

*The following article and policy was published in the October 2000 issue of New Jersey Municipalities Magazine. It was updated in January 2009 for this website.)*

## **A POLICY TO PROTECT AGAINST IMPROPER EMPLOYEE COMPUTER USE**

By Dennis S. Deutsch, Esq.

Municipalities in many ways are treated by the law as any other employer.

In this day of e-commerce and employees' rights, it is important that every employer, including a municipality take steps to protect itself from improper use of computers and especially e-mail and Internet access while at the same time making certain that employee rights are not violated.

In order to accomplish this goal, it is important that the law in New Jersey recognizes every employee's right to reasonable privacy; even at the workplace. Virtually every court which has dealt with the issue of the employer's interests in protecting itself versus the employee's right to privacy has held that so long as the employer provides the employee the ground rules under which the employee will work, the employer is protected. That is, so long as the employee's reasonable expectations of privacy are defined, the employer has the right to take the necessary steps to permit a limited intrusion into employee privacy.

In order to achieve this goal, it is in every municipalities' interest to adopt and publish to its employees a computer/email/voice-mail policy which creates those reasonable expectations.

What follows is an email policy I adopted for my hometown of Hillsdale which was adopted by the Borough council.

*Sample Computer Use Policy.* (Name of Municipality) makes every effort to provide the best available technology to those performing services for (Name of Municipality). In this regard, (Name of Municipality) has installed, at substantial expense, equipment such as computers, electronic mail, and voice mail. This policy

1

Dennis S. Deutsch is a partner in the Fort Lee, New Jersey law firm of Kaufman Bern Deutsch & Leibman, Esq. He has served as an Adjunct Professor of Computer Law at Rutgers Law School, Newark and Fordham Law School, New York and is a Councilman in Hillsdale.

---

**Page 2**

is to advise those who use our business equipment on the subject of access to and disclosure of computer-stored information, voice mail messages and electronic mail messages created, sent or received by (Name of Municipality)'s employees with the use of (Name of Municipality)'s equipment.

This policy also sets forth policies on the proper use of the computer, voice mail, and electronic mail systems provided by (Name of Municipality). (Name of Municipality) 's property, including computers, electronic mail and voice mail, should only be used for conducting municipal business. Personal use of (Name of Municipality) computers is prohibited and the municipality may, at any time, monitor the use of said equipment. You should not expect any privacy with respect to any information you place in or on (Name of Municipality)'s computers or computer equipment.

The use of the electronic mail system may not be used to solicit for commercial ventures, religious or political causes, outside organizations, or other non-job related solicitations. Furthermore, the electronic mail system is not to be used to create any offensive or disruptive messages. Among those which are considered offensive, are any messages which contain sexual implications, racial slurs, gender-specific comments, or any other comments that offensively address someone's age, sexual orientation, religious or political beliefs, national origin, or disability. In addition, the electronic mail system shall not be used to send (upload) or receive (download) copyrighted materials, trade secrets, proprietary financial information, or similar materials without prior authorization.

Although (Name of Municipality) may provide certain codes to restrict access to computers, voice mail and electronic mail to protect these systems against external parties or entities obtaining unauthorized access, employees should understand that these systems are intended for business use, and all computer information, voice mail and electronic mail messages are to be considered as Borough records.

(Name of Municipality) also needs to be able to respond to proper requests resulting from legal proceedings that call for electronically-stored evidence. Therefore, (Name of Municipality) must, and does, maintain the right and the ability to enter into any of these systems and to inspect and review any and all data recorded

---

In those systems. Because (Name of Municipality) reserves the right to obtain access to all voice mail and electronic mail messages left on or transmitted over these systems, employees should not assume that such messages are private and confidential or that (Name of Municipality) or its designated representatives will not have a need to access and review this information. Individuals using (Name of Municipality)'s business equipment should also have no expectation that any information stored on their computer - whether the information is contained on a computer hard drive, computer disks or in any other manner - will be private.

(Name of Municipality) has the right to, but does not regularly monitor voice mail or electronic mail messages. (Name of Municipality) will, however, inspect the contents of computers, voice mail or electronic mail in the course of an investigation triggered by indications of unacceptable behavior or as necessary to locate needed information that is not more readily available by some other less intrusive means. The contents of computers, voice mail, and electronic mail, properly obtained for some legitimate business purpose, may be disclosed by The (Name of Municipality) if necessary within or outside of (Name of Municipality).

Given (Name of Municipality)'s right to retrieve and read any electronic mail messages, such messages should be treated as confidential by other employees and accessed only by the intended recipient. (Name of Municipality)'s administrator will review any request for access to the contents of an individual's computer, voice mail,

or electronic mail prior to access being made without the individual's consent. Any employee who violates this policy or uses the electronic communication systems for improper purposes may be subject to discipline, up to and including termination.