

Rick Becker

From: Jim Mowbray [jmowbray@ncpa.state.ne.us]
Sent: Tuesday, February 08, 2005 11:20 AM
To: info@cio.state.ne.us
Cc: ron.ritchey@hhss.ne.gov

To Whom It May Concern:

Pursuant to Email Standards 4.2 we are requesting an exemption. The reason for the exemption is unique and specific to this agency.

The Nebraska Commission on Public Advocacy is not a typical state agency in terms of our documents being a part of the public domain. We represent individual clients who are charged with criminal offenses. Our staff consists of six attorneys, two support staff and one investigator. The attorneys and staff are regulated by the Code of Professional Responsibility which mandates that all attorney/client communications are strictly confidential. Those communications include any written correspondence either by word documents or email communications. No one from outside this office can view or have access to those confidential communications in any form or manner. If these attorney/client communications were to be disclosed the attorney's in this agency would be subject to discipline and could lose their license to practice law.

If our email is stored on the state's servers then access is possible by someone other than the staff of this agency, which would violate Canon 4 of the Code of Professional Responsibility. It is no different than when we store our closed files off site, we must insure that no one has access to these files. I realize that other agencies have attorneys working for them, and they use the state system, but that is different from this office, because they do not have an individual client, they represent the State of Nebraska, not a private client. In other words, to the best of my knowledge, we are the only agency that has attorneys' who represent individual private clients.

I contacted the Federal Public Defender for the State of Nebraska and asked him how the federal government deals with this issue. He told me that they too have an email standard similar to the State's, but what they do is put the two or three servers that handle the public defenders' offices emails on site in one of the public defender's offices. That way, the emails are not off site, and no one has access to them except the staff of the public defender system.

I realize that there may other options, that you may feel would work, however, unless the option is putting a state server in this office, the only alternative is to make our in house server our mail server.

If you should have any questions, or need to discuss this further, please contact me.

James R. Mowbray
Chief Counsel
Nebraska Commission on Public Advocacy
P.O. Box 98932
Lincoln, NE 68509
402-471-7778