



Vermont State Employees' Association

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December 19, 2011

Secretary Jeb Spaulding
Agency of Administration
109 State Street
Montpelier, VT 05609-0201

Dear Secretary Spaulding,

This is in regard to the Agency of Administration's statutory mandate to report to the legislature concerning a state electronic documents management system.

As many are aware, VSEA successfully pursued a public records lawsuit against the state surrounding the issue of the free inspection of records. Our lawsuit was originally filed in July of 2010. On January 6, 2011, Judge Crawford of Washington Superior Court granted summary judgment to VSEA. The administration refused to rule out the possibility of appeal, and months passed before a final order for attorneys fees was issued. Finally, in August of 2011—some 14 months after our initial request to review these public records—the Agency of Natural Resources agreed to let VSEA inspect the records without charge.

To our great dismay, when VSEA staff went to ANR headquarters in August to review the electronic records we had requested, we learned that **the records had in fact been deleted during the pendency of the litigation.** ANR personnel informed VSEA that the email records of ANR Secretary Wood, Commissioner Wayne LaRoche and Policy Director Brendan Cosgrove were intentionally and permanently deleted weeks after those government officials left office in January of 2011. We have now been told by ANR that the emails cannot be found and no longer exist. **We have also been informed that it is a practice of the state information technology personnel to permanently delete state email accounts of high-ranking government officials shortly after they leave office.** Apparently, the only emails which are preserved are those which the officials themselves choose to print out and preserve. Those records which officials do not want to preserve—even if the subject of ongoing public records litigation—are destroyed without any way for the public to ever see them.

Any advocate of open government shudders to hear that high-ranking government officials have absolutely no accountability to the public with respect to emails they send and receive. It is unacceptable for the State to routinely and intentionally destroy all emails sent and received by department heads, policy makers, and the like. Such an action clearly violates the principle articulated in Chapter I, Article 6 of the Vermont Constitution, which holds that officers of the government are legally accountable to the public. Similarly, intentional destruction of these emails runs afoul of the policy statement of the Vermont Access to Public

Records Act, which states that "Officers of government are trustees and servants of the people and it is in the public interest to enable any person to review and criticize their decisions even though such examination may cause inconvenience or embarrassment." Email records of government officials are made possible by state tax dollars and thus, belong to the public. When the State willfully destroys records, it is essentially stripping citizens of their ability to exercise their constitutional right to hold government officials accountable.

While the state is clearly in contempt of court by failing to comply with the Washington Superior Court Order to allow VSEA to inspect these emails, we do not wish to see Vermont taxpayers have to pay for blatant Public Records Act violations committed by the State. Rather, we feel this problem would be best addressed proactively by the Agency of Administration, and if appropriate, also by the Legislature. First and foremost, the administration must put a stop to the state's practice of permanently destroying public records which are created, stored, and maintained electronically. It is necessary that the administration order all agencies and departments to retain the email files of government officials. Any burden or expense associated with archiving these public records must simply be viewed as the necessary cost of accountability and openness in government.

In addition to changing state practice from this point forward, we are hopeful that you will address solutions to this problem when you formulate your report to the legislature concerning an electronic documents management system.

Please advise me of any and all measures the administration intends to implement to address this serious situation. If you would like any more information from VSEA concerning this topic, just let me know.

Sincerely,

A handwritten signature in cursive script that reads "Abigail Winters (ah)".

Abigail A. Winters, Esq.
VSEA Associate General Counsel

CC: Senate and House Committees on Government Operations
Secretary of State Jim Condos
DII Commissioner Richard Boes