



E-mail, Web use renew debate over privacy vs. public access

by *Tim Anderson*

The story was private and personal, but a constituent of Indiana Rep. Jeff Thompson wanted some public good to come out of what she had experienced. The woman told Thompson that her husband was a child molester and hoped her story might lead to legislation that better protects children.

She assumed the correspondence would remain private. But, Thompson says, if the conversations were conducted via e-mail rather than the telephone, the woman's private life could be open to the public.

That led him to include language in House Bill 1083 — which the full Indiana House approved in early March by a vote of 92-1 — shielding the e-mails and Internet records of public officials. But while there was little dissent among legislators, one important voice in the state's capital city expressed major reservations about the bill — *The Indianapolis Star* newspaper. Other media groups also oppose the legislation.

"We're very concerned about it," says David Stamps, executive director of the Hoosier State Press Association. "The law proposes a major change in our FOIA [Freedom of Information Act] laws because, instead of making something public or private based on content, it essentially makes an entire mode of communication secret. It creates tremendous potential problems and a veil of secrecy over government.



Rep. Jeff Thompson

"Use your imagination about what could be done. Agreements could be made, contracts offered, you name it. We understand the legislators' concerns, but how do you enact privacy legislation that doesn't allow for mischief among public officials? In the form it passed the House, the legislation is a horrendous overreach."

Following House passage of the measure, *The Indianapolis Star* asked selected lawmakers to disclose two weeks' worth of e-mails in order to gauge public reaction to House Bill 1083. Four legislators — two Democrats and two Republicans — refused to disclose their correspondences and instead sought legal advice on the issue.

Meanwhile, as of late March, Thompson was trying to rework language in his bill before it went to the Senate for a vote. "We're not going to compromise on the intent of the legislation, but

we're willing to work on the language so that people feel more comfortable with it," the Republican from Danville says.

The issue of privacy vs. the public's right to know is certainly not new, but the increased use of the Internet as an informational and communication tool adds a new wrinkle to the public policy debate. State legislatures around the region may eventually have to address the thorny questions that Indiana lawmakers are facing in 2001.

While both deal with the issue of privacy, the two components of Thompson's legislation are distinct enough to merit being looked at separately. The first addresses public accessibility to the e-mail of legislators and other public officials. Opinions on whether it should be shielded from or open to the public are based in large part on how the communication method is defined.

"To me, e-mail is like the modern-day telephone, and phone conversations are not public," says Duane Cheney, a Democrat from Portage. "Our constituents certainly have the right to know the factors that made us vote one way or the other on a particular issue, but there are already conversations in the hallways and phone calls made now that are not made public.

"From our perspective, we want to protect constituents who contact us with sometimes very private concerns. They shouldn't have to worry about that information ending up on the front page of the paper."

Stamps argues that there is a considerable difference between phone calls and e-mails. One is an oral form of communication, traditionally considered "less formal," and the other is a written form of communication, viewed as "more concrete," he says. Consequently, e-mails should be treated like letters — which legislators must disclose — so that voters have access to correspondence between legislators and constituents, staffers and lobbyists, Stamps believes.

But lawmakers wonder when their public lives end and private lives begin. For example, Cheney's

legislative business card includes his home e-mail address. Does this mean that, minus any legislation on the matter, correspondence from his home computer could be scrutinized

as well?

In response to concerns on both sides of the debate, Thompson began crafting a more "content-based" shield law that makes distinctions between correspondence involving either public or private e-mail discussions (the exact language had not been determined as of late March).

"I'd say 80 percent of the e-mails we send or receive are more like phone conversations," Thompson says. "But there are certain ones that should be reported and made public. That's what we're trying to do with this revised language."

Questions also have been raised about compliance; namely, how long should public officials be expected to keep their e-mail messages before being able to throw them away without repercussions? "These are difficult questions to answer, and the issues involving privacy and the Internet are certainly not fully developed," Stamps says.

The Web trail

A few weeks before the Indiana House approved a shield on e-mails and Internet records, *The Indianapolis Star* published an article detailing the Web sites that school superintendents had logged on to during work hours. Many were found in violation of their district's own computer policies.

One superintendent had previously been fired by a school board for violating Internet policies. Only after the *Star* reviewed his Web-surfing history, though, did parents find out that the school administrator had accessed pornographic sites.



Rep. Duane Cheney

Under House Bill 1083, employers would still be able to review the Internet records of public employees and officials, but newspapers could not.

"I originally thought this portion of the legislation would be the major point of contention, rather than the e-mails," Thompson says. "What drove me to include it was my background as a teacher. If I'm doing some research on a lesson on gambling, I might go on some gambling sites. Or if I'm doing something on the Oklahoma bombing, I might visit sites that, without the right context, look like I want to build a bomb. It just wouldn't be fair for that information to show up in the paper."

Others, though, argue that public employees and officials should expect more governmental scrutiny because they are earning a living on taxpayer dollars. Like so many other public policy issues, legislators are being asked to find the right balance between two legitimate, competing concerns.

"The issue of privacy has become a very sensitive one," Stamps says. "In the years after Watergate, for example, you wouldn't have seen legislation like this. But because of the advent of new technologies and people's concerns about it, the pendulum has definitely swung toward privacy and away from public access and the public's right to know." 