

April 29, 2008 Longmont City Council Study Session  
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Council comments starting at **03:22:28** on council video from city website.  
(Second time code is from edited audio file)

**03:22:28/0:00.000 - Karen Benker:** Um, I've got some questions, this might be for Clay with regard to the LifeBridge Freedom of Information Act. Um, I think everyone knows that you know we've been asked to go back, well, we haven't been around for 20 years, but they're asking for 20 years of information on um anything that pertains to the parcels of land east of the city.

Um, but here's here's my question, um on December 26<sup>th</sup> Clay you came out with a different interpretation of what is public communication. And so I've seen this for the first time um in our packet this week, and um and so here's here's my concern: You know folks that email us um or send us letters at home, um I don't think they understand, in fact up until this week I didn't understand either, um that all of their emails to council and our response back is all public information. And so, I think it would be fair to come up with some sort of message to folks, and I'm not quite sure how you do it, to let them know, that you know they contact us, um and you know their email is going to be on some public site, I guess.

One suggestion that Brian had was maybe we all get new business cards because we've got our email address on our cards. And we put something down there that says you know if you if you do email us you know your email, unless you specify it's going to be confidential, is going to be public record. Um but it just seems to me that um most people have no clue um that when they try to contact us ah no matter what the issue or what they're talking about is um now public record, especially beginning December 26<sup>th</sup>. So can you add on to that? We're looking for suggestions so that people know what um what to expect.

**3:24:32/2:04.129 - Clay Douglas:** Well, it is correct that the Open, Colorado Open Records Act has provided for many years that a communic, um, among the exemptions the things that are are so-called um exempt uh from normal disclosure requirements is a communication from a constituent to an elected official that clearly implies by its nature or content that the constituent expects it's confidential. Or a communication from the elected official that's in response to such a communication. Um I haven't given it much thought, but given the brief time that I've had to consider the suggestion councilmember Benker just posed, I don't see any reason that there's no reason not to do that.

The law presumes that citizens know the law. But there's lots of law and so it's not surprising that citizens may not be aware of this provision in the Open Records Act, and uh just like the government gives citizens special notice of lots of provisions, I don't I don't see any reason that the government apprise citizens especially of this provision. Um the most effective, efficient, economic way to do that of course, um may be something to ponder. But I mean there's only so much you can put on a business card, for example.

**03:26:16/3:38.580 - Karen Benker:** Um, what what I found especially interesting is when Ethics Watch requested, had a Freedom of Information request on the same topic, quite frankly, um I still had your email that specifically said, in fact I even followed up with a phone call to um Sandy, the City Managers Office, to make sure I understood that. The email specifically said that personal communication from constituents was exempted from that. And I checked you know at that time to make sure I understood it, and like I said I still have a copy of that email that says that piece is exempted. It was communication between council, communication between staff and council, those were the things that were uh we had to provide for that particular Freedom of Information Act request.

So when this came out, and again I don't remember seeing a copy of this, but it looks like you issued it um December 26<sup>th</sup>, so your interpretation has changed. So I think because of that interpretation change I do think we need to somehow, you know, let um our our constituents know you know once again you know their communication with us um is all open, and then that raises the question of when we do get letters at home are we supposed to bring them in? And then what about telephone conversations? Because you know how much is is Open Record, and what do we do, and what's our guidance? It seems like things here are changing here for us.

**03:27:55/5:13:146 - Clay Douglas:** I'm not sure, is that a question? If there is a question there, I heard a question about what about um the question I heard was what about, the new question I heard was what about telephone conversations, and I'm not aware of anything in the Open Records Act that requires that you record telephone conversations. I think the council is aware um that a conversation, a telephone conversation among council members if it involves the requisite 3 members or majority can become an open meeting um and then affording the public access to that can pose its own its own challenges. But not aware of any provision in the Open Records Act that requires that telephone conversations be recorded or preserved. (**Unknown:** What about letters?)

Um the the statute ah says a communication. And so, by the way this is an exemption, the Open Records Act um applies to documents, records, and basically those are written records. Written means anything traditionally written or an electronic record, that's why email's covered. So uh I guess my ad-hoc interpretation would be that if you get mail um in your capacity as a city council member that pertains to public business that it is a public record. And then if it's not a communication that clearly implies by its nature or content that it is will be confidential then it probably is a public record that is subject to the Open Records Act.

**03:31:27/6:52:974 - Brian Hansen:** I guess my question is what are our options here? Can we just keep the emails for a week and throw them away and then we no longer have to reveal what was in the emails? We just put the information in our head? Should we, can we tell people if it's something they don't want to disclose to the public later on we put a note on there that says that this is

confidential and um we'd not like it to be disclosed? Um something like letters, should we if we don't want to have to – do we need to keep them for a for an extended period of time, as though we would taxes or other records or can we dispose of them and not have to be burden our self with coming up with a you know some letter about something related to some city issue a year or two in the future or something like that? I mean what are what are our parameters here, what are our options, and what are our expectations? Are there some record keeping expectations? Do we have to keep any of these emails for any length of time? Do we need to keep any of these letters for any length of time? Or can we just you know get the communication and be done with it and and not have to worry about the burden of maintaining that information in any such, in any way?

**03:32:40/8:06:884 - Clay Douglas:** Well, the Open Records Act does require, particularly with regards to emails, that um local government adopt a policy on retention of those. And the city has at least for the city as its internal departments, I think the city clerk has copied you I think the communication that Councilmember Benker referenced included a copy of this administrative regulation that covers um the Open Records aspect of electronic communication. And that has a component as I recall that specifies a retention period. It's the same by the way that administrative regulation is the place where we've memorialized the requirement that council members copy their email to this email box for just that very purpose.

So um the city's, the city's in the Enterprise Technical Services department that maintains that email box where all of your messages are supposed to go unless they fit this criteria of confidential. And by the way, as I read this I think it's pretty clear it has to be the constituent who indicates the desire for confidentiality. It wouldn't make the document confidential under this statute if a council member having read the message said "I think I'll treat this confidentially". It has to, the constituent has to initially request confidentiality, expressed or otherwise.

But at any rate uh as I understand it given this process in the administrative regulation that all of your email messages go into the email box then the way the ETS handles the retention issue, they have a retention schedule. There's a routine process by which in an effort to sort of manage scarce server space on the city's system periodically they'll just purge. Um I think that's what it's called, a purge operation. So there is a finite life to those. Now how how definitely those are purged, whether they can be recovered or restored in a in response to an open records request, I can't tell you that. Um but there is a process.

Um if you like I don't know that administrative regulation by heart, but I can look at that and maybe in a different forum advise you if there's anything more I can tell you about the retention period. But I do know that the statute requires that you adopt a policy on retention and I believe that the administrative regulation we've talked about uh expresses that policy the best we could.

**03:35:28 - Sarah Levison:** So if we, let me just make sure I'm understanding correctly. If we do our due diligence, my assumption is when someone sends me

an email on the official my official email that somehow that gets recorded as being sent to me. And then if I reply I hit the CC to the ci, you know the city council box, I fulfilled the obligation under Open Records to make that notation that I've replied to that email. Is that correct?

**03:36:01 - Clay Douglas:** That's correct. If you send a copy of your correspondence with constituents to the box. You know one of the technical problems that I think ETS has been working with and trying to find a better way to resolve is that remembers it requires you to remember to do that. It's a manual process. Um and you know this may raise an issue, I know they're aware of it. Um but uh it would be a lot easier administer (unintelligible interruption), it would be a lot easier to administer and less likely to um cause issues if there were some way to sort of automate that process. Maybe by using some standard stationary, for example, that just always included a copy. But at any rate, yes by copying your correspondence to the council email box that the city maintains our understanding is that you have fulfilled your obligation to preserve a copy for public records purposes, and that given the administrative regulation on how long we retain those you've also, we've also got a policy on retention of these messages.

**03:37:13 - Sarah Levison:** So at that point, once the emails come to me I replied, CC'd the city council ah mailbox, if I delete that I have not expunged that record in any way and would be in violation of the Open Records Act?

**03:37:28 - Clay Douglas:** Well I suppose one might parse, a person who uh. It might be necessary to fully answer that question you might need to distinguish between a reply to a message and a reply that includes the original message. It is possible, at least on the city's email system and I'm not sure about the systems that council uses, but it is possible to reply to a message without including the original incoming message. And so if you replied, if your reply that went to the box did not come to you through some separate channel, did not come through the city's server for example, then it's possible that if your reply didn't include that original message and you deleted the incoming message, then you would have erased an incoming piece of correspondence.

**03:38:13 - Roger Lange:** You know Clay, let me, this is going to go on forever. Why don't figure out how to just automate the process. **(Clay Douglas:** Sounds like a plan) Regardless of what we do somebody's gonna pocket of our emails, they can they can look at them and be done with it. We are all over the map I'll guarantee you on how we're doing this. So why don't we leave it at that. Maybe Gordon whoever come back and say how can we how can we foolproof this thing.

**03:38:38 - Sarah Levison:** I just wanted to make sure for myself that's the standard procedure that that I was schooled by staff and I just wanted to confirm that that was something that I think you educated all the new council members on, pointedly. And we had gotten additional training I believe at CML, too. (unrelated discussion)

**03:41:52 - Gabe Santos:** The only question I had regarding the email, there is a possible potential, but that would require us to all get City of Longmont email addresses, that way it would be stored on a server. Now that cus we all have each individual email address and that's the only way I can see that to be remedied. Um the other thing is Clay I'd like to, regarding the confidentiality, cuz anyone can just put something in there and say "yeah, I want this to be confidential" and then um that defeats the purpose of the Open Records Act. I'd like some more clarification on what can be construed as confidential. Um more along the lines of, you know if someone says ah having an issue regarding, I don't know ah open space, but it's confidential, that kind of defeats the purpose of the Open Records Act.