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November 3, 2003

City Council
c/o Ms. Susan Galeczka
City of Rochester Hills
1000 Rochester Hills Drive
Rochester Hills, Michigan 48309-3033

Re: ***Council Member Computers/FOIA***

Dear City Council Members:

I am enclosing a page from the Municipal Q&A section of the November/December 2003 edition of the Michigan Municipal Review published by the Michigan Municipal League. I want to draw your attention to the Q&A suggesting that public information stored on a city council member's home or personal computer is subject to a Freedom of Information request. I have not been asked to, nor have I carefully researched the issue, but I am providing this to caution City Council Members that what they receive, send and store on their home or laptop computers concerning City affairs **may** be disclosable under FOIA.

Very truly yours,

BEIER HOWLETT, P.C.

(Signature)
John D. Staran

JDS/lh
Enclosure

*Copy to ce 11/04/03 DM
BW*



MUNICIPAL Q&A ... SO GLAD YOU ASKED!

coordinated by Mary Charles

Q. A local church has offered to donate a nativity scene to the city for display in a municipal park during the holiday season. Can we accept this offer and use the nativity scene? How does the recent court decision on the Ten Commandments display in Alabama impact our decision?

A. Yes, you can accept, but only under limited conditions, depending on the setting and circumstances of the display. Federal courts have ruled that local governments can display nativity scenes and other religious symbols such as a menorah if these are a part, and not the predominant part, of displays that include secular holiday symbols. Secular symbols include wreaths, Christmas trees, Santa and much more.

The best way to avoid a challenge is to exclude all objects or scenes having a religious inference. If they are included, however, they must have a secular purpose, not be the predominant element of the display and not be interpreted as an endorsement or disapproval of religious beliefs. You should first consult your municipal attorney.

The Alabama decision would only serve to reinforce the necessity to be careful with a display of this nature.

Q. I tried to order a copy of the *Records Management Handbook* and was told you no longer publish it. Is that true?

A. No. However, instead of publishing it in "hard copy," we are now publishing it as an E-Book on our web site. You can either print it out or download it to your computer. Click on "Services" on the left side of the bar and then on

"Publications." One of the choices is "E-Books." Both the *Salaries and Wages in Michigan Municipalities Under 1,000* and the *Records Management Handbook* are there. You will need to use your password to access them.

Q. Are e-mails subject to the Freedom of Information Act?

A. Whether or not any material is subject to FOIA depends on the material rather than the medium. As a general rule, any material requested which does not meet any of the exemptions spelled out in the Act is subject to FOIA. You should also be aware public information stored on a council member's home/personal computer is subject to a Freedom of Information request.

Again, whether or not information is subject to the Act depends on the nature of the material itself. A public record is a public record, no matter where, or how, it is stored.

Q. I'm embarrassed to say, I signed up for a password for your web site and now cannot remember the password. How can I find out what it is - or get a new one?

A. There is no reason to be embarrassed and rest assured you are not the only call we've received like this. If you go to our home page at www.mml.org, under the "Members Only" heading on the right side of the screen is a link that says "Forget your password?" Click on that, complete and submit the form. We will send you back your password by e-mail as soon as possible.

Q. What is the maximum amount for which we can write a contract without going out for public bids under state law?

A. There are no state laws requiring public bids on municipal contracts. However, many cities and home rule villages have such a requirement written into their charter and additional cities and villages have ordinances establishing a threshold amount over which contracts must be bid. Even if your municipality does not have such a requirement, it is often prudent to solicit bids on large projects. ♦

Request for Information

The MML Resource Center relies on contributions from local officials to keep materials current. We would appreciate receiving:

- Purchasing policies/manuals
- Policies covering cell phone usage, both those owned by municipalities and reimbursement from those owned by employees
- Policies regarding use of city owned vehicles
- Council rules, particularly as they pertain to public speaking time.

Please mail copies of your municipality's new ordinances, policies, resolutions and innovative ideas to the Michigan Municipal League, Member Resource Services, 1675 Green Road, Ann Arbor, MI 48105, fax it to 734-663-4496 or email it to info@mml.org. Thank you!