



Office of the City Manager

October 5, 2015

To: Honorable Mayor and  
Members of the City Council

From:  Dee Williams-Ridley, Interim City Manager

Re: Council's July 14, 2015 Referral to Evaluate City's Email Retention Policy

This memorandum provides the information requested in Council's July 14, 2015 referral to the City Manager regarding the City's 90 day email retention policy. The specific language of the referral is "evaluate the Berkeley Email Retention system for compliance with California state law and consider building in passive information redundancy systems."

City Administrative Regulation ("A.R.") 4.2, "Computer Network Resources," sets forth, among other things, the City's policy regarding email. It states the city's policy that email is intended as a tool to transmit information and that it is not to be used by staff as a permanent storage medium. A.R. 4.2 was originally issued by the City Manager in January 1995 and amended in February 2011 after a thorough review by the Information Technology (IT) Director and City Attorney.

In 2011, the 90-day email purging policy was added to A.R. 4.2 to address network problems caused by employees saving email in Outlook. The large volume of email was causing a significant slow-down of the City's servers. The new policy was also intended to address issues that have arisen when responding to Public Records Act (PRA) and litigation discovery requests for broad categories of email. Some examples of these types of requests, include requests for "all email sent or received" by a particular staff member for the last two years, or requests for "all communications" between all staff (or Council members) and a particular citizen or on a particular issue. Because employees were using Outlook to store several years of email, significant staff resources were being expended to search, retrieve and review thousands of emails that were not part of the City's official records, but had been saved simply because employees had not deleted their email. To address these issues, A.R. 4.2 was amended to provide for a 90 day automatic purging of all email messages. This means that any email message that is more than 90 calendar days old is automatically deleted from the email system.

However, because some email should be maintained as part of the City's official records, A.R. 4.2 specifically provides that employees are required to maintain some email that falls within the category of records listed in the City's Records Retention Resolution. A.R. 4.2 provides that employees shall determine for each email sent or received whether the email is required to be retained as part of the City's official records. Similar to any other communications employees send or receive in other formats, employees must determine whether a particular email is required to be maintained as part of the City's official records and, if so, place it in the appropriate file.

Prior to its amendment, the City Attorney reviewed A.R. 4.2 and found it in compliance with applicable state law. The Public Records Act does not regulate the retention of records. It only regulates disclosure. Also, there is no state statute that defines what a "record" is for the purposes of the City's records retention policy. Government Code Section 34090 (cited in the Council referral) governs the retention of public records. However, Section 34090 contains no definition of what is a "record" for purposes of local records retention policies. Further, the California Attorney General has opined that local agency records for purposes of records retention statutes are those kept as required by law, *or as necessary or convenient for the discharge of agency duties*. Therefore, local agencies retain some discretion concerning which agency records, including emails, must or should be retained in the ordinary course of city business. The City's Records Retention Resolution does not list email as a record. Instead, email is treated like other correspondence, i.e., if it documents official city business, then it must be maintained for the relevant retention period. However, if an email is not documentation of official city business, it is treated like staff's other preliminary, drafts, and notes, which are discarded.

Council also requested information on whether the City could set up "passive information redundancy" and keep all email for two years. While it is possible to change the City's email policy to retain all e-mails for two years, there are additional unbudgeted costs that must be considered. The IT Network Administrator has advised that such a change would likely result in an eight-fold demand on email processing, data storage, back-up infrastructure and electricity for those functions, and estimates the additional costs to be an initial \$180,000 for software, 40 hours of time to implement the change, 80 hours of training, and approximately \$32,000 - \$64,000 per year to cover recurring expenses. We will also need an additional 0.5 FTE to provide user support, respond to PRA inquiries, and ongoing maintenance.

Additionally, there would be impacts on staff workload in responding to PRA requests, as it is likely that the City would receive more PRAs for all email sent or received in a two year period. (Some PRA requests already seek documents well over two years old.) These types of PRA request would place an additional workload on IT Department staff, who must retrieve the emails, and City Manager and City Attorney staff, who must review every single email to determine if it should be withheld, redacted or released. For example, under the current 90 day destruction policy, staff already spends a

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significant amount of resources responding to PRA requests. For example, a recent PRA request sought all email sent or received by staff and Councilmembers during a 10-day period that contained certain key words. A search by the IT Department identified several thousand emails that were responsive to this request. City Attorney staff then had to review each email to determine if any portion was exempt from disclosure, and if so, redact that portion. Responding to this one PRA has taken several weeks and required significant staff time. Retaining all emails would significantly increase the work load associated with responding to PRA requests. As a result, additional staff would be needed to avoid negative impacts on other projects.

cc: Gil Dong, Interim Deputy City Manager  
Zach Cowan, City Attorney  
Ann-Marie Hogan, City Auditor  
Mark Numainville, City Clerk  
Matthai Chakko, Public Information Officer