

# Deleted e-mails cause public records issue

## Daily News plans to petition court to recover electronic correspondence between Steed, legislator

By Mark Williams, Daily News staff writer

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Idaho law does not restrict government officials from deleting e-mails they received concerning public business, even though those e-mails can be considered public record.

The issue came to light when the Daily News made a public records request to state Rep. John "Bert" Stevenson, R-Rupert, concerning e-mail correspondence between himself and Moscow City Councilman Walter Steed.

The request sought e-mails regarding two proposed bills that would affect Moscow's ability to sell water across the state line to the Hawkins Companies' planned retail development in Whitman County.

Both bills, sponsored by Rep. Gary Schroeder, R-Moscow, died in the House Resources and Conservation Committee after passing overwhelmingly in the Senate, and never reached the House floor.

Stevenson serves as chairman of the House Resources and Conservation Committee. His written reply to the public records request stated he had deleted the messages sent by Steed.

He later said he had not read the majority of Steed's e-mails.

Stevenson's written response was reviewed by the state attorney general's office, which indicated the Daily News would need to petition a court to recover them. Idaho law states a petition must be filed in the district court of the county where the records or some part of them are located.

Though deleted e-mails can be recovered, the process is time-consuming and potentially costly, meaning hordes of potential public records in electronic form may be disappearing before the public can access them.

Daily News Editor and Publisher Nathan Alford said the company plans to take the necessary steps to recover the records.

"Defending the public's right to know is part of our mission and responsibility, and we're willing to do what it takes to protect a well-established right," he said. "Transparency in government is essential."

E-mails and other records must be retained after a public records request has been made, but Idaho Deputy Attorney General Bill von Tagen said no mechanism exists to compel government officials, including legislators, to keep their e-mails before a request is made.

"We don't really have a records retention policy," he said. "There may be other reasons that require them to be saved, but when you're in a purely political realm I don't believe that is the case."

Senate Minority Leader Kate Kelly, D-Boise, sees the loophole as a problem, but said there has been no pressure from the public or within the Legislature to remedy the law.

"The Legislature certainly doesn't have (a retention policy) for hard copy or e-mail," she said.

Kelly is well-versed in public records issues. She and Senate Majority Leader Bart Davis, R-Idaho Falls, co-sponsored a bill last session that would have required elected officials and candidates to disclose their personal finances, but the proposal was killed before it reached committee.

Kelly previously worked in the attorney general's office and advised agencies on open records laws.

She said she is not surprised that Idaho hasn't addressed the law.

"I like to describe Idaho as an analog bubble in the middle of a digital world," she said. "In terms of what we're doing from a statutory standpoint, my guess is that we're probably behind" other states.

House Majority Leader Mike Moyle, R-Star, said he doesn't think the situation is a problem.

He said if legislators or interest groups were to discuss something potentially damaging, they wouldn't do it via e-mail, where they know it can eventually be retrieved.

"Common sense says you wouldn't think somebody would send something along those lines knowing that it would be a public record," he said. "Everything we do is out there to be found. I mean, you can say it's gone, but it's not really gone."

Moyle said most legislators delete their e-mails just like everyone else.

"Most guys delete them right away," he said. "We caution our legislators to be careful with what they do or say. We do our best to keep things above board. We want to keep things in the light."

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