

CIRSA Training: Email Suggestions for Elected & Appointed Officials

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The use of email by elected or appointed officials to discuss public business raises issues under both the Colorado Open Meetings Law (“OML”), C.R.S. § 24-6-401 et seq., and the Colorado Open Records Law (“CORA”), C.R.S. § 24-72-201 et seq. The OML recognizes that discussions by email can trigger notice and openness requirements. Specifically, the OML provides that any meeting of a quorum, or three or more members of a local public body (whichever is less), at which public business is discussed or at which formal action may occur must be open to the public. Also, the meeting must be preceded by proper notice if a quorum will be present, or any action will be taken. A meeting can include a discussion that occurs by phone or email.

Additionally, CORA recognizes that public records can include emails of elected and appointed officials where the communications involve City/Town business or public funds and are made, maintained or kept by the City/Town as part of its operations. Under CORA, emails may be public records even if they do not trigger open meetings rules. Based on these rules, the following are suggested email “dos and don’ts:”

Email – Okay to Do

- Have a one-on-one discussion with another council/board member.
- Respond to constituent emails consistent with “role discipline.”
- Correspond directly with City/Town staff.
- Email other council/board members concerning scheduling and availability, or posing a question for later discussion, or sharing “FYI” only information. But, such communications must not morph into a discussion of the merits or substance of any public business.
- Copy other council/board members on an email, subject to the same limitation.
- Do use your City/Town-assigned email address and device, if applicable.

Email – Don’ts

- Do not use email (or similar technology) to discuss the merits or substance of any matter of public business among a quorum or more than two members (whichever is less), whether simultaneous and/or serial or not.
- Do not use email as a substitute for open public meeting discourse.
- Do not use email as a substitute for taking any official action.
- Do not “reply to all” on emails sent to more than two council/board members, excepting only emails that clearly have no policy purpose (e.g., “FYI” emails).
- Do not send messages that discuss both personal matter and public business.
- Most importantly, do not use email to discuss pending quasi-judicial matters.

