

Records Retention: What to Keep and How to Save.

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North Carolina Perspective: Professional and Legal Issues for Legislative E-Mail and Other Documents.

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In this presentation, I will discuss in general why we keep legislative staff documents, why legislative staff documents might be treated differently than executive branch staff documents, and why we might not want to keep all documents forever. And I will share how our experience in North Carolina highlights new more complex issues of record retention and retrieval in the electronic age.

Why do we keep records?

North Carolina is probably like most other states in that it has a public records law governing access to public records. North Carolina treats emails as any other public record, like most states.

North Carolina defines public records as "...all documents ...regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions." G.S. 132-1.

The North Carolina law does not specifically include the General Assembly under its public records law, and whether the General Assembly is covered has never been tested in the courts. The General Assembly is not considered to be an agency of State government, but a branch of State government, and therefore an argument could be made that the public records laws do not apply to the General Assembly. One reason this question has not been tested is because of the NC legislative confidentiality statute clearly defines certain documents created in the legislative process as not public records. This would apply to emails as well as other documents.

Additionally, the North Carolina public records law not only requires that in order for a document to be a public record the document has to be made or received in connection with the transaction of public business, but that it also be made or received pursuant to law or ordinance. As to legislative documents made or received, except for administrative operations of the General Assembly that may be governed by law (personnel matters, procedures for paying expenses, purchasing equipment, etc.), the constitutional role of the General Assembly is only to enact laws. Other documents, not related to these two purposes, would not be made or received pursuant to law or ordinance and therefore would not be public records. This could include personal and political correspondence (caucus matters and political strategy), as well as constituent correspondence.

Legislatures in other states seem to handle public records issues in different ways. Some appear to treat legislative documents the same as documents in the executive branch. Some treat legislative documents differently from other public documents, like North Carolina. And others do not specifically address legislative documents in their public records but rely on separation of powers and legislative immunity concepts to shield certain documents. (See Attachment 1)

For an excellent compendium of the public records laws of the 50 states go to <http://www.rcfp.org/ogg/>.

Why are staff documents different in the legislative vs. the executive branch?

Because of legislative immunity and legislative confidentiality.

The doctrine of legislative immunity has origins in the common law in the struggles between the English Crown and Parliament that began more than 600 years ago.¹ The United States Constitution provides for legislative immunity in Article I Section 6, which states, "For any speech or debate in either house [the members] shall not be questioned in any other place". Legislative immunity is not provided for in North Carolina's constitution. G.S. 120-9 constitutes the NC Speech and Debate clause saying:

"The members shall have freedom of speech and debate in the General Assembly, and shall not be liable to impeachment or question, in any court or place out of the General Assembly, for words therein spoken."

The United States Supreme Court has recognized the deep roots of legislative immunity in American and English Common law and its application to state legislators. *Tenney v. Brandhove*, 341 U.S. 367, 95 L.Ed 1019 (1951). In *Tenney*, the court stated the reason for legislative immunity:

"In order to enable and encourage a representative of the public to discharge his public trust with firmness and success, it is indispensably necessary, that he should enjoy the fullest liberty of speech, and that he should be protected from the resentment of every one, however powerful, to whom the exercise of that liberty may occasion offense".

The court concluded in *Tenney*, due to its common law origins, legislative immunity under federal law is afforded to state legislators even where not specifically provided for in a state's constitution. *Id.* As a result, state courts have likewise afforded common law legislative immunity to legislators or legislative staff, or both, even when not provided for in a state's constitution or by statute.

Today, forty-three states have constitutional legislative privilege provisions; twenty-three of them have provisions essentially identical in the text to the federal Speech or Debate Clause. Seven states: California, Florida, Iowa, Mississippi, Nevada,

¹ Wattson, Peter, General Counsel, Minnesota Senate. "Legislative Immunity in Minnesota", 2006.

North Carolina, and South Carolina are entirely without any constitutional language granting legislative immunity.²

The scope of legislative immunity is extremely broad. The court in *Gravel v. United States*, 408 U.S. 606, 625 (1972), has described a legislative act as any act that is (1) “an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings”, and (2) relates “to the consideration and passage or rejection of proposed legislation or with respect to matters which the Constitution places within the jurisdiction of either House”. This includes sending a letter containing defamatory material from one Senator to another in response to the second Senator’s inquiry into the first Senator’s exercise of his official powers, *Ray v. Proxmire*, 581 F.2d 998 (D.C. Cir. 1978), and drafting memoranda and documents for discussion between a legislator and staff, even when the document’s proposed action falls outside the sphere of legitimate legislative activity. *United Transp. Union v. Springfield Terminal Ry.*, 132 F.R.D. 4 (D. Me. 1990).

There are several activities of legislators that do not fall under the doctrine of legislative immunity; most notably, legislative immunity does not bar inquiry into whether a legislator’s activities and conversations were, in fact, legislative in nature.

Because legislative immunity is constitutionally based, I do not believe that it can be taken away by statute, under the constitutional concept that one session of the legislature cannot bind another session of the legislature. I also believe that this privilege or immunity rests with the individual legislator, and not just the institution or body, and therefore even a majority of a chamber or the legislature cannot take away the constitutional protections afforded the individual legislator. For these reasons, I do not believe that the public records law can apply to matters covered by legislative immunity.

The North Carolina Experience

Since 2005, the North Carolina General Assembly has faced four interesting situations that has lead us to look more closely at the professional and legal issues involved with emails in the legislative context:

- Response to a federal grand jury subpoena for legislative email as part of a criminal investigation in 2005 into the conduct of the then Speaker of the House Jim Black.
- Response to a discovery request for legislative emails in a civil lawsuit against the State of North Carolina in 2007 challenging the reasoning behind the passage of a law.
- Governor’s Email Review Panel created after the Governor’s order in 2008 to delete controversial emails.
- Response to a discovery request for legislative redistricting documents and emails in 2012, where attorney-client privilege, work product and legislative privilege were raised as a challenge to a provision of the legislative confidentiality statutes making redistricting documents public records after the adoption of redistricting plans.

² Huefner, Steven. “The Neglected Value of the Legislative Privilege in State Legislatures”, William and Mary Law Review, 2003.

North Carolina General Assembly

During the period from 2005 through 2008, the North Carolina General Assembly processed between 7 and 10 million e-mails a month. This number fluctuated based on whether or not the General Assembly was in session; i.e., sessions average about 8 million emails a month and interims between sessions average about 6 million emails a month. This number had grown tremendously since 2000, when emails averaged about 2 million a month. The storage needs for legislative emails has grown even more sharply from 30,000 MBytes in 2000 to over 270,000 MBytes by 2007.

Response to federal grand jury subpoena.

In 2005, the Legislative Information Systems Division (ISD) was formally engaged in the research and forensics of e-mails related to the three subpoenas of former House Speaker Jim Black on federal corruption charges. The subpoena required production of all emails from 18 listed individuals.

The Division initially identified 5,701,820 potentially relevant emails, which was reduced to 483,877 after filtering out all email accounts that were not identified as being within the scope of the subpoena. ISD examined on-line e-mail accounts, network drives, and local hard drives and further reduced the number of applicable e-mails to 434,222. This process took more than 5 calendar days to complete.

In addition to on-line emails, emails contained on backup tapes were also requested. These tapes also contained text files and databases along with email that ISD would have to sort through. Due to the magnitude of information that would have to be searched, the Division built a "forensics lab" environment that would not be a part of the NC General Assembly computer network, but would have sufficient processing power and disk space to search and process the backup tapes. In the process of locating the tapes containing emails, over 1,700 tapes were scanned. To accomplish this task, ISD spent approximately 1,662 staff hours (at a cost of an average of \$36 per hour totaling \$59,832) and required the purchase of \$7,000 in additional hardware and software.

During the process the General Assembly worked with the FBI and the U.S. Attorney's Office to satisfy the federal investigators that the protocol being followed would produce results that would comply with the subpoena. After six months of processing and review of documents retrieved, approximately 2500 emails were turned over to the grand jury. (See Attachment 2)

Response to civil discovery request.

In 2007, Waste Industries USA, Inc (doing business as Black Bear Disposal) sued the State of North Carolina and the NC Department of Environment and Natural Resources (DENR) after the General Assembly enacted two bills which made significant changes to the law governing the location of sanitary landfills within the State. These bills amended the law to prohibit DENR from issuing a permit to construct a sanitary landfill if any portion of the proposed sanitary landfill was to be located within five miles of the outermost boundary of a national wildlife refuge. The provision directly affected the proposed landfill site of the plaintiffs, located within 5 miles of a national wildlife refuge. The plaintiffs claimed the bills were an improper abdication of the General

Assembly's authority to a subordinate administrative agency, and sued under both State and federal law. The plaintiff's claims against the State include: regulating commerce among the several states, denying equal protection under the law, depriving plaintiff's property without due process, taking property without just compensation, and taking the plaintiff's property in an arbitrary, capricious, and confiscatory manner.

As part of the lawsuit, the General Assembly was requested to produce all emails produced or received within the General Assembly concerning the passage of these bills. The Black Bear discovery request involved searching the electronic records for more than 100 individuals and an undetermined number of "search terms". As of April 2008, the NCGA computer network housed over 8.6 million on-line electronic files.

In its response to the discovery request, the State asserted legislative confidentiality and legislative immunity as the basis for refusing to turn over all emails covered by the discovery request. The State turned over all documents considered to be public records.

The trial court granted summary judgment in favor of the State, which the NC Court of Appeals affirmed. The case is currently on appeal to the NC Supreme Court. The plaintiff did not ask the court to rule on the General Assembly's refusal to turn over all requested emails considered to be covered by legislative confidentiality or legislative privilege.

Governor's E-mail Records Review Panel.

Early in 2008, then NC Governor Mike Easley created the E-mail Records Review Panel after his administration was accused of ordering state employees to delete their email correspondence with the Governor's office. Governor Easley charged the panel with studying the issue of managing e-mail as a public record and recommending any necessary changes to then current North Carolina e-mail and electronic text communication record retention policies and procedures in light of changes in technology.³

The Panel met six times in 2008 and developed a set of unanimous recommendations. The panel found that there are more than 33,000 email accounts used within agencies in North Carolina, including county and local government entities. Statistics show that about 300,000 valid email messages were delivered a day (valid meaning not blocked due to virus/spam filtering) and about 9 million valid emails were delivered a month. The NC General Assembly operates its own email account, separate and independent of the executive branch.⁴

In its report to the Governor, the panel recognized that state employees should be directed to treat e-mail as they do paper documents or other records handled in the course of their employment and to do so in compliance with existing public records laws. The panel felt the content of the information in e-mail, rather than e-mail format, should determine how an employee should manage e-mail. The panel also added that in managing email, each agency's records retention and disposition schedule could instruct an employee on how long e-mail should be saved and how to distinguish between e-mail

³ Letter from Franklin Freeman, Chair, E-mail Records Review Panel to Governor Easley. May 20, 2008.

⁴ E-mail Services Customer Profile, Office of Information Technology Services.

created in the course of state business and personal/junk e-mail, which the Panel felt state employees should retain the ability to delete.⁵

Other recommendations made by the panel included: public records training for state employees, random audit state agencies to ensure compliance with public records laws and agency record retention and disposition schedules, extending retention of back-up tapes from 30 days to at least 5 years, single e-mail system in the executive branch, and requiring employees who use personal e-mail accounts and other forms of technology to conduct state business to synchronize or otherwise copy the records to a state-assigned e-mail account for archiving.⁶

In July, 2009, Governor Perdue issued an executive order applicable to the executive branch which presumed that all email received in State government email accounts were public records and employees had no expectation of privacy in their electronic correspondence and should assume that personal emails would be subject to release in response to a public records request. All email accounts are to be backed up daily and maintained for a minimum of 10 years.

Attorney-client privilege, work product, legislative immunity and waiver of legislative confidentiality.

On July 9, 2012, the N.C. Supreme Court heard a case involving discovery in a redistricting case where the defendants asserted attorney-client privilege, work product privilege, and legislative privilege in an attempt to shield certain documents from discovery. During discovery, the legislative defendants refused to produce certain requested documents, predominantly e-mails, created in consultation with outside counsel hired by the Speaker of the House, the President Pro Tempore of the Senate, and the chairs of the redistricting committees in their official capacities. The trial court held that the legislative confidentiality statute waives any attorney-client privilege that may attach to redistricting-related documents and ordered the disclosure of the documents.

G.S. 120-133, part of the legislative confidentiality law provides:

"Notwithstanding any other provision of law, all drafting and information requests to legislative employees and documents prepared by legislative employees for legislators concerning redistricting the North Carolina General Assembly or the Congressional Districts are no longer confidential and become public records upon the act establishing the relevant district plan becoming law. Present and former legislative employees may be required to disclose information otherwise protected by G.S. 120-132 concerning redistricting the North Carolina General Assembly or the Congressional Districts upon the act establishing the relevant district plan becoming law."

For purposes of legislative confidentiality, G.S. 120-129 defines "Legislative employee" to include "consultants and counsel to members and committees of either

⁵ Letter from Franklin Freeman, Chair, E-mail Records Review Panel to Governor Easley. May 20, 2008.

⁶ *Id.*

house of the General Assembly or of legislative commissions who are paid by State funds. . . .”

The question before the Court is whether G.S. 120-133 waives the General Assembly’s common-law attorney-client privilege and work product privilege with regard to redistricting communications between members of the General Assembly and outside legal counsel paid with public funds.

The legislative defendant-appellants argue that the waiver of confidentiality in G.S. 120-133 regarding redistricting matters is limited to those rights expressly recognized by the legislative confidentiality law, which does not include attorney-client privilege or the work product doctrine. These privileges are common law rights available to legislators and legislative staff independent of the legislative confidentiality recognized by the legislative confidentiality law. Further, since it was codified in 1983, G.S. 120-133 has been construed by the General Assembly and the Attorney General’s Office as not waiving the attorney-client privilege and such a long-standing construction is entitled to “great weight.”

The plaintiff-appellees argue that the plain meaning of G.S. 120-133 requires the disclosure of all documents related to redistricting, emphasizing the broad language used (“notwithstanding *any* other provision of law, *all* drafting and information requests . . . are no longer confidential”). The plaintiff-appellees argue that even if strictly construed, the word “confidential” frequently includes privileged information in other contexts, and the fact that attorney-client privilege and the work product doctrine are not specifically mentioned does not cancel out the statute’s broad language. They also argue that by the enactment of this statute, the General Assembly waived its legislative privilege as to these documents.

Since the NC Supreme Court heard this case on an expedited direct appeal from the trial court, a decision is expected within the next month.

NC e-mail retention

In North Carolina, administration of the State’s archives and record retention policies is the responsibility of the NC Department of Cultural Resources. In its publication, “Email as a Public Record in North Carolina”, the Department states that electronic mail is a public record when sent or received in normal business processes. The Department mandates that electronic mail may not be disposed of, erased, or destroyed without authorization from the Department. Some examples of email messages that are public records include: policies and directives, correspondence related to official business, work schedules, meeting agendas or minutes, any document that initiates, authorizes, or completes a business transaction, reports, and draft documents that are to be reviewed and/or commented upon.

There are also other email messages that qualify as public records but have extremely limited value. These messages may be disposed of when they no longer have reference value to the sender or receiver of the message, or in conjunction with an approved records retention and disposition schedule. A records retention and disposition schedule is made by a government agency and approved by the Department. There is also a statute for State agency records, which addresses records commonly found in

agencies throughout State government, provides uniform descriptions and disposition instructions, and indicates minimum retention periods.

For the NC General Assembly, there is currently no specific policy concerning email records in the retention and disposition schedule approved by the Department of Cultural Resources. However, under NC's Public Records Law, email content is subject to the same access and inspection conditions as other records, unless exempted from access by another statute. In the General Assembly's records and retention schedule, the disposition of daily records and operations of the Fiscal Research, Legislative Drafting, and Research Divisions of the General Assembly directs employees to destroy these materials in office when the administrative value of the document ends, "if no litigation, claim, audit, or other official action involving the records had been initiated." If official action has been initiated, employees are instructed to destroy the documents in office after completion of the action or resolution of issues involved. Since there is no specific statute in the public records law exempting emails of this nature, emails concerning records of daily operations of each division may be destroyed in office when the administrative value ends. These records include correspondence, memorandums, copies of project materials handled by staff attorneys, materials for special projects or subjects, policies and procedures, and other related records and data.

In a policy statement titled "Custodianship of Legislator E-mail and other Electronic Documents", individual members of the General Assembly are given custodianship of their email and other electronic documents because legislative immunity may shield some of the documents received or made by the member. The policy gives members of the General Assembly custodianship of documents that are made or received by the member or the personnel in the member's office, and allows the member to access the documents after they leave office.

In this day and age of relative inexpensive electronic storage, the tendency to "clean out your file cabinet" is often thought unnecessary and certainly not cost efficient. But from our experience it is possible that the failure to dispose of documents that have outlived their usefulness may make the job of responding to subpoenas and public records requests much more costly because we have let the number of file cabinets that have to be gone through, one document at a time, grow without restraint.

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Open Government Guide

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Open Records

I. STATUTE -- BASIC APPLICATION

B. Whose records are and are not subject to the act?

2. Legislative bodies.

Comparing: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming

Alaska

Subordinate legislative bodies such as school boards and municipal assemblies are clearly covered by the public records law. Records of the Alaska Legislature itself are also public by virtue of legislative rules and statutes. It is possible that legislators would argue the laws and rules are not judicially enforceable, *citing Abood v. League of Women Voters*, 743 P.2d 333 (Alaska 1987). In that case, the Alaska Supreme Court held that violations by the state legislature of the Alaska Open Meetings Act were "nonjusticiable," even though the OMA and legislative rules expressly required the legislature to meet publicly in accordance with the law. This means the court simply will not entertain disputes over such violations, because of the need to respect the relationship between coordinate branches of government established by the constitution.

Would the same reasoning be applied by the courts to duck problems with legislative violations of public records laws? Possibly, though there are good arguments to the contrary. The *Abood* decision rests on two constitutional provisions. First, the Alaska constitution provides, in Article II, Section 12: "Rules. The houses of each legislature shall adopt uniform rules of procedure." This, the Court says, "specifically and exclusively authorizes the legislature to adopt its own rules of procedure." Further, the court found that when, where and how legislators meet and deliberate is a question of legislative rules and that only the legislature can decide whether and how the law should apply to it. This reasoning could be applied to records, as well, since the premise of the court's opinion is that "out of respect owed to a coordinate branch of state government, [the court must] defer to the wisdom of the legislature concerning violations of legislative rules which govern the internal workings of the legislature." 743 P.2d at 337. In this context, however, records and meetings present very different issues. It is less obvious that access to records involves procedural rules. Also, there is no provision in the records laws comparable to AS 44.62.312(f) in the OMA, which — as it was written at the time — would have voided legislation enacted as the result of a process involving open meetings law violations.

A different problem is posed by the other ground for the Court's decision — Article II, Section 6, of the Alaska Constitution, dealing with legislative immunity. In essence, it would prevent questioning a legislator, and many legislative aides, about alleged violations of public records laws whether in depositions or in court. This should not be such a major stumbling block in the records context, however, since there will normally be records custodians other than the legislators or their aides. It is

different from the situation of a meeting of legislators, when only they know what was said, or who attended. Further discussion of the interesting constitutional issues raised by access to legislative records is beyond the scope of this outline. Reporters should assume legislative records are generally open to the public unless and until it is determined otherwise.

Alabama

All legislative bodies are presumptively subject to the Public Records Law, although the Law itself is silent on this point. One trial court has applied the Law to the following legislative officers: *Clerk of the State House and Secretary of the State Senate*: Remote access telephone assignment records. *Birmingham News Co. v. Swift*, CV 88-1390 G (Cir. Ct. of Montgomery County, Ala., Aug. 31, 1988).

Arkansas

Records of a “public official or employee” and a “governmental agency” are covered by the FOIA. Ark. Code. Ann. § 25-19-103(5)(A). This definition includes the General Assembly, legislators, legislative committees, city councils, and other bodies with legislative powers. *E.g.*, *Laman v. McCord*, 245 Ark. 401, 432 S.W.2d 753 (1968) (city council); Ark. Op. Att’y Gen. Nos. 96-123 (county quorum court), 84-091 (legislative committees). The definition might not include advisory bodies. Ark. Op. Att’y Gen. No. 2006-059 (Chancellor Search Advisory Committee). However, a task force that discusses official business of the larger governing body and will provide information upon which the governing body “could foreseeably take action” is included in the definition of a “governmental agency.” Ark. Op. Att’y Gen. No. 2006-194 (HVAC-Plumbing Examining Committee Recommendation Feasibility Joint Task Force).

Arizona

There is no information under this heading in this state's outline. Because there might be relevant text in the parent point in the outline, the text for that section follows:

Open Records

I. STATUTE -- BASIC APPLICATION

B. Whose records are and are not subject to the act?

The Arizona Public Records Law contains two operative definitions—“officer” and “public body”—for the purpose of subjecting certain documents to disclosure under the law.

“Officer” is defined as “any person elected or appointed to hold any elective or appointive office of any public body and any chief administrative officer, head, director, superintendent or chairman of any public body.” A.R.S. § 39-121.01(A)(1).

“Public bodies” are defined by statute as “the state, any county, city, town, school district, political subdivision or tax-supported district in the state, any branch, department, board, bureau, commission, council or committee of the foregoing, and any public organization or agency, supported in whole or in part by monies from the state or any political subdivision of the state, or expending monies provided by the state or any political subdivision of the state.” A.R.S. § 39-121.01(A)(2). The operative definition of a “public body” in Arizona is very broad. Indeed, any “public organization or agency” supported by or expending public funds falls within the ambit of the Act.

Exempt Agencies: No Arizona agencies are exempted in their entirety.

Every officer and every public body are obligated to preserve, maintain and care for public

records pursuant to Arizona law. A.R.S. § 39-121.01(C).

California

The CPRA does not apply to the State Legislature or its committees. Cal. Gov't Code § 6252(a). Records of the Legislature are subject to the Legislative Open Records Act. Cal. Gov't Code § 9070, et. seq. The Constitutional Sunshine Amendment does apply to the Legislature because it applies generally to "public bodies" and to the "writings of public officials," without excluding the Legislature. Cal. Const. Art. I, § 3(b)(1). The Amendment, however, specifically maintains exemptions and protections for confidentiality of records of the Legislature as provided for by "Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions" Cal. Const., Art. I, § 3(b)(1). Moreover, in *Sutter's Place v. Superior Court*, 161 Cal. App. 4th 1370, 1382, 75 Cal. Rptr. 3d 9 (2008), the court rejected the argument that the Sunshine Amendment eliminated the mental process principle asserted to protect the motives and thought processes of local legislators (not state legislators), and characterized the principle as rooted in state and federal constitution law, as well as statutory law under the CPRA's Section 6254(k) (incorporating other prohibitions established by law), both of which the court said were expressly prereserved under the Sunshine Amendment. Nevertheless, a constitutional right of access arguably would extend to records of the Legislature not exempt or otherwise protected under existing law.

Colorado

The records of the General Assembly are covered by the Act.

Connecticut

The legislative branch is subject to FOIA. Conn. Gen. Stat. §1-200(1). *See also* Conn. Gen. Stat. §2-23 (copies of bills, resolutions, and records of hearings and proceedings shall be kept at state library for public inspection).

District of Columbia

The Act applies to any "public body," including the Council of the District of Columbia. *See* D.C. Code Ann. § 2-502(18A) (defining "public body" as including the Council).

Delaware

Legislative bodies are covered by the Act. However, the General Assembly, or any caucus thereof, or committee, subcommittee, ad hoc committee, special committee or temporary is specifically exempted. 29 *Del. C.* § 10002(c); *News-Journal Co. v. Boulden*, 1978 WL 22024 (Del. Ch. May 24, 1978). For example, the Wilmington City Council is covered. *News-Journal Co. v. McLaughlin*, 377 A.2d 358 (Del. Ch. 1977).

Florida

Unless the legislature promulgates a contrary legislative rule, the public records law applies to records made or received in connection with official business by legislators. *See* Op. Att'y Gen. Fla. 75-282 (1975) (in the absence of a House or Senate rule to the contrary, Chapter 119 applies to legislative records); Op. Att'y Gen. Fla. 72-416 (1972) (the Legislature may provide by rule for the confidentiality of a report of a special master appointed by the Senate to conduct a suspension hearing until such time

as the Senate meets to debate the suspension).

In addition, various statutory exemptions apply to legislative records. See Fla. Stat. § 15.07 (1995) (exempting the journal of the executive session of the Senate from disclosure except upon order of the Senate itself or some court of competent jurisdiction); Fla. Stat. § 11.26(1)(2) (1995) (legislative employees forbidden from revealing the contents of any requests for services made by member of legislature).

Georgia

The Act applies to all governmental bodies or other entities that serve a "public function," legislative or otherwise. See *Jersawitz v. Fortson*, 213 Ga. App. 796, 446 S.E.2d 206 (1994) (applying related Open Meetings Act to Olympic Task Force Selection Committee) The Act specifically exempts from its disclosure requirements privileged and confidential official communications with the Office of Legislative Counsel, O.C.G.A. § 50-18-75, as well as certain records related to the provision of staff services to individual members of the General Assembly by the Legislative and Congressional Reapportionment Office, the Senate Research Office, or the House Research Office, O.C.G.A. § 50-18-72(a)(8). Moreover, the Act has been held inapplicable to the General Assembly, "since the Legislature [has] historically exercised the authority to adopt its own internal operating procedures, and [has] subsequently adopted [procedures] inconsistent with the Act." *Fathers Are Parents Too v. Hunstein*, 202 Ga. App. 716, 717, 415 S.E.2d 322 (1992), citing *Coggin v. Davey*, 233 Ga. 407, 410-11, 211 S.E.2d 708 (1975).

Hawaii

The State Legislature is subject to the UIPA, but Section 92F-13(5) provides an exception for "[i]nchoate and draft working papers of legislative committees including budget worksheets and unfiled committee reports; work product; records or transcripts of an investigating committee of the legislature which are closed by rules adopted pursuant to Section 21-4 and the personal files of members of the legislature." Legislative rules provide that committee reports (as opposed to drafts) are public records.

Iowa

Similarly to how executive branch records are treated under the law, no provision is made in the statute for exclusion of records in the custody of legislative bodies or the courts. "It is the nature and purpose of the document, not the place where it is kept, which determines its status." 79 Op. Att'y Gen. 19, 20 (Oct. 9, 1979). *Des Moines Independent Community School District Public Records v. Des Moines Register & Tribune Company*, 487 N.W.2d 666, 670 (Iowa 1992) ("The nature of the record is not controlled by its place in a filing system."). *But see, Des Moines Register and Tribune Co. v. Dwyer*, 542 N.W.2d 491, 503 (Iowa 1996) (Senate decision to keep the records in question (long distance telephone records) confidential falls within the constitutionally granted power of the Senate to determine its rules of proceedings under Iowa Const. Art. III, § 9).

Idaho

The definition of "state agency" in the Public Records Act also includes all legislative bodies. Idaho Code § 9-337(14). The records maintained by officers of all legislative bodies, except as expressly provided otherwise by law, are open to the public.

Illinois

Public bodies whose records are subject to the Act include legislative bodies. See 5 ILCS 140/2(a). It

should be noted that records of officers and agencies of the General Assembly that pertain to the preparation of legislative documents are exempt from disclosure if those records are in the nature of preliminary drafts, notes, recommendations, memoranda and other records *in which opinions are expressed, or policies or actions are formulated*. 5 ILCS 140/7(1)(f) (emphasis added).

Indiana

Unless covered by a specific exemption, all records of legislative bodies are subject to the Act. Ind. Code § 5-14-3-2. However, in a bizarre decision, the Indiana Supreme Court has held that separation of powers considerations prevent the courts from enforcing the access statutes against the Indiana General Assembly. *State ex rel. Masariu v. Marion Superior Court No. 1*, 621 N.E.2d 1097 (Ind. 1993).

Kansas

Legislative bodies are subject to KORA. *Id.*

Kentucky

The General Assembly is not exempt from the ORA. "The General Assembly did not exclude itself from the Open Records Act, but made the Act binding upon itself by defining the term public agency to include 'any body created by state or local authority in any branch of government.'" 98-ORD-92 (*citing* Ky. Rev. Stat. 61.870(1)(g)). "Every state or local legislative board" is a public agency under the ORA. Ky. Rev. Stat. 61.870(1)(c).

Louisiana

Legislative bodies are covered by the statute. La. Rev. Stat. Ann. § 44.1. *See Times-Picayune v. Johnson*, 645 So. 2d 1174 (La. App. 4th Cir. 1994), *writ denied*, 651 So. 2d 260 (La. 1995) (individual legislators are "custodians" of nomination forms for legislative scholarships to private university). In *Copsey v. Baer*, 593 So. 2d 685 (La. App. 1st Cir. 1991), *writ denied*, 594 So. 2d 876 (La. 1992), however, the court held that the legislative work files related to two bills from prior sessions of the Louisiana legislature were privileged from public records disclosure under the legislative privileges and immunities clause of the Louisiana Constitution, Article III, § 8. The court found that the "demand for legislative files in this case calls for an inquiry into the motivations behind the preparation and introduction of legislative instruments into the Louisiana Legislature. . . ." *Id.* at 689.

Massachusetts

Records of the Legislature are exempt. G.L. c. 66, § 18; *Westinghouse Broadcasting Co. v. Sergeant-At-Arms of Gen. Court of Mass.*, 375 Mass. 179, 184, 375 N.E.2d 1205 (1978) (telephone billing records of Legislature not "public records" subject to disclosure, because Legislature is not "agency, executive office, department, board, commission, bureau, division or authority of Commonwealth). "Massachusetts, the birthplace of American democracy, is one of fewer than 20 states with virtually no requirements that legislators discuss government business in public," the *Boston Globe* noted after the Legislature passed a \$30.6 billion budget that had been negotiated "almost entirely in secret, with six lawmakers meeting for 24 days of talks that were off limits to taxpayers. Debates, agendas, and even the times and locations of the meetings were held in strict confidence. No minutes were kept." N. Bierman, "Legislators' Vital Work Veiled from Public's Eye," *Boston Globe* (July 8, 2011). The article said "[i]nformation blackouts are treated with an almost religious reverence" by legislators, who declined to discuss their deliberations "out of what they term 'a respect for the process.'" *Id.*

Maryland

The PIA applies. The records of all units or instrumentalities of State government or of a political subdivision of the State concerning the affairs of government and the official acts of public officials and employees are subject to the PIA. See §§ 10-611(g), 10-612(a), 10-601, 10-604. The public record statute pertains whether the document was created or merely received by the instrumentality. § 10-611(g)(1)(i)

Maine

Records of the Legislature itself are subject to the Freedom of Access Act, but legislative papers and reports, working papers, drafts, internal memoranda, and similar works in progress are not public until signed and publicly distributed in accordance with rules of the Legislature. 1 M.R.S.A. § 402(3)(C).

Michigan

Agencies, boards, commissions, or councils in the legislative branch of the state government are included in the FOIA's definition of "public body." Mich. Comp. Laws Ann. § 15.232(d)(ii). State legislators themselves are exempted from its provisions. 1985-86 Op. Att'y Gen. No. 6390 (1986).

Minnesota

The legislature was crafty enough to draft the Act so that it did not apply to the legislature. However, in 1993, as a result of a controversy over personal use of long distance telephone cards, the legislature passed legislation rendering certain records, including telephone records, public. § 10.46.

Missouri

Legislative bodies are subject to the Sunshine Law. Mo.Rev.Stat. § 610.010(4) (definition of "public governmental body" includes any legislative governmental entity created by the constitution, statutes, order or ordinance).

Mississippi

Legislative records are covered by the Act, but an ambiguous section retains for the legislature "the right to determine the rules of its own proceedings and to regulate public access to its records." § 25-61-17.

Montana

The Public Records Act does not specifically exempt legislative records. Further, the Montana Constitution, Article V, § 10(3), requires that "(t)he sessions of the legislature and of the committee of the whole, all committee meetings, and all hearings shall be open to the public." Although no court has addressed legislative records, this constitutional mandate for open meetings coupled with the lack of exemption on legislative branch records all lean in favor of openness.

North Carolina

Most records of legislative bodies are covered by the law, but a separate statute allows legislators to

maintain the confidentiality of their requests to the legislative staff for information or drafting assistance. G.S. § 120-129. The Attorney General has opined that correspondence sent to legislators by their constituents is public.

North Dakota

All legislative bodies are covered by the open records law. However, it is worth noting the following records, regardless of form or characteristic, of or relating to the legislative counsel, the legislative management, the legislative assembly, the House of Representatives, the Senate, or a member of the legislative assembly are not subject to the law: records of a purely personal or private nature, records that are legislative council work product or legislative council-client communication, records that reveal the content of private communications between a member of the legislative assembly and any person, and (except with respect to a governmental entity determining the proper use of telephone service) records of telephone usage that identify the parties or list the telephone numbers of the parties involved, except records distributed at open meetings. N.D.C.C. § 44-04-18.6.

Nebraska

The definition of public records above appears to include records of legislative bodies as well. Neb. Const. Art. III, § 11, however, provides "the Legislature shall keep a journal of its proceedings and publish them (except such parts as may require secrecy)." The Legislature has taken the position that the exemption for "Correspondence, memoranda, and records of telephone calls related to the performance of duties by a member of the Legislature" prohibits access to telephone records even by the State Auditor.

New Hampshire

The Statute's definition of "public body" covers "[t]he general court [i.e., the New Hampshire House and Senate] including executive sessions of committees; and including any advisory committee established by the general court," as well as "[a]ny legislative body, governing body, board, commission, committee, agency, or authority of any county, town, municipal corporation, school district, school administrative unit, chartered public school, or other political subdivision, or any committee, subcommittee, or subordinate body thereof, or advisory committee thereto." Nevertheless, in *Hughes v. Speaker of the New Hampshire House of Representatives*, 152 N.H. 276 (2005), the Court held that the Statute did not apply to a House and Senate conference committee on a bill concerning school funding. "[W]e hold that the public interest in protecting the legislature's prerogative to set its own procedural rules and engage in free and frank debate significantly outweighs the public's right of access to the contested negotiations." *Id.* at 295. The Court also held that whether the defendants had violated the Statute was "a non-justiciable political question." *Id.* at 287. The plaintiff, a member of the House, claimed that the closed conference committee proceedings violated the Statute. *See also, Union Leader v. Speaker*, 119 N.H. 442 (1979)(Statute does not require disclosure of tape recording made by the House of Representatives).

New Jersey

A government record shall *not* include information received by a member of the Legislature from a constituent or information obtained by a member of the legislature concerning a constituent, including but not limited to, information in written form or contained in any e-mail or computer database, or in any telephone record whatsoever, unless it is information the constituent is required by law to transmit.

A government record shall also *not* include any memorandum, correspondence, notes, report or other communication prepared by or for the specific use of a member of the Legislature in the course of the

member's official duties, except that this provision shall not apply to an otherwise publicly accessible report that is required by law to be submitted to the Legislature or its members.

See N.J.S.A. 47:1A-1.1

New Mexico

The Legislature is generally subject to the Inspection of Public Records Act. §14-2-6(E), NMSA 2011.

Nevada

The statute does not distinguish legislative bodies from any other governmental entity. See N.R.S. 239.005.

New York

Records of the New York State Legislature are subject to FOIL under a separate provision of that law which delineates the specific records which are subject to public inspection and copying. N.Y. Pub. Off. Law § 88 (McKinney 1988). The "State Legislature" is defined by FOIL to mean "the legislature of the State of New York, including any committee, subcommittee, joint committee, select committee, or commission thereof." N.Y. Pub. Off. Law § 86(2) (McKinney 1988). See *Polokoff-Zakarin v. Boggess*, 62 A.D.3d 1141, 879 N.Y.S.2d 244 (3d Dep't 2009) (holding that the State Senate must disclose Senate employee's time and attendance records as they are included in the list of records that must be disclosed under 88 (3)(b)); *Weston v. Sloan*, 201 A.D.2d 778, 607 N.Y.S.2d 478 (3d Dept. 1994), modified 84 N.Y.2d 462, 643 N.E.2d 1071, 619 N.Y.S.2d 255 (granting access to facts and figures memorializing the expenditure of public funds for legislative printings and mailings, but denying access to copies of newsletters and information targeted mailings). Local legislative bodies are governmental entities within the definition of "agency" and thus subject to FOIL. See generally *King v. Dillon*, No. 20859/84 (Sup. Ct., Nassau County, Dec. 19, 1984) (granting access to minutes of village board meeting); *Malman v. Supervisor (Town of Islip)*, No. 7361/81 (Sup. Ct., Nassau County, Aug. 20, 1981) (granting access to resolution passed by Town Board).

Ohio

The language of the statute is broad enough to encompass all legislative bodies. The Ohio Supreme Court has not yet applied the statute to Ohio's General Assembly. The court's recognition that the constitutional doctrine of separation of powers may inhibit the statute's application could mean that separation of powers bars the statute from applying to certain internal records of state legislators. See *State ex rel. Plain Dealer Publishing Co. v. City of Cleveland*, 75 Ohio St.3d 31, 661 N.E.2d 187 (1996).

In the meantime, the General Assembly has immunized certain classes of its internal legislative records from the Public Records Act, specifically records that arise out of the relationship between legislative staff and a member of the General Assembly but are not filed with the clerk of the General Assembly, presented at a committee hearing or floor session (for amendments to bills or resolution or a substitute bill or resolution), or released/authorized to be released to the public by the member of the general assembly. Ohio Rev. Code § 101.30.

Oklahoma

Records of the legislature or of individual legislators are not subject to the Act except for records kept and maintained on receipt and expenditure of any public funds reflecting all financial and business transactions relating thereto. 51 O.S. § 24A.3.2. However, a copy of a written or electronic

communication "created by" a third-party public body or official and sent to a legislator would be a record of the creating public body or official subject to the Oklahoma Open Records Act in its custody, control or possession. A written or electronic communication from a legislator sent to a third-party public body or official would become a "record" upon being "received by" the public body or official and thereby become subject to the Act in the custody, control or possession of the third-party public body or official. 2008 OK AG 19. Records of expenses incurred by employees of the Legislature in the performance of their official duties or authorized actions which are reimbursed by the Legislature are public records. 2008 OK AG 19.

Oregon

The records of legislative bodies other than the state legislature are subject to inspection under ORS 192.420 and the definitions of ORS 192.410(3). The state Legislative Assembly is not subject to the Public Records Law. ORS 192.410(5); see also ORS 171.405 (no requirement to keep records of acts of legislature other than enrolled laws and joint resolutions themselves) and ORS 192.005(5)(a) and (6).

Pennsylvania

The Act applies to "legislative agencies." This "includes any of the following: (1) The Senate. (2) The House of Representatives. (3) The Capitol Preservation Committee. (4) The Center for Rural Pennsylvania. (5) The Joint Legislative Air and Water Pollution Control and Conservation Committee. (6) The Joint State Government Commission. (7) The Legislative Budget and Finance Committee. (8) The Legislative Data Processing Committee. (9) The Independent Regulatory Review Commission. (10) The Legislative Reference Bureau. (11) The Local Government Commission. (12) The Pennsylvania Commission on Sentencing. (13) The Legislative Reapportionment Commission. (14) The Legislative Office of Research Liaison. (15) The Legislative Audit Advisory Commission. " "Section 102.

Legislative agencies are required to provide access to "legislative records" as set forth in the Act. Section 303.

The old act did not apply to the legislative branch of state government. See *Commonwealth v. Fenstermaker*, 530 A.2d 414 (Pa. 1987).

Rhode Island

Subject to the APRA. R.I. Gen. Laws § 38-2-2(1) (1999)

South Carolina

"Memoranda, correspondence, and working papers in the possession of individual members of the General Assembly or their immediate staffs" are exempt from disclosure, but the exemption is not to be construed to limit public access to "source documents or records, factual data or summaries of factual data, papers, minutes, or reports otherwise considered to be public information . . . and not specifically exempted by any other provisions." S.C. Code Ann. § 30-4-40(a)(1). Other than this "working papers" exception, other records of the General Assembly are subject to the same provisions as other public records.

South Dakota

Legislative bodies are included as a “branch” of the state. SDCL § 1-27-1.1.

Tennessee

The joint legislative services committee has sole authority to determine whether any member of the public may be permitted access to the legislative computer system in which confidential information is stored or processed. T.C.A. § 3-10-108(a). Direct access to such a computer may not be permitted unless protection of any confidential information is ensured. § 3-10-108(b). No information available in printed form may be obtained from the legislative computer system pursuant to the Open Records Act. § 3-10-108(c). A legislator's e-mail is subject to the Act if it was made or received in connection with the transaction of official business. Op. Atty Gen. No. 05-099 (June 20, 2005).

Texas

The legislative branch of state government and any governmental body created by it is subject to the Act, which exempts certain categories of information pertinent to the legislature. Drafts or working papers involved in the preparation of proposed legislation are excluded from the Act. Tex. Gov't Code § 552.106. See Tex. Att'y Gen. ORD-380 (2003) (certain information related to proposed adult entertainment business licensing ordinance excepted from disclosure because it reflected internal policy judgments, recommendations, and proposals).

Private correspondence or communications by an elected office holder, the disclosure of which would constitute an invasion of privacy, are excepted from the Act. Tex. Gov't Code § 552.109. This exception applies only to correspondence sent out by the official, not to correspondence that is received by the official. In addition, this exemption only protects the privacy interests of the public official. See Tex. Att'y Gen. ORD-473 (1987). It does not protect the privacy interests of the person discussed in the communication or the privacy of the recipient of the communication although it may be appropriate to redact the parties' names such as those of students and parents under related statutes. See Tex. Att'y Gen. ORD-332 (1982).

Certain records of communications between citizens and members of the legislature or the lieutenant governor may be confidential by statute. § 552.146. Exempt correspondence includes handwritten notes on a personal calendar. See Tex. Att'y Gen. ORD-145 (1976).

An itemized list of long distance calls made by legislators and charged to their contingent expense accounts is not excepted because such a list is not a "communication." See Tex. Att'y Gen. ORD-40 (1974). See *also* Tex. Att'y Gen. ORD-636 (1995) (cellular billing records are generally considered public information).

Section 552.111 exempts from disclosure interagency or intraagency memoranda or letters that would not be available by law to a party in litigation with the agency.

Utah

Legislative bodies subject to GRAMA include “the Office of the Legislative Auditor General, Office of the Legislative Fiscal Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative committees.” Utah Code Ann. § 63G-2-103(11)(a)(ii). GRAMA also extends to any “office, agency, board, bureau, committee, department, advisory board, or commission” of the above-named entities if the office, agency, board, etc. “is funded or established by the government to carry out the public's business.” *Id.* § 63G-2-103(11)(b). GRAMA does not apply to “any political party, group, caucus, or rules or sifting committee of the Legislature.” *Id.* § 63G-2-103(11)(a)(ii). However, the Legislature and its staff offices are not subject to GRAMA's fees or appeals provisions. See *id.* § 63G-2-703(2)(a). In addition, all letters of inquiry submitted by any judge at the request of any judicial

nominating committee shall be classified as private under GRAMA. See *id.* § 67-1-2.

Virginia

Working papers and correspondence prepared by or for members of the General Assembly or the Division of Legislative Services are exempted from disclosure. Va. Code Ann. § 2.2-3705.7(2).

Vermont

There is no case law negating the statute's apparently broad application to all "branch[es] or authority of the State." An early opinion of the Attorney General expressly holds that the companion public meetings law applies to legislative committees. See 1966-68 Op. Atty. Gen. 101.

"The doors of the House in which the General Assemble" Vt. Const. Ch. II, § 8.

Washington

The Washington State Supreme Court has not decided whether the Public Records Act applies to all records of the legislature. *Cowles Publishing Co. v. Murphy*, 96 Wn.2d 584, 637 P.2d 966 (1981). The Act does apply to administrative records of the Clerk of the State House of Representatives and of the Secretary of the Senate. RCW 42.56.100.

Wisconsin

Legislative records are not exempt.

West Virginia

Records of legislative bodies are subject to the FOIA to the same extent as records of any other public body. In *Common Cause of West Virginia v. Tomblin*, 186 W. Va. 537, 413 S.E.2d 358 (1991), the state Supreme Court invalidated the process by which the Legislature's Conferees Committee on the Budget traditionally prepared an informal but influential budget "digest" setting forth its view of the specific purposes for which general appropriations should be used. The court ruled the contents of the digest must be determined by the Conferees Committee in a public meeting, and the Committee must create and maintain for public inspection "memoranda of the negotiations, compromises and agreements or audio recordings of committee or subcommittee meetings where votes were taken or discussions had that substantiate the material which is organized and memorialized in the Budget Digest." *Id.*, Syllabus pt. 5.

Wyoming

All public records of the legislature should be subject to the Act. Wyo. Stat. § 16-4202(a) (1977, Rev. 1982).

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Statistical and Administrative Data on Black Subpoena

Dennis McCarty, ISD Director, North Carolina General Assembly

Subpoena Process

4/05/2006

The Information Systems Division was formally engaged in the research and forensics of e-mails related to the three subpoenas of Speaker Black's office in December 2005.

On December 13, 2005, ISD received the related "search terms" provided by the Federal Attorney's office. Before applying the "search terms," ISD had to filter out all e-mail accounts that were not identified in the subpoena. This reduced the base amount of e-mails to process from 5,701,820 down to 483,877. After reviewing the "search terms" provided, ISD reported the "search terms" would produce too many false-positive and duplicate "hits." However, the "search terms" were used as provided and, using *The Ultimate Forensics Toolkit* Product, ISD examined on-line e-mail accounts, network drives, and local hard drives of the identified 18 individuals (483,877 emails) and further reduced the number of applicable e-mails to 434,222. This took a little over 5 calendar days to complete.

In addition to on-line e-mails, e-mails contained on backup tapes were requested. This involves individual backup tape sets corresponding with 12 periods in time (YE 2003, YE 2004, 1/05, 2/05....10/05). It was noted that the tape sets are part of our disaster recovery backups, were not designed to restore e-mail, and have commingled data. In other words, the tapes contain text files, databases, not just e-mail and that ISD would have to identify which tapes contained the e-mail Post Office. Initial estimates of 26 hours per restore were provided based on network speeds and barring any technical problems.

The sheer size of the e-mail Post Office required ISD to build a "forensics lab" environment that would not be part of the NCGA Network and would have sufficient processing power and disk space to restore the Post Office (the Post Office is over 130GB). A "forensics lab" was established using existing servers that were being decommissioned.

When ISD began the identification and restoration process, several problems surfaced:

- Scanning of the backup tape sets to see which tapes were needed was not included as part of the 26 hour restore estimate. This is an extremely time-consuming process.
- There was insufficient external disk storage to house the extracted e-mails. External disk storage needed to be purchased.
- Changes to the Microsoft Active Directory over the time period required creative technical workarounds.
- Multiple tape media and equipment failures prompted purchases of new tape equipment.

To date, ISD has:

- Spent approximately 1,694 staff hours (using an average of \$36/hr = \$60,984)

- Spent \$7,000 in hardware and software
- Scanned over 1,700 backup tapes (it takes anywhere between 5 minutes to one hour per tape)
- Analyzed and preserved all requested staff on-line email
- Successfully restored three (of 12 requested time periods) post office mailboxes from backup tapes and have located four more backup tape sets for restoration
- Successfully restored five (of 12 requested time periods) individual archived emails from backup tapes and have located two more backup tape sets for restoration and have located four backup tape sets
- Still attempting to locate backup tapes for five post office mailboxes
- Still attempting to locate backup tapes for five individual archived emails

Remaining tasks:

- Restore the mailboxes from backup tapes (four sets)
- Restore individual archived emails from backup tapes (two sets)
- Complete scanning for the remaining backup tapes that contain mailboxes (five time periods)
- Complete scanning for the remaining backup tapes that contain individual archived emails (five time periods)
- Index and run forensic tool against all restored data

On 3/29, we provided a “guess” estimate to complete the remaining tasks as four to six weeks. It was noted that hardware, software complexities, and media failures will affect this estimate.

Today, staff has reported that these same complexities preclude additional restores and have concluded that they cannot restore any additional data.

Summary

We started out looking at **5,701,820** on-line e-mails (contents of current mailboxes and on-line archive files). After selecting the 18 people identified in the subpoenas, this was reduced to **483,877**. After eliminating duplicates and applying the “search terms” (70+), this was further reduced to **434,222** e-mails. It is important to understand that this may report duplicate results and cause the numbers of e-mails to be artificially inflated. This is because they are searched for individually.

We still have to include e-mails from 12 additional points-in-time (i.e., YE 2003, YE 2004, 1/05, 2/05, ... 10/ 05) of post office e-mail and 12 individual personal archive files (PSTs) for a total of 24 restores. Eight (**8**) restores were performed and are ready for forensics. We expect most of these will be duplicates.

In the process of locating the tapes containing e-mails over **1,700** tapes were scanned.

To accomplish this, we spent approximately **1,694** staff hours (using an average of \$36/hr this is equivalent to **\$60, 984**) and purchased **\$7,000** in hardware and software

Subpoena Process File Restoration		
Item	Status	Comments
Spinning E-mails	C	As of 12/12/2005
"C" Drives	C	As of 12/17/2005
POST OFFICE	---	
YE 2003	U	Unable to process 12/2003 tapes, tape 75 in set is unreadable
YE 2004	C	Restored to October 2004
Jan 2005	S	Scanning tapes for complete set
Feb 2005	R	Ready to restore
Mar 2005	R	Restores on 3/15 and 3/27 were incomplete. Starting again
Apr 2005	S	Scanning tapes for complete set
May 2005	S	Scanning tapes for complete set
Jun 2005	S	Scanning tapes for complete set
Jul 2005	S	Scanning tapes for complete set
Aug 2005	R	Failed due to license error. Starting again
Sep 2005	C	Restored on 3/20/06
Oct 2005	R	First restore, tape broke in drive. Second set ready to restore
Nov 2005	C	1/27/06 - Out of scope; can be used to verify "Spinning" with date filters
Individual PSTs	---	From individual's F drives
YE 2003	S	Scanning tapes for complete set
YE 2004	R	Restoring to Nov 2004
Jan 2005	S	Scanning tapes for complete set
Feb 2005	C	Restored on 3/13/06
Mar 2005	C	Restored on 3/3/06
Apr 2005	S	Scanning tapes for complete set
May 2005	R	Ready to restore
Jun 2005	S	Scanning tapes for complete set
Jul 2005	S	Scanning tapes for complete set
Aug 2005	C	Restored on 3/13/06
Sep 2005	C	Restored on 3/2/06
Oct 2005	C	Restored on 3/3/06

C	Complete
R	Ready to restore
S	Scanning for tapes
U	Unable to restore