

The Right-to-Know and the Use of Email

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Does the Right-to-Know Law prohibit the use of email?

The short answer is no: Members of a public body, like the library trustees, can use email. However, what email can be used for is significantly curtailed by the Right-to-Know Law—and that’s why there’s also a long answer.

When a quorum of a public body convenes contemporaneously and discusses anything related to the public body’s business, that discussion must be held in a public meeting—unless it fits a nonpublic session purpose under RSA 91-A:3, II, or the definition of a “non-meeting” under RSA 91-A:2, I.

The “business” of the library trustees is anything over which they have “supervision, control, jurisdiction, or advisory power.” Interpret this broadly. Examples include budgeting and spending, employee matters, library policies, building maintenance, fundraising efforts—just to name a few. And it doesn’t matter whether the trustees are actually making a decision on the matter or just discussing it; discussion, even without a decision, must occur in a proper meeting.

In addition, using email (or other electronic means) to communicate can qualify as “convening contemporaneously.” The sequential communications among a quorum of the library trustees is really no different than in-person dialogue: the result is still a discussion.

Therefore, use email or other electronic forms of communication for administrative or non-substantive purposes. The most obvious example is the chair emailing the packet of materials for the upcoming meeting to other board members, or inquiring whether any board members will be absent at the next meeting.

Although the discussion of official business must be among a quorum of the public body to technically qualify as a meeting, one board member should never send an email to his or her other board members on a topic that should be discussed in a public meeting or proper nonpublic session because it creates the risk of an improper or “illegal meeting” occurring. For example, if one library trustee sends an email to his other board members explaining how he thinks the library budget should be increased, that one-way communication would not constitute a meeting. However, if other trustees hit “Reply All” and continue the conversation, the law has been violated. To drive this point home, RSA 91-A:2-a says that “[c]ommunications outside a meeting, including, but not limited to, sequential communications among members of a public body, shall not be used to circumvent the spirit and purpose of this chapter as expressed in RSA 91-A:1.”

The trustees can take further precautions by having an administrative person (e.g., not a board member) send the email, and/or putting the email addresses for the other board members in the “BCC” line rather than the “To” line of the email. Using the BCC line generally prevents a board member from being able to click “Reply All” and respond to all members of the board.

Finally, even if an email communication is proper and doesn’t violate the law, remember that it is still a governmental record and may be subject to disclosure.

If you want to learn more on the Right-to-Know Law, purchase NHMA’s new publication *A Guide to Open Government: New Hampshire’s Right-to-Know Law*, and attend one of our all-day workshops. For details, visit us at www.nhmunicipal.org.