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## IVGID’s efforts to conceal public records gets bizarre

**Staff blandly admits felony-level destruction of email records**



BY STEVEN MILLER

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Has Incline Village’s often-criticized local government — the Incline Village General Improvement District, or “IVGID” — finally gone off the deep end?

According to district staff, members of the public can no longer review any history of top administrators’ email communications on matters of public controversy, or anything else, older than 30 days.

The reason, District Clerk Susan Herron told records-requester Mark E. Smith, is that, for emails, the district suddenly has a new 30-day “retention policy.”

Such a policy would directly contradict state law, which makes it a C class felony to destroy or conceal emails and other public records.

Herron, who also has the titles Executive Assistant and Public Records Officer, answers to IVGID General Manager Steven Pinkerton, who, along with IVGID Public Works Director Joseph Pomroy, was the subject of Smith’s requests under the Nevada Public Records Act.

Smith is a longtime activist on north Lake Tahoe’s problem with roving bears and the unsecured garbage and waste containers that attract them.

“I was pretty active in getting the trash ordinance updated” in 2016, he told *Nevada Journal*. His June 4 public-records request, he says, had been triggered by learning “that the [IVGID] board of trustees was going to have a review of the new franchise agreement with the trash disposal company, Waste Management.”

Also coming up was a board review of Pinkerton’s performance. In April, the members had extended his contract for three years. Then in June he’d requested a reputed \$64,000 raise.

Smith wanted to see how vocal Incline Village and Crystal Bay residents had been with complaints about the new franchise agreement. It had increased IVGID’s financial subsidy of Waste Management local operations, he said, but service, nevertheless, had continued to decline.

“They” — IVGID and the trash company — “had a huge problem meeting their obligations this spring,” he said. Under the new franchise agreement, Waste Management committed to pick up “green waste” — mainly pine needles, pine cones and tree debris — every week.

However to service Smith’s neighborhood this spring, he said, it took the company five weeks.

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And, he learned, talking to other people, as well as IVGID insiders, that throughout the district Waste Management had not provided anything like the weekly service it had promised and for which property owners had paid.

“So yes, over the whole neighborhood, big piles all over the place for a month and a half,” said Smith.

“The period runs late May to late July: a two-month period when they’re supposed to pick up green waste. And for five weeks out of the eight weeks they didn’t pick up green waste in a lot of the community.”

There were also chronic problems with Waste Management’s servicing of damaged commercial dumpsters.

“It was taking them, in some cases, a month to service dysfunctional dumpsters,” he said. “But part of their agreement with the district was they would also upgrade trash service in terms of their responsiveness. But that got markedly less responsive.” And it was the same thing with residential service.

So, on June 4, Smith — seeking a multi-year picture of the issue — submitted his records request, writing IVGID:

Also, by way of this letter, I am making a Public Records Act request for each and every complaint that IVGID has received about any aspect of:

- Waste Management's service for the period of 1 January 2010 to the present date,
- The performance or lack thereof of IVGID's trash enforcement program for the period of the first engagement of George Valentic to the present,
- Mr. Pinkerton's performance related in any way to trash collection or trash enforcement, for the period of his first day of employment for the District to the current date; and
- Mr. Joe Pomroy's performance related in any way to trash collection or trash enforcement for the same period as noted in (c), above.

Further, I request each and every email sent or received by Mr. Pinkerton or Mr. Pomroy to or from any person representing Waste Management or any Waste Management subcontractor, supplier or vendor, in any regards for the period from Mr. Pinkerton's first day of engagement with the District until the present date.

Finally, I also request each and every document related to all corrective action the District has taken in attempts to resolve the failure of Waste Management to abide by the Franchise Agreement.

Five weeks later, IVGID Clerk Herron emailed Smith a peculiar response:

I just wanted to give you a status on your document request of June 4, 2017. Staff has advised that for Items 1. through 3. Waste Management has responded/taken care of those requests. For a), b), c) and d) I have no public records responsive to your requests. I continue to work on the balance and will update you again at the end of this month if not before.

In fact, says Smith, Waste Management had not “responded/taken care of” the requests he’d made to IVGID.

Moreover, *it is IVGID, as a local government*, that is subject to the Nevada Public Records Act, not the trash company.

On August 1, 58 days after the initial request, IVGID finally turned over a handful of emails. Although Smith’s request had covered multiple years, with special attention to 2016, the district had released only a dozen *recent* emails. And the earliest was dated a couple of weeks *after* his June 4th request.

“So the two problems,” Smith told *Nevada Journal*, “are, one, they didn’t [provide] anywhere near [the records requested], but, two is, they received my email on June 4th, and *after* they

received my request, they deleted emails.”

Wrote Herron:

In response to your request for e-mails between our District General Manager and Director of Public Works and Waste Management, I have a thumb drive available for your pick up at our 893 Southwood offices. *You will see thirty days of e-mails as that is our retention policy.* (Emphasis added.)

This appears to be the first time that anyone at Lake Tahoe or anywhere else had ever heard of a “30-day email retention policy.”

Smith had also submitted a records request to review any email communications between IVGID’s Pinkerton and Pomroy on one side and representatives of the Parasol Foundation, on the other. The nonprofit has been seeking to interest IVGID’s board in changing the terms of Parasol’s long-term lease of IVGID land, on which Parasol’s building sits. The proposal has elicited skepticism and controversy.

Only a few of those requested email records were provided Smith. The rest — under the 30 day “policy,” were either withheld or deleted.

If any of these requested emails still exist in some form of digital backup, IVGID would have illegally concealed them, a category C felony under Nevada law, specifically NRS 239.320. If the emails were destroyed, that, also, is a C felony under the same statute:

[NRS 239.320](#) Injury to, concealment or falsification of records or papers by public officer. An officer who mutilates, destroys, conceals, erases, obliterates or falsifies any record or paper appertaining to his or her office, is guilty of a category C felony and shall be punished as provided in NRS 193.130.

Under [NRS 193.130](#), at least one year in jail is mandatory:

A category C felony is a felony for which a court shall sentence a convicted person to imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 5 years. In addition to any other penalty, the court may impose a fine of not more than \$10,000, unless a greater fine is authorized or required by statute.”

IVGID Clerk Susan Herron had apparently been convinced by her IVGID bosses that their sudden new “policy” of destroying emails after a mere 30 days was legal because of three interlocking arguments:

1. The general manager, Pinkerton, legally the real controller of the records, had told her to do it.
2. Under [a policy statement adopted by a 2011 IVGID board of trustees](#), the general manager was allegedly given “the discretion to interpret and to modify” board policy “on a case by case basis, as deemed necessary and appropriate under the circumstances.” It is unknown if such discretion was ever reviewed by the state archivist.
3. Twenty-three years ago, in 1994 — well before the planet-wide explosion of email — the Nevada State Archives Administrator, under the law then in place, [had approved](#) IVGID’s then “proposed schedule(s) for the retention and/or disposition of records,” which, of course, did not mention emails.

What Herron never acknowledged was that Nevada [records-retention law](#) frequently changes, and did so many times in the next 20 years. An [appendix](#) to the Nevada Local Government Retention Manual, issued by the state, reveals hundreds of such changes, just over the last nine years. One such important change is that email records have long been explicitly protected at the same level as hard-copy records. Thus, emails to and from the IVGID *executive* — that is, the general manager — must be *permanently* retained, and all *complaints* must be retained for at least three years, as [this page from the Nevada Local Government Retention Schedule](#) indicates.

Nevada Administrative Code 239.155 now also requires that any change in retention schedules

that would dispose of records — such as IVGID’s alleged “policy” of destroying all emails after 30 days — must first be reviewed and approved by the State Library’s Archives and Public Records Administrator. NRS 239.125 also requires that records-retention policies must be adopted by the *governing board* of a local government, not merely by its hired executive or a lawyer who reports to him.

Given the sudden, apparently ad hoc, obstacles thrown up against Smith’s attempt to see General Manager Pinkerton’s email communications over the last couple of years, *Nevada Journal* asked Smith if he thought the new “policy” might just be a way to not honor his records request.

“I think that’s exactly right,” he said. “This is the most blatant time when they’ve done something that seems so obviously intentional. In the past, you chalk it up to ineptitude, or lack of time, bureaucratic fumbles with no malicious intent. Here, I have a hard time finding a non-malicious reason for this.”

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