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April 17, 2008

The Honorable Franklin Freeman
Chairman
E-Mail Records Review Panel
Office of the Governor
Raleigh, North Carolina 27601

Re: Email Records Review Panel/North Carolina Press Association

Dear Mr. Freeman:

You and several of your colleagues on the Email Records Review Panel have requested our opinion concerning the North Carolina Department of Cultural Resources August, 2002 "Guidelines for Retention and Disposition" of government e-mail ("the Guidelines") and the North Carolina Public Records Law. N.C. Gen. Stat. Section 132-1, et seq.

Based upon the published Guidelines and the explanation of the NCDCCR's implementation of the Guidelines within the Executive Branch of North Carolina government, offered at the April 3, 2008 public hearing, it is the opinion of the North Carolina Press Association that provisions of the Guidelines violate the Public Records Law because these provisions permit the immediate destruction of e-mail made or received by state government regardless of content.

The provisions of the Guidelines that are, in our judgment, at odds with the Public Records Law are:

1. The policy described on pages 3 and 8 for e-mail that qualifies as a "public record" under the Public Records Law (all records made or received in connection with government business) -

"[E-mail] Messages with ... short term value may be disposed of in conjunction with an approved records retention and disposition schedule, or when they no longer have reference value to the sender or receiver of the message."

2. The above policy impliedly and illegally authorizes NCDCCR to approve a records retention and disposition schedule for public record e-mail that differs from the retention and

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disposition schedule applicable to all other public records and, in effect, permits immediate destruction of e-mail public records.

The North Carolina Press Association and its more than 200 member newspapers across the state are not insensitive to the challenges of archiving the public records of our state and local governments. Yet, the tradition of open government in North Carolina has always included the obligation to archive government records for a length of time sufficient to allow the public and press a meaningful opportunity to request and inspect records made and received by government in connection with their government's business. The advent of electronic communications has not altered this tradition in any way.

Therefore, the North Carolina Press Association urges the Governor to rescind the provisions of the Guidelines that violate the Public Records Law and to enforce the law accordingly.

Sincerely,

A handwritten signature in black ink that reads "John Bussian". The signature is written in a cursive style with a large, stylized initial "J".

John A. Bussian
NCPA First Amendment and
Legislative Counsel