Managing City Video and Audio Recordings

By Rachel L. Carlson

In addition to traditional paper records, city staff must also deal with video and audio records stored on videotapes, cassettes, CDs, DVDs, computer drives, and other digital storage devices. The city creates these records for a variety of reasons, from recordings of city council meetings to police car recordings of incidents and arrests.

These recordings can serve a useful purpose, but many management and maintenance responsibilities come with them. It is important to remember that under both the Minnesota Government Data Practices Act (MGDPA), which governs public access to data, and the records retention laws, which govern storage and retention of data, you must treat these recordings like you treat traditional paper records.

Specifically, the MGDPA defines government data as “data collected, created, received, maintained, or disseminated … regardless of its physical form, storage media, or conditions of use.” Similarly, the records retention laws define records as including all municipal information or documentary material, regardless of physical form or characteristics.

Requirements of the MGDPA.

Under the MGDPA, government data is public unless another law classifies it as non-public. Public data is accessible to the general public. Any person may inspect and copy public government data at a reasonable time and place. A city that maintains any type of recordings will need to have equipment and facilities available that allow the public to view the recordings (e.g., a DVD player and television to view DVDs of council meetings; a public computer terminal to view digital photographs stored on a hard drive).

Additionally, since it may not be appropriate to allow recordings to leave the city hall premises, it is also necessary for the city to have some means of producing copies of its recordings when copies are requested by the public. As an alternative, a city may want to contract with a copying service to produce such copies.

The city has the authority to charge for the actual costs of copying the recordings, including the costs of employee time. However, the city may not charge for copying costs if the person only wishes to view the data. If the city is not able to produce the data recordings at the time of request, the law requires the city to supply the data as soon as reasonably possible.

Separating private data from public data.

While copying audio and video recordings is generally not a difficult task, the issue may become quickly complicated if the recording contains both public and non-public data. For example, a DVD recording of a council meeting may contain the entire public portion of the meeting, but also a portion that was closed under the attorney-client privilege to discuss pending litigation with the city attorney. The city will need to separate the public from the private data before providing it to a member of the general public. Separation will usually require some type of redaction or “whiting out” of a portion of the recording.

With DVDs, CDs, and other digital recordings, redaction may not be as simple a task as with a standard video cassette recording. In some instances, the city may need to contract with a professional service to perform editing services. The best way to avoid this cost, however, would be to confirm at the time of purchase of new recording equipment and/or software that the equipment allows staff to edit recordings.

Under the MGDPA, cities may not charge for the cost of separating public from private data. If a private company needs to be hired to perform the redaction of private data, this may be a significant cost that the city must bear.

Requirements of the public records retention laws.

Minnesota law prohibits the destruction of public records except for under the authority of the Minnesota public records retention law according to an approved records retention schedule. A person who destroys records in violation of this law or knowingly permits another to destroy records may be guilty of a misdemeanor.

Cities should view all recordings in the same way they view traditional paper records under the general records retention schedule. Cities need to assure that the various recordings that they have fall within the categories in the records retention schedule and are maintained as such.

For example, under the approved records retention schedule, the city may discard recordings of open city council meetings three months after the council approves formal written minutes. On the other hand, public works recordings related to inspection and testing of water mains must be retained for as long as five years.

It is important to consider all the different types of recordings of city activities that the city may be creating in various media. If the city has recordings in a number of different departments, those departments should be aware of the legal requirements for records and reminded to catalog and retain recordings accordingly.

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