



Municipal Technical Advisory Service
INSTITUTE *for* PUBLIC SERVICE

Published on *MTAS* (<http://www.mtas.tennessee.edu>)

January 23, 2020

Written Email Policy Required

Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](http://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

The University of Tennessee
Municipal Technical Advisory Service
1610 University Avenue
Knoxville, TN 37921-6741
865-974-0411 phone
865-974-0423 fax
www.mtas.tennessee.edu

Table of Contents

| | |
|---|---|
| Written Email Policy Required | 3 |
| Sample Acknowledgement Email Policy | 4 |

Written Email Policy Required

Reference Number: MTAS-1069

Tennessee governments — including cities — that operate or maintain an electronic-mail (e-mail) system must adopt a written policy about monitoring e-mail communications.

The written policy must include:

- the circumstances that warrant e-mail monitoring; and
- a statement that the employee's e-mail correspondence may be a public record under Tennessee's Public Records Law and may be inspected by the public. T.C.A. § 10-7-512.

The statute, adopted in 1999, does not require a city to monitor e-mail; that is each municipality's decision. If a city chooses to monitor e-mail, its policy must meet both conditions stated above. In a municipality that does not monitor e-mail, however, the policy must at least satisfy the public record statement requirement.

Should the city monitor its e-mail?

City officials and employees who must answer that question should review the reasons whether or not to monitor e-mail. Some of the reasons not to monitor include:

- the practice may be seen as intrusive and obnoxious;
- distrust between management personnel and employees, and even between employees can be generated;
- monitoring may be expensive, particularly the cost of retrieving deleted e-mail ; and
- monitoring involves some serious legal privacy issues that apply generally to all government employees.

Some of the reasons **for** monitoring include:

- improper misuses could have serious legal and financial repercussions for the city, such as the disclosure of medical or other confidential files or information;
- remarks or jokes disseminated and forwarded by e-mail that may have been intended to be harmless but may be grounds for a suit against the city for creation of a hostile work environment, for racial, religious, or sexual discrimination, or for even libel or defamation;
- software owned by the city may be used to conduct non-city business;
- software may be duplicated illegally for home or other use, which might constitute software piracy copyright infringement; and
- e-mail is subject to the discovery rules in litigation.

What are the major problems involved in monitoring e-mail?

The General Assembly pointed to those problems in monitoring e-mail. In adopting T.C.A. § 10-7-512, it directed that an e-mail study be conducted, *"to balance the privacy interests and practical limitations of public officials and employees with the public policy interests in access to government information."* [Author's emphasis.] The General Assembly said that the use of e-mail by governments creates the following "unique circumstances": generally, telephonic communications are not stored in any form and are regarded as private, but e-mail creates an electronic record that may be used or retrieved in paper format; and e-mail is becoming more common and important, but public officials are not equipped to act as official custodians of such communications and to determine whether or not the communications might be public records. Certain federal and state statutes and case law also protect the privacy of workplace e-mail communications.

How does the city handle the privacy problem?

Generally, the statutes and the cases that protect the privacy of e-mail in the government workplace permit monitoring of such e-mail where the government employees have been given notice that their e-mail communications are subject to being monitored. The most successful notice is written notice. For that reason, the city can ensure that the e-mail policy it adopts in accordance with T.C.A. § 10-7-512

includes provisions notifying employees that the city intends to monitor e-mail. Employees should be required to read the policy and to acknowledge with their signature that they understand it.

How does the city handle the open records problem?

T.C.A. § 10-7-512 does not require city's to monitor its e-mail. However, if the city decides not to monitor, its e-mail policy must include the statement that employee's e-mail correspondence may be a public record under Tennessee's Public Records Law (T.C.A. § 10-7-503), and subject to inspection under "this part." The "this part" phrase suggests that a person claiming access to a city's e-mail might base his or her claim under both Tennessee's Public Records Law and T.C.A. § 10-7-512.

Most municipal records are open under T.C.A. § 10-7-503, but that law contains several exceptions, including some found expressly in the law, and some found in other state and federal laws. Generally, a city can answer the question of whether a particular e-mail message or document is open or closed by determining whether the "hard copy" of the same e-mail message or document would be open or closed under the law. The answer to some of these questions will be obvious while others will require thought and even legal consultation.

Reminder : Even if the city decides not to monitor its e-mail, it must adopt a policy that contains at least a provision stating that its employee's e-mail may be a public record and subject to inspection under Tennessee's Public Records Law and "this part." T.C.A. § 10-7-512.

Sample Acknowledgement Email Policy

Reference Number: MTAS-1070

ACKNOWLEDGMENT OF RECEIVING AND READING THE POLICY FOR USE AND MONITORING OF EMAIL

I hereby acknowledge that I have received and read a copy of the city of _____'s Policy for the Use and Monitoring of E-mail. I understand that all e-mail communications systems are the property of the city, as is the information received from, transmitted by, or stored in these systems. I understand that, except with respect to certain content deemed confidential by state and federal law, I have no expectation of privacy in connection with any e-mail messages, the use of city equipment, or the transmission, receipt, or storage of information in this equipment.

I acknowledge and consent to the city's monitoring my use of both Intranet and Internet e-mail at any time the city deems it necessary in accordance with its policy. Monitoring may include reading and printing out all electronic mail entering, stored in, or disseminated by the city of _____'s system and equipment. I agree not to use a code, access a file, or retrieve any stored information unless authorized to do so. I understand that this consent is a condition of my employment and/or continued association with the city. I understand all the provisions specified in this policy. Further, I recognize that a violation of this policy may result in disciplinary action, including possible termination.

Employee

Supervisor/Employer

Date

DISCLAIMER: The letters and publications written by the MTAS consultants were written based upon the law at the time and/or a specific sets of facts. The laws referenced in the letters and publications may have changed and/or the technical advice provided may not be applicable to your city or circumstances. Always consult with your city attorney or an MTAS consultant before taking any action based on information contained in this website.

Source URL (retrieved on 01/23/2020 - 5:15am): <http://www.mtas.tennessee.edu/reference/written-email-policy-required>

