

Dan Bucks

From: Dan Bucks <danbucks3@gmail.com>
Sent: Wednesday, January 6, 2016 11:11 PM
To: DOA Public Records Board Comments
Subject: Change in Definition of Transitory Records Made on August 24, 2015

Dear Members of the Public Records Board:

My name is Dan Bucks. I am a Wisconsin citizen residing at 2920 N. Downer Avenue, Milwaukee, WI 53211.

The following comments are based on over 40 years of experience in state government administration in South Dakota and Montana and as Executive Director of the Multistate Tax Commission, a public agency established by an interstate compact. My work included, most recently, serving as Montana Director of Revenue. In that position I was required, on the one hand, to protect confidential taxpayer information **while, on the other hand, also ensuring** public access to records of agency decision-making required by one the strongest public right to know provisions of any state constitution in the nation. Thus, these comments are based on extensive experience in making complex decisions regarding public access to governmental information.

I am writing to oppose the change in the definition of transitory records made by the Public Records Board on August 24, 2015. That definition I understand would allow the deletion of e-mails and other electronic records that "schedule or confirm meetings or events, committee agendas and minutes received by members on a distribution list, interim files, tracking and control files, recordings used for training purposes and ad hoc reports for individual use." That definitional change was apparently used **by the Walker Administration to deny public access to text messages related to decision-making concerning a questionable \$500,000 WEDC loan to Building Committee, Inc.**

The example of the records related to this loan illustrates the problems with the definitional change. E-mails and texts that record the scheduling of meetings or events, agendas and minutes, interim files, and ad hoc reports can include records of who was involved in making decisions, outside parties that attempted to influence decisions, and the factors that were considered in the process. Indeed, if the only records of decision-making are emails that can be described by the decision-makers as scheduling messages, agendas and minutes, interim files or ad hoc reports, then the entire substantive record related to a decision could be hidden from the public and destroyed.

The touchstone for public records policy in this area should be that electronic records should be preserved as a public record if they document to any degree items of the following nature: a) who was involved in a transaction or decision, b) the steps that were taken in the decision-making and when those steps occurred, c) all of the factors that were considered in the decision-making including input and communications from parties other than the decision-makers, or d) any other pertinent information that explains why a transaction occurred or a decision was made. The policies should not use formalistic terms such as "scheduling of meetings or events, interim files, ad hoc reports etc." that allow latitude to agencies to hide the actual true substantive record of public business or decisions in documents labeled **with those terms. The August 24 definitional change essentially creates document forms or labels that can be used to hide the substantive record of public business and decision-making.**

The argument that the August 24 decision creates "clarity" is misleading. The only "clarity" it provides is a set of electronic document labels that government officials can use abusively to hide decision-making from the public. That decision provided no clarity whatsoever to the citizens of Wisconsin that they will have access to records of public business or decisions.

Please reverse your August 24 decision and start over using the principles for public records described above.

Thank you for your consideration of these comments.

Sincerely,

Dan Bucks
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Milwaukee, WI 53211