

**From:** [Lee D. Turonie](#)  
**To:** [Bobbi Birk-LaBarge](#)  
**Subject:** FW: [External] electronic communications  
**Date:** Friday, September 22, 2023 1:04:28 PM

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**From:** Lee D. Turonie  
**Sent:** Thursday, September 21, 2023 7:32 AM  
**To:** 'Kim Manley' <kmanley@kronenwetter.org>  
**Cc:** Chris Voll <cvoll@kronenwetter.org>  
**Subject:** electronic communications

Good morning. I believe I have tried to raise the issue covered in the below material, but maybe not hard enough. The below excerpt is from the WI DOJ compliance guide. I did the bolding. Thank you.

### **Electronic Communications**

Written communications transmitted by electronic means, **such as email**, instant messaging, blogging, or other social media, also may constitute a “convening of members,” depending on how the communication medium is used. Although no Wisconsin court has applied the open meetings law to these kinds of electronic communications, it is likely that the courts will try to determine whether the communications in question are more like an in-person discussion—e.g., a rapid back and-forth exchange of viewpoints among multiple members—or more like non-electronic written correspondence, which generally does not raise open meetings law concerns. **If the communications closely resemble an in-person discussion, then they may constitute a meeting if they involve enough members to control an action by the body.**<sup>85</sup> In addressing these questions, courts are likely to consider such factors as the following: (1) the number of participants involved in the communications; (2) the number of communications regarding the subject; (3) the time frame within which the electronic communications occurred; and (4) the extent of the conversation-like interactions reflected in the communications.<sup>86</sup>

Because the applicability of the open meetings law to such electronic communications depends on the particular way in which a specific message technology is used, these technologies create special dangers for governmental officials trying to comply with the law. Although two members of a governmental body larger than four members may generally discuss the body’s business without violating the open meetings law, **features like “forward” and “reply to all” common in electronic mail programs deprive a sender of control over the number and identity of the recipients who eventually may have access to the sender’s message. Moreover, it is quite possible that, through the use of electronic mail, a quorum of a governmental body may receive information on a subject within the body’s jurisdiction in an almost real-time basis, just as they would receive it in a physical gathering of the members.**

**Inadvertent violations of the open meetings law through the use of electronic communications can be reduced if electronic mail is used principally to transmit information one-way to a body’s membership; if the originator of the message reminds recipients to reply only to the originator, if at all; and if message recipients are scrupulous about minimizing the content and distribution of their replies.** Nevertheless, because of the absence of judicial guidance on the subject, and because

electronic mail creates the risk that it will be used to carry on private debate and discussion on matters that belong at public meetings subject to public scrutiny, the Attorney General's Office strongly discourages the members of every governmental body from using electronic mail to communicate about issues within the body's realm of authority.<sup>87</sup> **Members of a governmental body may not decide matters by email voting, even if the result of the vote is later ratified at a properly noticed meeting.**<sup>88</sup>

pages 11-12: <https://www.doj.state.wi.us/sites/default/files/office-open-government/Resources/OML-GUIDE.pdf>

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