

RESOLUTION No. 2013-005

**A RESOLUTION OF THE
OURAY COUNTY BOARD OF COUNTY COMMISSIONERS**

**Adopting an Email Policy for
County Officials, Boards, Commissions and Committees**

WHEREAS, the Board of County Commissioners believes that email is a useful tool that is used by the public extensively and that can be used productively in making county government more efficient; and

WHEREAS, the Board of County Commissioners wants to ensure compliance by all officials, boards, commissions and committees in Ouray County with the requirements of both the Colorado Open Meetings Law ("COML"), C.R.S. §§ 24-6-401 to 402 and the Colorado Open Records Act ("CORA"), C.R.S. §§ 24-72-201 to 206, and with the spirit of these statutes that provide for transparency in the conduct of public business; and

WHEREAS, case law interpreting the applicability of both COML and CORA to email correspondence is evolving, causing the potential for confusion as to the appropriate procedures and uses for emails among county officials, boards, commissions and committees.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF OURAY COUNTY, COLORADO, AS FOLLOWS:

1. The Board of County Commissioners hereby adopts the Email Policy for Elected Officials, Appointed Boards, Commissions and Committees attached hereto as Exhibit A.
2. The County Attorney is instructed to make this email policy available to all officials, boards, commissions and committees, and to provide an explanation or training as necessary in order to assure understanding and compliance with the policy.
3. This policy may be further amended as additional case law or statutory amendments require.

APPROVED AND ADOPTED THIS 5th DAY OF FEBRUARY 2013.

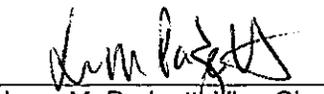
Voting for: Commissioners Fedel, Padgett and Batchelder
Voting against: None

BOARD OF COUNTY COMMISSIONERS
OF OURAY COUNTY, COLORADO




Michelle Nauer, Clerk and Recorder
By: Linda Munson-Haley, Deputy Clerk of the Board


F. Mike Fedel, Chair


Lynn M. Padgett, Vice-Chair


Don Batchelder, Commissioner

Ouray County Email Policy for Elected Officials, Appointed Boards, Commissions, and Committees

Adopted February 5, 2013

The use of email is permitted by elected officials, boards and commissions, as well as county staff, but its use requires careful consideration to ensure compliance with both the Colorado Open Meetings Law (“COML”) C.R.S. 24-6-401 to 402 and the Colorado Open Records Act (“CORA”) C.R.S. 24-72-201 to 206. This policy, with accompanying explanation, is adopted by the Board of County Commissioners to ensure compliance with the spirit and intent of the statutes, and is consistent with Colorado judicial decisions through the date of adoption.

Use of email potentially results in a “meeting” under COML. A meeting is defined by statute, C.R.S. 24-6-402(1)(b) as “any kind of gathering, convened to discuss public business, in person, by telephone, electronically, or by other means of communications.” All meetings “of a quorum or three or more members of any local public body, whichever is fewer, at which any public business is discussed or at which any formal action may be taken” must be open to the public, with notice provided. C.R.S. 24-6-402(2)(b). “Local public body” is defined as “any board, committee, commission, authority, or other advisory, policy-making, rule-making, or formally constituted body of any political subdivision, or an official thereof,” but does not include administrative staff.

Not all emails qualify as a “meeting” even if the requisite number of commissioners, board members or officials (“requisite group”) is included as recipients of the email. As with other gatherings of the requisite group, the gathering must also be for the purpose of discussing “public business” or at which “formal action may be taken”. Thus, social events, professional or association conventions, seminars, casual lunches and similar gatherings are not “meetings”. A 2012 Colorado Court of Appeals case addressed the topic of email communications as a “meeting” and discussed both the intent of the statute as well as the nuances of various situations that meet the definition of “meeting” and those that do not.

In *IREA v. PUC*, 2012 COA 123, No. 11CA1398 (July 19, 2012) the Court found that an email chain relating to pending legislation and discussion of potential revisions to the legislation among the PUC Commissioners did not violate COML because the emails did not contain a discussion of “public business”. The court reasoned that, while “public business” is not defined in the statute, the phrase had been interpreted by the Supreme Court as relating to the public body’s policy-making function. “A meeting must be part of the policy-making process to be subject to the requirements of the OML. A meeting is part of the policy-making process if it concerns a matter related to the policy-making function of the public body holding or attending the meeting.” *Board of County Commissioners v. Costilla County Conservancy District*, 88 P.3d 1188 (Colo. 2004).

The Court of Appeals reasoned, using *Costilla County* as guidance, that “...to prevail on a claim under the OML, a party must point to a pending action by the public body holding the meeting with regard to a rule, regulation, ordinance, or formal action by that public body that has a meaningful connection to the gathering in question.” Thus, while a topic might be a matter “of concern” to the public, if there is no pending policy-making decision or action, it is not a “meeting convened to discuss public business.” The court found that while the legislation was of interest to the PUC, the PUC “does not engage in policy-making by providing input on proposed legislation, because passing legislation falls exclusively under the policy-making functions of the General Assembly and the Governor.” Even though the PUC eventually presented formal comments on the legislation based upon its particular agency expertise, because passing legislation is not within the PUC’s statutory duties, this was not a “formal action” of the PUC. Therefore, in this instance, the email chain did not constitute a meeting subject to public notice and participation requirements. Note that this decision was by the Court of Appeals and not the Supreme Court, so this conclusion may not be the last word on the subject of emails as “meetings.”

Emails for the purpose of scheduling, relaying articles in the media, providing information about upcoming events and so on are not meetings under the *IREA v. PUC* ruling. An email chain that does not constitute a “meeting” may be subject to a request for public disclosure under CORA, however. Emails that meet the test of being a “public record” or “correspondence” pertaining to the performance of public functions may be requested for disclosure under CORA. If the email meets the definitions, and is not otherwise exempted as work product, deliberative process, or one of the other exemptions provided by statute and case law interpretation, it is subject to disclosure regardless of whether the email account is a public entity account or whether the computer utilized is owned by a governmental agency or political subdivision. Having less than the requisite group for purposes of a “meeting” involved in an email similarly does not preclude applicability of CORA if it otherwise is subject to disclosure.

The Board of County Commissioners believes that the intent of COML and CORA are to ensure transparency in government and to facilitate participation by the public in policy decisions. It shall be the policy of the county to avoid the appearance of conducting policy-making discussions “behind closed doors” through the use of emails in which policy decisions or positions are debated, discussed or regulations are formulated, even if fewer than the statutory requisite group are included in a given email or chain of emails. This policy also considers that when email chains involve less than an entire appointed board, commission or committee, the benefits of differing perspectives which may be expressed in a public meeting can be lost. Recognizing that the exemptions for work product, executive sessions, personnel matters, and other exempted, privileged and confidential discussions are also valid and allow the Board and other officials to conduct business in the best interests of the county, the Board of County Commissioners is in no way waiving the right to claim such exemptions from either COML or CORA.

The Board of County Commissioners requests all appointed and elected officials, board, commission and committee members in Ouray County to carefully consider in drafting, responding or participating in an email chain whether the content is more properly or appropriately addressed in a noticed and public meeting, whether members of the public could perceive that policy decisions are being made without the transparency provided by law, whether all members of a board or commission are being involved in discussion of policy decisions in a way that ensures full debate of differing ideas and perspectives, and whether the emails are public records or correspondence which may be subject to CORA. The Board requests that when in doubt, reserve the deliberation or conversation for a noticed public meeting to comply with both the spirit and the letter of the law, and to ensure public confidence in the transparency of policy decisions in Ouray County.

More detailed training and guidance materials are available to all officials, appointed boards, commissions and committees through the County Attorney.