

Text messages as public records emerges as new Montana issue

August 29 2017, by Matt Volz



In this Nov. 15, 2016 file photo, Montana Gov. Steve Bullock, left, and the governor's budget director, Dan Villa, outline Bullock's proposed budget for the next two years in Helena. Montana government leaders plan to create rules for when and how to preserve text messages after a news organization's public-records request exposed the lack of a policy to retain the messages that have become a regular communication method for state business. Bullock's spokeswoman Ronja Abel said Monday, Aug. 28, 2017, that Lee Newspapers of Montana's request for text messages between state lawmakers and budget director Dan Villa was the first of its kind received by the administration. (AP

Photo/Matt Volz, File)

Montana government leaders plan to create rules for when and how to preserve text messages after a news organization's public-records request exposed the lack of a policy to retain the messages that have become a regular communication method for state business.

Gov. Steve Bullock's spokeswoman Ronja Abel said Monday that Lee Newspapers of Montana's request for text messages between state lawmakers and budget director Dan Villa was the first of its kind received by the administration.

"We're working to develop a framework that celebrates Montana's dual constitutional rights to transparent government and individual privacy," Abel said.

Lee Newspapers requested the text messages of Villa and the Democratic governor to track negotiations with Republican legislative leaders about the two-year state spending plan that was ultimately approved in April.

The governor's office released 86 emails sent and received by Bullock between April 10 and April 30 but did not do so for messages sent and received by Villa, a key player in the talks with Republicans.

Villa had not retained any of his text messages, the governor's office said.

Bullock adviser Eric Stern compared text messages to "sticky notes" that do not need to be preserved.

"Text messages are transitory and ephemeral communications with a high expectation of privacy for the sender and receiver, and they occur almost always on personal devices," he told Lee Newspapers.

State law says any communication that deals with official business, regardless of format, is information that can be accessed by any member of the public. Records to be retained in the state archives also are not limited by any medium, according to the state's public records law that was updated in 2015.

In response to a query on whether Stern's comments on text messages reflect the Bullock administration's policy, Abel told The Associated Press the governor turned over his text messages because he believes in government transparency.

"The request came as various state agencies are updating their records retention policies to adjust for significant technological changes in how people communicate," she said.

Text messages are increasingly used in discussions and decisions about state policy. Advocates for government transparency said those messages are part of the record that the state constitution requires be available to the public to review.

"If text messages are 'ephemeral,' then maybe they shouldn't be using them to negotiate the state budget," said John Wonderlich, executive director of the Sunlight Foundation, a government transparency advocacy organization, told Lee Newspapers. "If they are used for that kind of communication, it suggests they are official records and not some ephemeral Post-it note."

Most states have public-records laws that require the preservation of electronic communications, though text messages are often not

specifically addressed.

A 2015 guideline memo to U.S. government agency heads from the National Archives said that agencies must capture and manage text messages to comply with federal records laws and policies, even though text and chat messages are more likely to "contain transitory information or information of value for a much shorter period of time."

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