

Question: If an email, a report, or other document related to government business is composed, received or stored on my personally owned electronic device, is that a public record under Chapter 22?

Editor's Note: This is a monthly column prepared by the Iowa Public Information Board to update Iowans on the IPIB's activities and provide information on some of the issues routinely addressed by the board.



ANSWER: Most likely, yes. If a government official or employee uses privately owned electronic devices or services, such as cell phones, computers, email accounts, smart phones, or such to conduct official government business, then the record generated is a public record.

What governs the issue is the content of the message. If it concerns public business relating to public duties of an official or employee, then it is a public record. Recent years have shown a rapid explosion in electronic device ownership, making it easy to start a project at work, fine tune it at home, email drafts to colleagues and others, refine it on the work computer, carry it around the world on a flash drive or store it indefinitely 'in a cloud.' Because of this ease of portability and expansion of the work site, the term "public records" no longer refers to a document in a paper file in a drawer in an office.

This issue has been addressed in Iowa in a limited manner. Iowa Code Section 22.1 includes "all records, documents, tape or other informa-

tion, stored or preserved in any medium" in the definition of public records. Subsection 22.2(2) states that a governmental body cannot prevent access to a public record by contracting with a nongovernmental body (such as a cloud storage provider). Section 22.3A addresses public records and data processing software. The cumulative effect of these statutes is that a public record does not lose its public status by being retained on a privately owned electronic device.

The Iowa Supreme Court, in a 1967, pre-email decision, addressed the idea that you must look at the contents of the document or communication to determine whether it is a public record: "It is the nature and purpose of the document, not the place where it is kept, which determines its status," *Linder v. Eckard*, 152 N.W.2d 833, 835 (Iowa 1967).

To allow a governmental body to avoid public records disclosure by simply requiring that officers or employees use their privately owned electronic devices would be to completely thwart the transparency goals of Chapter 22.

Comingling public communications and reports with private communications on a privately owned electronic device can create difficulty in responding to an open records request. Some private communications may arguably be withheld as not being a public record or as a confidential public record under Iowa Code Section 22.7. First and foremost, however, the public business communications are public records, and the custodian must review all records on a device to determine whether they are within a request for examination and copying to justify any denial of release.

BEST PRACTICES: Advise your staff that email communications are subject to review and disclosure, even if written, drafted, communicated and/or stored on the staff member's privately purchased and owned electronic device or email service. Use of a dedicated folder or flash drive should be considered.

IPIB Facts and Figures

During the month of September, 73 contacts were made with the Iowa Public Information Board office. To contact the IPIB, call 515-725-1781 or send an e-mail to Margaret.Johnson@iowa.gov.

<u>TYPE</u>	<u>SEPTEMBER</u>	<u>JAN-SEPT</u>
Formal complaints	15	83
Formal opinions	0	5
Declaratory orders	0	4
Informal complaints	10	84
Informal requests	48	422
Misc.	0	6
TOTAL:	73	604