



Berkeley City Council

CONSENT CALENDAR
April 29, 2014

To: Honorable Mayor and Members of the City Council
From: Councilmembers Gordon Wozniak and Laurie Capitelli
Subject: Protection of Citizens' Privacy in Online City Records

RECOMMENDATIONS:

Refer to the City Manager a request for an information report from the City Clerk about changing the City's policy of posting communications between private individuals and City staff online on the City's website. The intent is to better protect individual residents' privacy and online reputations.

The report should consider the following options for protecting individuals' information:

1. Removing communications from the City website after the relevant matter ends (e.g. after ZAB has rendered a decision on a neighborhood dispute and the appeal window closes);
2. Keeping communications in Records Online instead of searchable on the City's website;
3. Redacting private citizens' phone numbers and email addresses from communications;
4. Any other ideas that staff may want to contribute.

The report should include an analysis of which option staff believes is most efficient and cost-effective as well as an analysis of which option best balances the need for government transparency with the need to protect individuals' privacy.

CURRENT SITUATION AND ITS EFFECTS:

The current policy regarding resident communications submitted to City boards and commissions is to upload everything to the City's website as-is. This is because any communications with City boards and commissions become part of the public record.

However, a problem arises when documents submitted and uploaded as-is include private individuals' names, home addresses, phone numbers, and email addresses without their consent.

When neighbors first appealed her proposed home improvements to the Zoning Adjustments Board in 2011, Berkeley resident Cynthia Doe* (*not her real name) didn't know that she would deal with the fallout of her case for more than two years. Fast forward to the end of an exhausting, alienating, and disheartening process during which her plans were appealed all the way to the City Council, Ms. Doe thought she was finally done.

To her surprise, a Google search of her name in February 2014 revealed that all the documents affiliated with her case were posted un-redacted online and came up as the first hit on Google. These documents included her name, her husband's name, their home address, cell phone numbers, personal email addresses, blueprints and photos of their home from every angle, and hundreds of pages of vitriolic emails from neighbors.

Although Cynthia knew that her documents would become part of the public record, she noted her right to redact all her documents (outlined on the ZAB's website) and did so carefully before submitting anything to the City. It didn't matter, though, because neighbors submitted hundreds of unedited emails and ZAB submitted all her construction documents and photos, which were all uploaded to the City's website.

Today, anyone who searches Cynthia's name in any online search engine finds as the top hit the City's PDF with her family's names, address, cell phone numbers, and email addresses, as well as potentially-defamatory comments by her neighbors. We believe the City's actions have inadvertently led to a serious infringement on Cynthia's privacy and her online reputation.

The public record is very important for the purposes of government accountability and transparency. However, it has become evident that there are holes in the City's policy where our dedication to open government has made it likely that the City will violate individual residents' right to privacy in posting their information online.

It is not clear whether the City's policy of uploading documents is regulated by ordinance or if it evolved from precedent/standard practice. On most commission websites, a disclaimer reads:

"Communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not

include that information in your communication. ” [Emphasis theirs, taken directly from the website.]

The problem is that even though people can redact their own documents, as Cynthia did, communications submitted to the public record by others (e.g. the emails submitted by Cynthia Doe’s neighbors, or un-redacted communications between citizens and City commissioners) can lead to peoples’ names, home addresses, telephone numbers, and email addresses ending up online without their consent.

There are at least two necessary changes where this policy is concerned:

1. First, we should set a standard privacy policy that applies to the online publication of all resident communications with the City Council, City Clerk, Rent Board, and all commissions.

This recommendation applies only to communications between private individuals and City employees or commissioners that will be posted on the City’s website as part of the public record. Other communications not posted online, including those on file in the City Clerk’s Office, are not covered by these recommendations.

2. Second, once the policy is developed, it should be clearly described and prominently displayed on the website of any City department or commission that uploads documents to the City’s website as part of preserving the public record.

This will allow us to compile a robust public record while simultaneously protecting the personal information of residents who prefer to maintain their privacy and online reputations.

FINANCIAL IMPLICATIONS:

Unknown. Staff time involved in preparing a report with findings for the City Council.
Potential staff time spent implementing privacy policy after adoption.

ENVIRONMENTAL IMPACT:

Little to no environmental impact. This item deals only with the posting of documents on the City of Berkeley’s website.

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