

TO: James L. App, City Manager

FROM: Meg Williamson, Assistant City Manager

SUBJECT: S.L.O. Grand Jury Report – City Council Email Accessibility

DATE: June 4, 2013

NEEDS: For the City Council to consider a response to the Grand Jury's findings regarding City Council email accessibility.

FACTS:

1. The San Luis Obispo County Grand Jury provided the City a report concerning City Council email accessibility on April 30, 2013.
2. The Grand Jury Report requires a response by July 26, 2013.
3. The Grand Jury's "findings" and "recommendations" are detailed with the City's responses (attached). The City is only asked to respond to Finding No. 5 and Recommendation No. 2.

ANALYSIS &
CONCLUSION: The Grand Jury determined that the City's practice of providing City domain email addresses for City Councilmembers was proper. The Grand Jury recommended that all agencies in the County provide a disclosure that email correspondence sent to or from members of the City Council are considered public records and may be subject to disclosure and additional distribution pursuant to the Public Records Act and/or Brown Act. The City has implemented that recommendation.

POLICY
REFERENCE: City Council Policies and City's E-Mail/Internet Use Policy.

FISCAL
IMPACT: No fiscal impact is associated with the Grand Jury's recommendation.

OPTIONS:

- a. For the City Council to authorize the attached response to be sent to the S.L.O. Grand Jury regarding City Council email accessibility; or
- b. Amend, modify or reject above option.

Attachments:

1. City Response to Grand Jury, dated June 4, 2013
2. Grand Jury Report, dated April 30, 2013



June 4, 2013

Response to April 2013 Grand Jury Report

"Email Accessibility to City Government"

Responder: James L. App, City Manager
City of Paso Robles

FINDINGS:

- We agree with the finding number: 5

RECOMMENDATIONS:

- Recommendation number 2 has been implemented.

(See attached statement of explanation in response to recommendations)

Date: _____ Signed: _____

James L. App, City Manager

Number of pages attached: 1

ATTACHMENT

Response to April 30, 2013 Grand Jury Report

“Email Accessibility to City Government”

Thank you for the opportunity to comment on the above referenced Grand Jury report.

The City of Paso Robles does provide each City Councilmember with a City domain email address and posts those email addresses on the City's website www.prcity.com as well as other publicly distributed materials. Councilmembers are provided with printed business cards where their City domain email addresses are cited.

In addition to individual accounts, Councilmembers may also receive external email via several group accounts, including:

Council@prcity.com – All five Councilmembers

Council-CM@prcity.com – All five Councilmembers plus the City Manager

All email account addresses are listed on the City Council's Home Page:

<http://www.prcity.com/government/citycouncil/index.asp>.

Having access to the City's computer system, the City Councilmembers are subject to the City's adopted E-Mail /Internet Use Policy, where communications sent over the system may be subject to disclosure under the Public Records Act, Brown Act, or litigation.

Upon receiving the Grand Jury's April 30, 2013 report the City implemented recommendation No. 2 to add a disclaimer statement on the City Council's home page. The following statement is now posted:

NOTE:

E-Mail correspondence sent to or from members of the City Council are considered public records and may be subject to disclosure and additional distribution pursuant to the Public Records Act and/or Brown Act.



GRAND JURY

April 30, 2013

Confidential

Duane Picanco, Mayor
City of Paso Robles
1000 Spring St
Paso Robles CA 93446

Dear Mayor Picanco:

The San Luis Obispo County Grand Jury has completed the attached report titled **"Email Accessibility To City Government."** This copy of the report is being provided to you two days in advance of its public release, as required by California Penal Code §933.05 (f), which states:

A grand jury shall provide to the affected agency a copy of the portion of the grand jury report relating to that person or entity two working days prior to its public release and after the approval of the presiding judge. No officer, agency, department, or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report.

Please check the last page of text of the report for the timing of your response, if any, as required by the Penal Code. § Sections 933 through 933.05 of the Penal Code are attached for your reference. Also attached is a form for your responses to its findings and recommendations.

Please keep in mind that this report must be kept confidential until its public release by the Grand Jury.

Respectfully,

Ed Kreins, Foreperson
2012-2013 Grand Jury

2 Enclosures
EK:sm

EMAIL ACCESSIBILITY TO CITY GOVERNMENT

SUMMARY

Transparency in local government is a fundamental concern and an expectation of the citizens of San Luis Obispo County. Email communication is one way that the public gains access to their local public officials. The 2012/2013 San Luis Obispo County Grand Jury, responding to a complaint by a citizen, investigated and concluded that all but one locality provided their constituents access to their public city emails.

INTRODUCTION

Based on a citizen complaint alleging Brown Act ¹ violations and transparency issues with the City of Morro Bay's email system, it was determined to investigate the City of Morro Bay and the other six municipalities (Arroyo Grande, Atascadero, Grover Beach, Paso Robles, Pismo Beach and San Luis Obispo) in San Luis Obispo County with regard to the allegations.

The purpose of this investigation is to look at the seven municipalities and how they use email to communicate with each other about city business. In addition, the investigation sought to learn if those communications are available to the public. In each city-based system, the question was to determine if council members use private email, and if there was a possible Brown Act violation or the appearance of one.

¹ California Brown Act 54950: The people of this State do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created....A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communication of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the matter of their jurisdiction of the legislative body. ...The use of direct communications, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken by the members of the legislative body is prohibited.

AUTHORITY

Under the California Penal Code Article Two, Section 925, "The grand jury may at any time examine the books and records of any incorporated city or joint powers agency located in the county. In addition to any other investigatory powers granted by this chapter, the grand jury may investigate and report upon the operations, accounts, and records of the offices, departments, functions and methods or system of performing the duties of any such city or joint powers agency and make recommendations as it may deem proper and fit."

METHODS AND PROCEDURE

In order to obtain a better understanding, and for comparison sake, the Grand Jury sent letters to each of the County's seven municipalities (Arroyo Grande, Atascadero, Grover Beach, Morro Bay, Paso Robles, Pismo Beach and San Luis Obispo) asking for their policies and procedures regarding how their elected officials use email to correspond. The Grand Jury also interviewed the City Manager of Grover Beach and the City Manager of Morro Bay.

NARRATIVE

From the cities' responses, the Grand Jury found that the City of Morro Bay had changed to city emails for council members by city resolution in October 2012. Responses also indicated that the City of Grover Beach was the only county municipality that continued to use private email to conduct city business.

During an interview with the Grover Beach City Manager, the Grand Jury was informed that the reason Grover Beach continues to use personal email addresses by their city council members was that to transfer them to the city domain was cost prohibitive. The Grand Jury conferred with the Morro Bay City Manager to determine if there was significant cost in transferring their city council members to the city's domain. The Grand Jury was informed that there was no cost to the City of Morro Bay. The transfer was the same as adding or deleting employees' emails to the

Morro Bay domain. Emails may be found by searching a particular city's website (domain). Incorporating council members' city domain emails into the city website helps to give transparency to city council business, as well as keeping communications within the guidelines established by the Brown Act.

The cities of Arroyo Grande and San Luis Obispo each have Brown Act disclosures related to the use of official city emails on their city websites. For example, the following extract is from the website of the City of San Luis Obispo: "E-Mail correspondence sent to and from members of the City Council via the City's website are considered public records and may be subject to disclosure and additional distribution pursuant to the Public Records Act and Brown Act."

CONCLUSIONS

All municipalities (except the City of Grover Beach) require employees and council members to use individual city domains (i.e., city.org) when conducting business by email. Citizens should not have to seek information regarding their city's business via any official's personal email address.

The websites of each municipality (except the City of Grover Beach) list an official city domain email address for each of its council members, city manager and department heads. The websites are available to the public.

Although no evidence of Brown Act violations were discovered, the use of personal email in discussing public business can easily and unnecessarily give the impression of such.

Grover Beach residents do not have email access to their elected council members, and therefore are hindered in gaining direct access to their elected officials. All city business, including emails, should be open for public inspection as guaranteed by the Freedom of Information Act.

FINDINGS

1. The City of Grover Beach does not list email addresses for City Council members on their official city website.
2. Grover Beach City Council members use personal emails for city business and the email addresses are not published on the official city website.
3. Information regarding city business discussed on personal emails is not available to the public.
4. No evidence of Brown Act violations were discovered; however, the use of personal email in discussing public business can easily and unnecessarily give the impression of such.
5. The cities of Arroyo Grande and San Luis Obispo each have Brown Act Disclosures relating to the use of official emails on their city websites.

RECOMMENDATIONS

1. The City of Grover Beach should create an official city email address for each city council member and department head and list them on the city website.
2. The cities of Grover Beach, Pismo Beach, Morro Bay, Atascadero and Paso Robles should provide a Brown Act disclosure, similar to that provided by the City of San Luis Obispo, regarding the use of city-based emails as a way of demonstrating that they are in conformance with the Brown Act.

COMMENDATIONS

The City of Morro Bay is commended for the rapid transference of their city council members' personal emails to city domain emails for conducting official business.

REQUIRED RESPONSES

1. The City of Grover Beach should respond to Findings 1 through 5 and Recommendations 1 and 2.

2. The cities of Pismo Beach, Morro Bay, Atascadero and Paso Robles should respond to Finding 5 and Recommendation 2.