



July 29, 2015

Craig Hess
Chief Legal Counsel
Jeffco Public Schools

VIA EMAIL TO rhess@jeffco.k12.co.us

RE: Email Retention Policy of under the Colorado Open Records Act

Dear Mr. Hess:

As an organizational member of the Colorado Freedom of Information Coalition, Colorado Ethics Watch works to ensure citizen access to public records pursuant to the Colorado Open Records Act (CORA). As part of this mission we have worked together with a wide variety of groups to support legislation that protects citizen access and reduces costs to government custodians of public records while modernizing CORA to deal with today's realities of digital documentation and electronic communication.

It has come to our attention that the Jeffco Public Schools and its Board of Education ("Board") does not have any official document retention policy regarding electronic mail used for official business by Board members and employees. According to a Chalkbeat Colorado article, the Board's attorney advised that a policy should be adopted and promised to draft one back in January.¹ From our review it appears the "Public's Right to Know" policy on the Board's website does not include any provisions regarding retention of digital records, including email. We have been made aware that citizens have recently been advised that the Board still has not adopted such a policy, but is considering discussing the matter this fall.

Almost *twenty years ago*, the General Assembly amended CORA to address the increased use electronic mail and digital documents by government officials and agencies. After explicitly adding email to the definition of "public records" covered by CORA, the legislation added a new provision about retention policies:

(b) Where public records are kept only in miniaturized or digital form, whether on magnetic or optical disks, tapes, microfilm, microfiche, or otherwise, *the official custodian shall:*

(I) Adopt a policy regarding the retention, archiving, and destruction of such records . . .

§ 24-72-203(1)(b), C.R.S. (emphasis added).

¹ Nicholas Garcia, *Jeffco board lawyer: emails can be deleted*, Chalkbeat Colorado (Jan. 30, 2015), available at <http://co.chalkbeat.org/2015/01/30/jeffco-board-lawyer-emails-can-be-deleted/#.VbkQyPmrRD>.

While CORA leaves to the discretion of each government custodian what type of retention policy to use, it mandated that as of June 1, 1996 each custodian must adopt some sort of retention policy for email and digital records. While the “Public’s Right to Know” policy was adopted in 1997 and has been amended as recently as October 2014, the Board’s refusal to adopt an email retention policy in the face of such clear mandatory language in a state statute is a flagrant, and apparently willful, violation of CORA.

The proposition that a government entity such as the Jeffco Public Schools must adopt and follow a document retention policy for electronic mail under CORA is not controversial. *See Colorado Association of School Boards Sample Policy on Electronic Communications* (stating “Colorado school districts are required by law to adopt a policy on this subject”).² We urge the Board to adopt the CASB sample retention policy at its next meeting to comply with state law while any possible discussions about tailoring the model policy occur this fall. Otherwise, Jeffco Public Schools and its Board continues to be acting in violation of CORA.

Please feel free to contact me with any questions regarding this matter. I can be reached at (303) 626-2100 or via electronic mail at pperl@coloradoforethics.org.

Thank you for your prompt attention to this matter.

Sincerely,



Peg Perl
Senior Counsel

² CASB Sample Policy is available online at:
<http://static1.squarespace.com/static/5192a434e4b0f3c88539a8b0/t/5228cfdee4b0001f2a37f492/1378406366017/E/GAEA+Electronic+Communic.pdf>.