

**BROOKS, PIERCE, McLENDON, HUMPHREY & LEONARD, L.L.P.**

**ATTORNEYS AT LAW**

**RALEIGH, NORTH CAROLINA**

L.P. McLENDON, JR.  
EDGAR B. FISHER, JR.  
W. ERWIN FULLER, JR.  
JAMES T. WILLIAMS, JR.  
WADE H. HARGROVE  
M. DANIEL MCGINN  
MICHAEL D. MEEKER  
WILLIAM G. McNAIRY  
EDWARD C. WINSLOW III  
HOWARD L. WILLIAMS  
GEORGE W. HOUSE  
WILLIAM P.H. CARY  
REID L. PHILLIPS  
ROBERT A. SINGER  
JOHN H. SMALL  
RANDALL A. UNDERWOOD  
S. LEIGH RODENBOUGH IV  
MARK J. PRAK  
JILL R. WILSON  
MARC D. BISHOP  
JIM W. PHILLIPS, JR.  
MACK SPERLING  
JEFFREY E. OLEYNIK  
MARK DAVIDSON  
JOHN W. ORMAND III  
ROBERT J. KING III  
V. RANDALL TINSLEY  
S. KYLE WOOSLEY  
FORREST W. CAMPBELL, JR.  
MARCUS W. TRATHEN  
JEAN C. BROOKS  
JAMES C. ADAMS II  
ALLISON M. GRIMM  
ELIZABETH S. BREWINGTON  
H. ARTHUR BOLICK II  
J. EDWIN TURLINGTON  
JOHN M. CROSS, JR.  
JENNIFER K. VAN ZANT  
KEARNS DAVIS

DAVID W. SAR  
BRIAN J. McMILLAN  
DAVID KUSHNER  
DEREK J. ALLEN  
CLINTON R. PINYAN  
COE W. RAMSEY  
ROBERT W. SAUNDERS  
ELIZABETH V. LAFOLLETTE  
GINGER S. SHIELDS  
JENNIFER T. HARROD  
CHARLES E. COBLE  
CHARLES F. MARSHALL III  
PATRICK J. JOHNSON  
STEPHEN G. HARTZELL  
JESSICA M. MARLIES  
ANDREW J. HAILE  
J. BENJAMIN DAVIS  
CAROLINE E. RITCHIE  
SARA R. VIZITHUM  
C. SCOTT MEYERS  
JOHN S. BUFORD  
NICOLE A. CRAWFORD  
ALEXANDER ELKAN  
KATHERINE J. CLAYTON  
KATHLEEN A. GLEASON  
SUSAN M. YOUNG  
DARRELL A. FRUTH  
IAIN MACSWEEN  
BENJAMIN R. NORMAN  
ELIZABETH E. SPAINHOUR  
JENNIFER C. NOBLE  
DAVID L. NEAL  
SARAH A.L. PHILLIPS  
PHILLIP J. LONG  
ANDREW T. TRIPP  
KATHERINE A. SOLES  
ADAM P.M. TARLETON  
JOHN A. DUBERSTEIN  
JOSEPH A. PONZI  
D.J. O'BRIEN, III

MAILING ADDRESS  
POST OFFICE BOX 1800  
RALEIGH, N.C. 27602

OFFICE ADDRESS  
1600 WACHOVIA CAPITOL CENTER  
150 FAYETTEVILLE STREET  
RALEIGH, N.C. 27601

TELEPHONE (919) 839-0300  
FACSIMILE (919) 839-0304

WWW.BROOKSPIERCE.COM

HENRY E. FRYE  
OF COUNSEL

J. LEE LLOYD  
SPECIAL COUNSEL

FOUNDED 1897

AUBREY L. BROOKS (1872-1958)  
W.H. HOLDERNESS (1904-1965)  
L.P. McLENDON (1890-1968)  
KENNETH M. BRIM (1898-1974)  
C.T. LEONARD, JR. (1929-1983)  
CLAUDE C. PIERCE (1913-1988)  
THORNTON H. BROOKS (1912-1968)  
G. NEIL DANIELS (1911-1997)  
HUBERT HUMPHREY (1928-2003)

GREENSBORO OFFICE  
2000 RENAISSANCE PLAZA  
230 NORTH ELM STREET  
GREENSBORO, N.C. 27401

WASHINGTON OFFICE  
601 PENNSYLVANIA AVENUE, N.W.  
SUITE 900, SOUTH BUILDING  
WASHINGTON, D.C. 20004

WRITER'S DIRECT DIAL

April 18, 2008

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

Re: The Governor's E-Mail Retention Policy

Dear Franklin:

This letter is in response to your request for comment from the North Carolina Association of Broadcasters (the "Association") on the Department of Cultural Resources' August, 2002 "Guidelines for Retention and Disposition" of government e-mail ("the Guidelines") and the extent to which these Guidelines are consistent with the North Carolina Public Records Law. N.C. Gen. Stat. Section 132-1, et seq.

Based upon the Guidelines and the explanation of the Department's implementation of the Guidelines within the Executive Branch at the April 3, 2008, public hearing, it is the Association's opinion that various provisions of the Guidelines and the implementation of those Guidelines are in violation both of the letter and spirit of the Public Records Law.

The Association, however, has elected not to institute legal proceedings to challenge the Guidelines or the Governor's recent actions concerning the disposition of certain e-mails within the Governor's office pending timely completion of the Review Panel's action and the Governor's response to it.

The Honorable Franklin Freeman  
April 18, 2008  
Page 2

The Guidelines state in relevant part:

[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.

This provision plainly authorizes state government officials to immediately retain or dispose of e-mail when the government employee sender or recipient determines in her or his discretion the e-mail no longer has "reference value." That is not the law for other public records, and it is not, of course, the law for electronic records. The provision renders the Public Records Law meaningless.

The Association's member stations across the state are not at all insensitive to the challenges of archiving the state public records. Yet, the tradition of open government in North Carolina has always included the obligation to archive public records for a length of time sufficient to allow the public a meaningful opportunity to inspect and review them. The advent of electronic communications has not altered that tradition nor the necessity of assuring the public has access to public records. Any policy that would allow the destruction of these records within the unfettered discretion of government employees is inconsistent with the statute and with any semblance of responsible public policy.

Therefore, the Association respectfully urges the Review Panel to recommend to the Governor that the provisions of the Guidelines that violate the Public Records Law be immediately rescinded and that new guidelines be adopted that would give full effect and meaning to the law. We will be pleased to work with the Review Panel and the Governor to that end.

Moreover, the process for amendment and adoption of the Guidelines should, itself, be transparent and open to the public. The process should be undertaken immediately and concluded timely, e.g., within sixty (60) days. The public, in keeping with North Carolina tradition, should be afforded an opportunity to comment on any proposed amendment.

We respectfully request that you share this letter and our recommendations with the Governor and members of the Review Panel.

We thank you, on behalf of more than 350 radio and television broadcast stations in North Carolina, for the privilege of commenting on this important issue.

Sincerely,



Wade Hargrove  
Counsel to the North Carolina  
Association of Broadcasters