to do with whether someone is qualified to be a judge:

86. Have you had reason to excuse one of the legal counsels in any case before you due to conflicts of interest in his or her representation before the court, including but not limited to the Attorney General?

NOTE CHANGE OF E-MAIL AND FAX

Chuck Hatfield
Stinson Morrison Hecker LLP
573-636-6827 (direct)
573-230-2610 (mobile)
573-556-3632 (direct fax)

chatfield@stinson.com

This communication is from a law firm and may contain confidential and/or privileged information. If it has been sent to you in error, please contact the sender for instructions concerning return or destruction, and do not use or disclose the contents to others.

From: John Watson
To: Ardini, Ted
Date: 8/7/2007 5:08 PM
Subject: Fwd: open letter from Appellate Judicial Commission to citizens of Missouri
Attachments: Open letter from Appellate Judicial Commission to Missouri Citizens 08-07-07.pdf

fyi

>>> <Beth.Riggert@courts.mo.gov> 8/7/07 4:44 PM >>>

Many in the media have asked the Appellate Judicial Commission to respond to various public statements that have been made recently. Attached is a letter the Appellate Judicial Commission intends to be an open letter to all citizens in Missouri:
(See attached file: Open letter from Appellate Judicial Commission to Missouri Citizens 08-07-07.pdf)

--Beth S. Riggert
Communications Counsel
Supreme Court of Missouri
PO Box 150, Jefferson City, MO 65102
Desk: (573) 751-3676
Fax: (573) 751-7514
Cell: (573) 619-2849
E-mail: beth.riggert@courts.mo.gov



Guidelines

Managing E-mail Records

*Approved and Recommended by the State Records Commission
February 22, 2001*

OFFICE OF THE SECRETARY OF STATE

Introduction

Most everyone would agree that e-mail has changed the way in which we communicate and conduct business. As a business tool, we use it to rapidly exchange information, collaborate on projects, and make announcements. As a communication tool, e-mail messages generally have a less formal tone than was typical of written correspondence found in letters and memorandums. Thus, many users fail to recognize that e-mail correspondence can be either a record as defined by Missouri's State and Local Records law, RSMo. 109.200 to 109.310, or a public record as defined by our Sunshine Law, RSMo. 610. In some cases, it may be both. If an e-mail correspondence is determined to be a record, then it must be maintained within a recordkeeping system. Agencies are strongly encouraged to implement an e-mail policy that covers usage, content, public access, privacy, and records retention. Records Management designed the following standard to assist agencies with the records retention portion of their policies.

E-mail Records v. Nonrecords

Not all records are valued equally. It is important to understand the distinction between records and nonrecords. The meaning of the term *record* depends on the context in which it is being used. In the context of these guidelines, a record is documentation created or received and used by an office or agency in the conduct of its business. To be an accurate and authentic record, the documentation must contain sufficient content, context, and structure to provide evidence of an activity. However, the physical format or media in which the documentation is conveyed is irrelevant.

Not all e-mail messages document official state business; however, many do. Therefore, agencies must be aware of their responsibility to manage e-mail records accordingly.

Evidence of Official State Business

E-mail messages that document decisions, policies, procedures, resource expenditures, operations, or delivery of services are evidence of official state business. Agencies must ensure that these messages are appropriately stored, organized, scheduled, and disposed of according to their approved Records Disposition Schedule. The following examples illustrate the kinds of e-mail messages that document official state business:

- General correspondence regarding management, financial, operating procedures, or policy matters (including items such as purchase orders)
- Interoffice messages regarding management, financial, operating procedures, or policy matters (including items such as timesheets and travel vouchers)
- Messages regarding state policy or the policy process (minutes of meetings, transcripts of hearings, etc.)
- Messages regarding vital public information (for example, critical environmental data and reports)
- Listserv messages posted in an official capacity (job announcements, etc.)
- Listserv messages that are relied upon in the development of management, financial, operating procedures, or policy matters

Nonrecords with an Official Context

E-mail messages may have an official context but not be part of a business transaction. Those messages are nonrecords and should not be retained within a recordkeeping system. The following examples illustrate e-mail with an official context, but no value beyond reference:

- General departmental correspondence regarding routine business activities (transmittal messages and responses to routine questions)
- Interoffice messages regarding:
 - employee activities (holiday parties, etc.)
 - phone calls
 - invitations and responses to work related events (meetings, etc.)
- Listserv messages other than those posted in an official capacity – unless the messages are relied upon in the development of management, financial, operating procedures, or policy matters

Personal Transactions

Any e-mail message that is neither created nor received in the course of routine or official state business may be disposed of immediately. Agencies are encouraged to define within their policies how much, if any, personal e-mail is acceptable.

Filing and Maintenance

Only the official copy of a record must be filed and maintained within a recordkeeping system. The same is true of e-mail records. Only the record copy must be filed and maintained. Additional copies are considered convenience copies and, as such, are nonrecords. These may be disposed of when they no longer serve a purpose.

Recordkeeping systems may be paper based, electronic, or a combination of the two. If an agency chooses to maintain printed copies of e-mail, the procedures to do so must include the appropriate transmission data, attachments, calendars, and task lists. If agencies use a software program to automatically capture, manage, and identify their electronic records, it may choose to include e-mail records within that system. Again, procedures to do so must include all the appropriate transmission data.

Agencies should consider the ramifications of depending on the users' personal e-mail directories to act as the recordkeeping system. Decentralization is counter-productive. Control of numerous copies, back-ups, and ultimate disposition is more difficult to maintain. Further, such ad-hoc file systems may not meet the need to provide easy and timely retrieval. These file systems are dependent upon the individual user's availability to retrieve specific records or upon the e-mail system administrator's ability to search users' directories. This could cause undue burden on agencies, if expedient retrieval is necessitated. RSMo. 610.023 (3) states:

Each request for access to a public record shall be acted upon as soon as possible, but in no event later than the end of the third business day

following the date the request is received by the custodian of records of a public governmental body. If access to the public record is not granted immediately, the custodian shall give a detailed explanation of the cause for further delay and the place the earliest time and date that the record will be available for inspection. This period for document production may exceed three days for reasonable cause.

E-mail Records Preservation

E-mail that fulfills the definition of a record must be preserved within a recordkeeping system. Further, if the record is a public record, it must be maintained in a format that makes it available to the public. Agencies must ensure their records are accurate and complete *regardless of physical form or characteristics* throughout the retention period. Several areas must be addressed to ensure e-mail messages are accurate and complete. The recordkeeping system must be able to capture the appropriate information, to ensure the records are easily accessible throughout their retention period, and to ensure for the timely disposition of records once their retention period is met.

Transmission Data	Agencies should attempt to ensure that as much transmission data as is possible is kept within the recordkeeping system. At a minimum the recordkeeping system must include the name of the sender(s), the recipient(s), and the date received. Additionally, if receipt acknowledgements are a part of the e-mail system, users should include those as a part of the record when appropriate. (For example, it may be appropriate to request a receipt acknowledgement when distributing a new policy to staff.) It is important to note that many e-mail systems use aliases to identify users. Therefore, a means of deciphering who the alias belongs to must be maintained. The same is true for distribution lists. There must be a method to identify to whom the individual e-mail address belong. However, when the e-mail is received from an e-mail system outside an agency's control, this may be an impossible task. Nonetheless, agencies must make a reasonable attempt to do so.
Authenticity	The system must ensure that once the record is a part of it, it cannot be altered.
Attachments	If an e-mail attachment meets the definition of a record, it must be maintained within the recordkeeping system.
Calendars and Task Lists	Some e-mail systems include calendars and task lists for each user. If the information contained in the calendar or task list documents decisions, policies, procedures, resource expenditures, operations, or delivery of services, it may meet the definition of a record. Therefore, agencies must develop a method of retaining those records within the recordkeeping system.
Accessibility	Missouri's Sunshine Law provides its citizens with openness in

government. RSMo. 610.011 states, “It is the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by laws. Sections 610.010 to 610.028 shall be liberally construed and their exception strictly construed to promote this public policy.” Some e-mail correspondence falls under the purview of the Sunshine Law. State agencies have a duty to make these public records available upon request. RSMo. 610.023 (2) states, “Each public governmental body shall make available for inspection and copying by the public of that body’s public records.” Therefore, we strongly encourage agencies develop systems and procedures to make e-mail records accessible when requested.

To ensure the records are easily accessible throughout their retention period for internal, as well as public use, the recordkeeping system must:

- Provide for the clear identification of the record
- Permit easy and timely retrieval of individual records and records series
- Retain the records in a usable format
- Provide for transfer of records with historic value to the State Archives

Retention Periods	The content of the message determines how long it must be retained. E-mail is not a unique record series. E-mail is simply the method of transmission – like a fax machine or the postal service. Agency recordkeeping requirements may differ. Agencies should consult their approved Records Disposition Schedules to determine the appropriate retention period or contact the Records Management Division (573-751-3319) for advise.
Disposition	Regardless of the type of media used to store e-mail messages, the recordkeeping system should have a procedure for the disposition of records once their retention period has been met. However, if e-mail records are maintained within electronic recordkeeping systems, agencies must ensure all copies including back-ups are purged.
Temporary Hold Orders	Once a record series and time period have been identified as part of litigation, a temporary hold order must be placed on the covered records. Agencies must establish procedures to ensure that e-mail records are included within the temporary hold order.