



FOR IMMEDIATE RELEASE

Settlement in California public records case requires greater access to government emails

Officials must save emails about government business for at least two years.

COLUMBIA, Mo. (July 25, 2012) – In an important case supported by the Knight FOI Fund, a grassroots public-interest organization has won a settlement agreement with the northern California city of Auburn over retention and disclosure policies regarding government emails.

The settlement agreement with the First Amendment Coalition (FAC) of California, approved by the Auburn city council this week, requires that government officials save emails for at least two years, replacing a policy and practice of deleting most emails after 30 days. The agreement also assures public access to emails about government business even when they are sent or received on personal computers or through personal email accounts.

FAC, a state member organization of the National Freedom of Information Coalition (NFOIC), filed the lawsuit on June 1 along with co-plaintiff Victoria Connolly, an Auburn resident. NFOIC approved a \$1610 grant award under the Knight FOI Fund to support the action.

NFOIC, a non-partisan network of state and regional open government groups and advocates, administers the half-million dollar perpetual litigation fund as part of a three-year, \$2 million grant from the John S. and James L. Knight Foundation.

Peter Scheer, executive director of FAC, and Kenneth F. Bunting, executive director of NFOIC, commended the settlement agreement as a good and important outcome regarding an issue with implications that reach far beyond the northern California community that was named in the lawsuit.

“As most government records become digital, public officials all over the state have fallen in love with their computer’s ‘delete’ key,” Scheer said. “This agreement establishes the principle that government emails about government business are public records and have to be treated as such, meaning they all have to be retained and made available for inspection and copying.”

Bunting added, “This is an important issue, and we are seeing it arise not just in California, but all around the country. With email becoming the prevalent means of written communication, the lengths and machinations to which some government agencies will go to hide them from public view are mind-boggling and disturbing.”

The agreement allows some exceptions for emails between government officials and their constituents.

Connolly first sought the emails by filing a California Public Records Act request on September 12, 2011. She asked for any correspondence—including emails—between Auburn City Council members and any building or contracting organization that discussed the charter city ballot initiative. In response to her request, Connolly was initially told that there were no records to release.

Connolly then conducted her own search of Auburn records. During her search, Connolly found administrative records of emails on Auburn City Council email accounts that were not disclosed to her. After repeated requests, Connolly eventually received some records, though city council members refused to disclose any emails between them and their constituents, citing privacy concerns. As a result of their refusal to disclose the emails, Connolly filed suit.

Since it began in January 2010, the Knight FOI Fund has assisted NFOIC member organizations, their allies and other litigants with 27 grant awards in FOI or access cases. While some are still being adjudicated, Knight Fund-supported cases have resulted in 14 favorable court orders or settlements that achieved more transparency or greater access.

Other significant access victories in cases supported by the Knight FOI Fund have included: the 2010 U.S. Supreme Court ruling in *Doe v. Reed* and the subsequent disclosure orders on remand; another California case that kept the nation's largest public pension fund from hiding details of a \$100 million real estate investment loss; a case that forced Wisconsin governor Scott Walker to release more than 8,000 emails; and a case involving a New Mexico state college that had declined to disclose records regarding building projects and a search for a new president.

Most Knight FOI Fund grant awards do not include direct outlays for attorney fees. Instead, the litigation fund is set up to fuel and assist the pursuit of important open government cases by helping to defray upfront costs such as filing fees, depositions, court costs and other expenses associated with legal actions. NFOIC only seeks reimbursement—or any kind of recovery of the Knight FOI Fund investments—when litigants it supports win reimbursements for costs, fees or expenses through court victories or legal settlements.

In addition to support for meritorious legal access cases under state and local public disclosure and open meeting laws, the Knight FOI Fund may also support litigants in anti-SLAPP (Strategic Lawsuits Against Public Participation) suits, SLAPP defenses, important appellate cases and federal FOIA cases where citizen and journalist access to important public record information might be enhanced.

For more information on the Knight FOI Fund, including the selection process for grants and how to apply, see <http://www.nfoic.org/knight-foi-fund>.

The John S. and James L. Knight Foundation supports transformational ideas that promote quality journalism, advance media innovation, engage communities and foster the arts. The Foundation believes that democracy thrives when people and communities are informed and engaged. For more, visit <http://www.knightfoundation.org/>.

The First Amendment Coalition (FAC), based in San Rafael, CA, is a 501(c)(3) nonprofit dedicated to freedom of speech and government transparency and accountability at the local and national level. FAC initiates test-case litigation and files amicus briefs in key appeals; provides free legal help and information to journalists of all kinds; and, through widely published Op-Eds, educational programs and other means, is an outspoken public advocate for the First Amendment and the public's right to know. For more, visit <http://www.firstamendmentcoalition.org/>.

The National Freedom of Information Coalition is a national network of state freedom of information advocates, citizen-driven nonprofit freedom of information organizations, academic and First Amendment centers, journalistic societies and attorneys. Its mission is to foster government transparency at the state and local level. A unit of the Missouri School of Journalism, the NFOIC is an affiliate of the Donald W. Reynolds Journalism Institute, and is based at the University of Missouri, home to the nation's oldest FOI Center. For more, visit <http://www.nfoic.org/>.

CONTACT:

Ken Bunting
Executive Director, NFOIC
Missouri School of Journalism
101E Reynolds Journalism Institute
Columbia, MO 65211
573.882.3075; buntingk@missouri.edu