

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



**FROM:** Supervisor Kevin Jeffries

**SUBMITTAL DATE:**  
November 30, 2015

**SUBJECT:** Amend Board Policy A-50 ("Electronic Media and Use Policy") to Improve Transparency and Reduce Potential Unintended or Accidental Brown Act Violations by Adding a Provision Regarding Use of the BCC and Reply All Functions in E-Mail communications

**RECOMMENDED MOTION:** That the Board of Supervisors:

- 1) Add a provision to Board Policy A-50 (2) regarding use of the BCC and Reply All functions in e-mail communications

**BACKGROUND:**

**Summary**

A recent column by an attorney from Best, Best, and Krieger on the website PublicCEO (<http://www.publicceo.com/2015/11/email-reply-all-responses-violate-brown-acts-open-meeting-requirement/>) warned of the hazard for elected officials and commissioners who are sent (and may reply to) emails that included numerous fellow elected officials or appointees as recipients, that said emails can easily become an unintended "serial meeting" if caution is not exercised by the sender and recipients and can result in a violation of the Brown Act.

*Background Continued on Second Page*

**KEVIN JEFFRIES**  
Supervisor, 1st District

| FINANCIAL DATA         | Current Fiscal Year: | Next Fiscal Year: | Total Cost:      | Ongoing Cost: | POLICY/CONSENT<br>(per Exec. Office)  |
|------------------------|----------------------|-------------------|------------------|---------------|---|
| <b>COST</b>            | \$ Click here to     | \$ 0              | \$ Click here to | \$ 0          | Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/> |
| <b>NET COUNTY COST</b> | \$ 0                 | \$ 0              | \$ 0             | \$ 0          |   |

**SOURCE OF FUNDS:**

Budget Adjustment: n/a

For Fiscal Year:

**C.E.O. RECOMMENDATION:**

**County Executive Office Signature**

**MINUTES OF THE BOARD OF SUPERVISORS**

On motion of Supervisor Jeffries, seconded by Supervisor Ashley and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Washington, Benoit and Ashley  
Nays: None  
Absent: None  
Date: December 8, 2015  
xc: Supvr. Jeffries, All Dept., COB

Kecia Harper-Ihem

Clerk of the Board

By:   
Deputy

**Prev. Agn. Ref.:**

**District:**

**Agenda Number:**

**3-6**

☐ A-30    ☐ Positions Added    ☐ Change Order  
☐ 4/5 Vote

Departmental Concurrence

**SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

**FORM 11:** Amending Board Policy A-50 to restrict the use of BCC and Reply All Functions in E-Mails

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**BACKGROUND Continued:**

Even an innocent press release or notification sent to multiple elected and/or appointed officials as part of a larger group can inadvertently become a policy discussion if someone unfamiliar with the rules uses "Reply All" to express their opinion on the news or update.

To reduce the potential for unintended or accidental Brown Act violations in Riverside County, this proposal would add a clause to Board Policy A-50 (2) ("Electronic Media and Use Policy") under "appropriate use" to require that the "BCC" function be utilized in all e-mails sent from county e-mail accounts that include a majority of any Brown Act body (e.g. more than two members of the Board of Supervisors or of a 5 member City Council or Board Appointed Commission), and similarly prohibiting the use of "Reply All" to respond to any e-mail received that includes a majority of any Brown Act body. County staff shall then be directed to utilize the BCC feature whenever emails are being sent to 3 or more members of the Board of Supervisors or other elected or appointed officials. This will help prevent notifications or reports sent to elected officials and/or appointees from accidentally becoming an unintended discussion outside of a noticed public meeting.

Full text of the current Board Policy A-50 is available here:

<http://www.rivcocob.org/boardpolicies/policy-a/POLICY-A50.pdf>

**Impact on Private Sector and Business**

Adding the new BCC and Reply All policy will improve transparency by helping ensure that policy discussions held amongst elected and appointed officials occur only in publicly noticed meetings, and not inadvertently in private e-mail exchanges.

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**Purpose:**

The purpose of this policy is to establish guidelines for proper use of all forms of electronic media. As used in this policy, "*electronic media*" includes, but is not necessarily limited to, the following: e-mail (electronic-mail), Internet use, voice-mail, video teleconferencing, fax, diskettes, storage media, bulletin boards, television, electronic subscription services, electronic documents, and any other forms of electronic communication. County employees with access to electronic media are required to abide by this policy.

**Policy:**

**1. No Expectation of Personal Privacy for Use of County Systems**

Employee use of any county electronic media system is not private; and employees using these systems should not expect their communications to be private. Employees should not have an expectation of personal privacy when using any form electronic media.

Employees should also be aware that any electronic media communication might be considered a public record subject to disclosure under California law.

**2. Appropriate Use**

County electronic media systems are made available to employees for the purpose of providing an effective method to communicate, increase productivity, perform research and obtain information that will assist in performing job related tasks.

Employees shall use good judgment at all times when using the Internet or other electronic media. Electronic media shall be used only to send courteous, professional and businesslike communications.

Certain electronic media (especially e-mail) may not be appropriate to transmit sensitive materials, which may be more appropriately communicated by written document or personal conversation.

Employees should always remember that persons other than the sender and the recipient might read electronic media communications at a later date.

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Accordingly, electronic media communications (such as e-mail messages) should always be treated as written memos, which may remain on file in various locations.

Electronic media shall not be used in any manner in violation of the law or county rules, policies or procedures. Electronic media shall in no manner be used for any improper, illegal, offensive or harassing purpose.

Activities prohibited by this policy include, but are not necessarily limited to the following:

- a. Transmittal of any material or communication in violation of any federal, state or local law, ordinance or regulation;
- b. Transmittal of any material or communication, which includes potentially offensive material (such as; sexual, racial or ethnic comments, jokes or slurs);
- c. Misrepresentation under any circumstance of an employee's true identity;
- d. Unauthorized access to any computer system;
- e. Any action intended to accomplish or assist in unauthorized access to computer systems;
- f. Unauthorized or improper downloading, accessing or transmittal of copyrighted information, documents or software;
- g. Transmittal of unauthorized broadcast communications or solicitations (such as; mass email transmittals). All broadcast or solicitation messages must be approved in advance by the Chief Information Officer, Riverside County Information Technology;
- h. Any action that causes the county to incur a fee for which there has not been prior approval;
- i. Use of security code or password other than as authorized; or
- j. Disclosing your username and password to anyone for any purpose.

**3. Notice of County's Right and Ability to Store Communications**

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Employees are notified that electronic media communication may not be deleted from the system; and that the county may save such communications even though it appears they have been deleted. For example, e-mail users should be aware that when they have deleted a message from their mailbox it may not have been deleted from the e-mail system and that every e-mail message might be saved by the county.

All electronic media communications are considered at all times to be county records. The county has the capability to access, monitor, review, copy, or disclose any electronic media communications; and the county reserves the right to do so for any proper county purpose. The use of security measures (such as individual passwords) or deletion of electronic media communications (such as deletion of e-mail messages by users) does not affect the county's ability or right to access, review, copy, or disclose such communications under appropriate circumstances. Employees' use of electronic media is consent to such action by the county.

This policy shall not be interpreted to limit the county's access to electronic media communications under appropriate circumstances; and shall not in any way limit the county's control or ownership of its electronic media systems. However, this policy is in no way intended to permit unauthorized access to electronic media communications.

**4. Software**

Employees shall use software only in compliance with license agreements and copyright or other laws.

**5. E-Mail Retention**

Riverside County email systems are transitory-communications systems and are not intended as mechanisms for storing records.

**A. Email Retention Period**

- i. Email messages must be retained in the departments' online email systems no longer than 45 days after they are created in or received into the email system.
- ii. Each department must implement an email retention period through automatic electronic means. Each user's email messages must be

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automatically saved in the department's online email systems during the email retention period.

- iii. Automatic archival of email messages is prohibited on Riverside County email systems. Each department must configure its email systems to prevent auto-archiving of email messages and each user must not activate the auto-archiving features.

**B. Email Deletion Schedule**

- i. Each user's email messages must be deleted from the department's online email systems after the email retention period has expired.
- ii. Each department must establish and implement the Email Deletion Schedule through automatic electronic means. Each user's email messages must be automatically deleted from the department's online email systems according to the following schedule:
  - a. All items in the "Trash" will be purged every 14 days.
  - b. All "In" and "Out" box items (whether read, opened or unopened) will be purged after the 45-day email retention period has expired.
  - c. Email "Trash", "In" and "Out" box items will be backed-up during routine server back-ups. Back-up tapes allow data recovery in the event of a systems crash but must be retained no longer than 30 days.

**6. Public Records**

- A. Notwithstanding Section 5.B. of this Policy titled Email Deletion Schedule, any information transmitted by email that meets the definition of "public record" under the California Public Records Act may not be deleted or otherwise disposed of except in accordance with the Public Records Act and in compliance with the Board of Supervisors Policy A-43 County Records Management and Archives Policy. General guidelines as to whether or not an email message contains information that constitutes a public record are provided in Attachment 1.

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- B. Employees must be aware that an email message which constitutes a public record (whether or not it is exempt from disclosure) may be subject to the County's records retention schedules and/or statutory retention requirements. In that event, the email message may not be deleted without first being reduced to paper copy or stored in an electronic format in a location other than the department's email systems.

**7. Litigation Hold Procedure**

- A. This email deletion policy and all supporting departmental policies and procedures are subject to litigation holds. A "litigation hold" is the process used to notify County departments about pending or reasonably anticipated litigation involving the County of Riverside and the department's potential obligation to preserve relevant email information by suspending email deletion policies involving any potentially relevant information transmitted by email.
- B. The Office of Risk Management, or the Office of County Counsel, or the Human Resources Department are authorized to direct any County department to place a litigation hold whenever information transmitted by email is or may be relevant to pending or reasonably anticipated litigation involving the County of Riverside.
- C. When any County department is directed by the Office of Risk Management, or the Office of County Counsel, or the Human Resources Department to institute a litigation hold, the department must promptly contact and coordinate with personnel from Riverside County Information Technology or internal information technology staff responsible for managing the department's email systems to implement the litigation hold.
- D. Each department must establish and implement the litigation hold procedure with the following general guidelines:
- i. Each department must designate "Litigation Hold / Public Records Act" personnel to serve as a liaison with outside legal counsel, the Office of County Counsel, the Office of Risk Management, the Human Resources Department, information technology personnel, and litigation hold personnel from other County departments.

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- ii. The departmental "Litigation Hold / Public Records Act" personnel are responsible for the following:
  - a. Helping legal counsel place a litigation hold on emails that are or may be relevant to pending or reasonably anticipated litigation involving the County of Riverside.
  - b. Providing sufficient information regarding the subject of the pending or reasonably anticipated litigation to allow departmental employees to conduct a reasonable search for potentially relevant email information.
  - c. Coordinating with informational technology personnel to place a litigation hold on potentially relevant email information.
  - d. Coordinating with litigation hold personnel from other County departments, if any, involved in the pending or reasonably anticipated litigation.

**8. Auditing**

- A. Each department must conduct audits to ensure that email messages are retained during the email retention period; that email messages are actually purged from the department's online email systems, and backed up, in compliance with the email deletion schedule; and that the litigation hold procedure is effectively implemented.
- B. The first audit must be performed within two (2) years of establishing the individual department's policies and procedures on email retention, deletion and litigation holds. Department heads may at their discretion conduct subsequent audits when appropriate.

**9. Training and Education**

Human Resources will be responsible for providing concurrent and ongoing training and education to all County employees regarding applicable policies and procedures for email communication, retention, deletion, litigation holds, and the California Public Records Act, including any applicable retention requirements.

**Written Acknowledgment**

Department heads shall have all employees acknowledge in writing that they have received and read this policy. Such written acknowledgment shall be retained in the



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department's files. (Nevertheless, the failure to provide such written acknowledgement shall not in any way limit the county's ability to enforce this policy.) An Example form is attached.

**Reference:**

Minute Order 3.8 of 10/22/1996  
Minute Order 3.36 of 06/29/1999  
Minute Order 3.7 of 11/07/2006  
Minute Order 3.65 of 06/02/09

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**ATTACHMENT 1**

**GENERAL GUIDELINES ON PUBLIC RECORDS**

- A. With respect to an email message that is prepared, owned, used or retained by the County, the content of such email message determines whether or not it is a public record.
  - 1. An email message is generally considered to be a public record if it contains information relating to the conduct of the public's business.
  - 2. An email message is generally not considered to be a public record if it contains only purely personal information unrelated to the conduct of the public's business.
- B. Some guidelines for making the determination as to whether or not an email message is a public record or exempt from disclosure include:
  - 1. Email messages that are SPAM, or commercial solicitation, or are of a personal nature which have no relevance to the conduct of County business shall not be considered to be public records and do not need to be retained.
  - 2. Preliminary drafts, notes, or interagency memoranda or intra-agency memoranda that are not retained by the County in the ordinary course of business are exempt from disclosure if the public interest in withholding those records clearly outweighs the public interest in disclosure.
    - a. These may generally include email messages that are pre-decisional communications to the extent they contain advice, recommendations, opinions, and deliberation in the policy-making processes and are not customarily preserved or retained.
    - b. Insofar as the above-described email messages also contain purely factual information, such information is generally not considered exempt from disclosure.

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**ATTACHMENT 2**

**ACKNOWLEDGEMENT OF  
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I have received a copy of and am fully aware of the County of Riverside's electronic media and use policy; and I agree to abide by the terms of this policy. I also agree to remain apprised of future revisions to this policy and to abide by the terms of all such revisions.

Employee Name: \_\_\_\_\_

Employee Signature: \_\_\_\_\_

Date: \_\_\_\_\_

This form shall be retained in department files.