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## Coates' Canons Blog: Individual Board Member Access to Email

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Imagine that you're a local government IT administrator, clerk, manager, or other employee, and your job requires you to have access to employee and board members emails for your unit of local government. A member of your governing board contacts you and says, "I need to review all the emails sent to or received by the HR director during the past week." Your first instinct is – "Hey, this is my boss – an elected official – asking me for information. I'd better provide it!" "But then again," you think, "Some of this information might be confidential. Some of it might be personal." Then you have another thought, "How do I know if the board member has a legitimate reason for asking, or is she just out to get this particular employee?" Who is allowed to have access to email? How should you respond?

The short answer is: An individual board member is just like any other member of the public when he or she requests individual access to employee emails. The *board* may have access to some emails that the public doesn't, but an individual board member doesn't have any special access unless a majority of the board has authorized it. A different rule applies to school board and community college board members with regard to personnel records, because of the language in the statutes that govern those types of agencies. Here's the long answer.

First, the right of access to email depends on two things: the content of the email, and the role or position of the person who is requesting the access. The content of emails is likely to fall into one of three basic categories: 1) emails that are public records and subject to public access; 2) emails that are public records but an exception either prohibits disclosure or eliminates the right of public access; or 3) emails that are private, not public records, and not subject to public access.

Emails that fall into the first category must be provided to anyone who asks for them, including an individual board member.

Emails that fall into the second category require a more particularized analysis. The right of access will depend upon the nature of the exception and in some cases, upon the person who is requesting access. In our hypothetical, it is likely that the HR director will have emails that are confidential personnel records. Under the **city** and **county** personnel privacy laws, only "an employee having supervisory authority over the employee" may have access to these records. In a city or county with a manager, the law gives the manager, not the governing board, and certainly not an individual member of the governing board, the supervisory authority over most employees. (Note that in counties, there are some employees who are supervised by independent elected or appointed officials – so even the county manager wouldn't have access to those employees' emails. Examples include employees in the sheriff's department and the health department.) In a city or county without a manager, the governing board may be considered to have supervisory authority, but even in these jurisdictions, an individual board member would not have legal access to personnel records unless a majority of the board authorizes it.

The statutes governing **local school units** and **community colleges**, are worded differently. Those laws allow access to personnel records by members of the local board and the board's attorney. This appears to authorize an individual school board or community college board member to have access to emails that contain personnel information without obtaining approval of a majority of the board.

Records that are not open to the general public under other types of exceptions, such as those involving **records of economic development projects**, or **utility billing information**, may be more broadly shared within the agency, depending upon the specific policies or practices adopted by the agency. An employee who receives a request that includes records that are subject to some protection from public access under the statutes should be careful to consult with a supervisor or local attorney before releasing them to an individual board member.

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Emails that are private – meaning, they were not made or received in the transaction of public business – are not subject to the public records law at all. That means that the public has no right of access to these records. Private emails made on the public agency’s email system may be subject to inspection by the agency as the owner of that system, depending upon the policies the agency has established about private use of the system, and the extent to which those policies have been clearly communicated, implemented, and enforced. What’s at stake with these private emails is the individual employees’ privacy rights, which are protected by the constitution and other federal laws. An employer is even more restricted under federal law if the private emails are created at work, but using an external email system (such as Gmail or Yahoo). This is too big an issue to discuss here, but it’s enough to say that this will vary from agency to agency, so there isn’t a standard answer about what access to private emails should be provided. And, as in the case with public records that are exempt from public access, even if there is a legal right of access, it will be the board and possibly the manager, but not an individual board member, who has that right. Other individuals would have access only if authorized by the board or the manager.

What if your request comes from an employee rather than a board member? This analysis applies to requests for access to email or any other type of record by any person appointed to or employed by the agency. Internal requests by board members or employees of an agency for access to email of other employees or board members should be analyzed by considering the content of each record and the status of the person who is making the request. In most cases, individuals making these requests will have the same rights that the public would have, so that’s a good place to start in considering how to respond.

## Links

- [www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_160A/GS\\_160A-168.html](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-168.html)
- [www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_153A/GS\\_153A-98.html](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-98.html)
- [www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_115C/GS\\_115C-321.html](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_115C/GS_115C-321.html)
- [www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_115D/GS\\_115D-29.html](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_115D/GS_115D-29.html)
- [www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_132/GS\\_132-6.html](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_132/GS_132-6.html)
- [www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_132/GS\\_132-1.1.html](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_132/GS_132-1.1.html)