EDUCAUSE Live! Participant Chat

Legal Issues for Higher Ed Technology Professionals: Spend an Hour with Lawyers to Prevent Spending Many Hours with Lawyers

February 27, 2014: 1:00 p.m. ET (UTC-5; 12:00 p.m. CT, 11:00 a.m. MT, 10:00 a.m. PT)

Abbreviated Chat Transcript:

CHPC: (13:11) "Password protection" gives no assurance at all about who sent e-mail!

Bill: (13:18) it depends on if it was a billable lunch hour or not

Mark Berman (Siena College): (13:18) CHPC is completely right, although metadata (envelope) data may help you track that down.

Bettina Cornelius: (13:20) Seth, have you seen any advantage (legally) of having a cloud hosted versus homegrown or combination email system?

Bettina Cornelius: (13:22) Please touch on emails sent from students using personal (yahoo, gmail, etc) to faculty in regards to FERPA.

Carl Fussell: (13:23) How do you deal with smtp clients downloading messages to users' local computer/drive?

Mike Carr - Univ of KY: (13:26) Do you consider personal cell phones (that may or may not be used to access Univ email) discoverable?(even if employee is not reimnbursed for monthyl charges)

Mark Berman (Siena College): (13:27) If you have a records retention policy that calls for keeping a certain type of record for 3 years, isn't it better to archive everything to make sure you keep those records rather than depend on individuals to know the policy and appropriately retain specific records (emails)?

James Cooper: (13:32) What about protest on a private campus - in terms ofpublic forum

P Brown, LSU Eunice: (13:34) Libraries are usually "limited public fora"--a phrase I remember from library school.

Seth Gilbertson: (13:35) email is not a type of record.the medium does not a record make.the content is what distinguishes a record from everything else

Seth Gilbertson: (13:36) a post-it note can be a record, but we dont have a post-it note retention policy

Mark Berman (Siena College): (13:38) Seth, you're right but the State of Massachusetts has a records retention policy that all written communications to or from a senior officer of the institution must be retained "forever". Technically that applies to post-it-notes as well as to email.
Seth Gilbertson: (13:38) unfortunately, mass did not consult me!

Seth Gilbertson: (13:39) NY is kind of the opposite. Our gov's office uses BB messanger because it leaves no record.

Deb McClenon: (13:39) Does SUNY Have an email records retention policy?

Seth Gilbertson: (13:40) SUNY has a records retention policy that applies to records regardless of medium.

Mark Berman (Siena College): (13:40) The Mass. governors office at one point got in trouble for using non-State comm methods to avoid needing to retain.

Seth Gilbertson: (13:40) We don't have a post-it retention policy, a paper retention policy or an email retention policy.

Ben Marsden, Smith College: (13:41) Mark, does that MA law apply only to government offices? I would be surprised if it applies to, say, Williams College?

Jon Brennan (SUNY Delhi): (13:41) YOU'RE FIRED!

Mark Berman (Siena College): (13:42) Yes it's just government. It is the records retention policy for State Agencies which also applies to Higher Ed institutions.

Seth Gilbertson: (13:42) FYI - SUNY policy online. the introduction section helps explain.

Ben Marsden, Smith College: (13:43) by HE, I would assume that means Public Higher Ed. If not, I need to know this.

Jeannie Colson/Lee College: (13:44) you haven't been in a library in a long time!

Brian Burchett: (13:44) that's probably an outdated view of a library.

Mark Berman (Siena College): (13:44) Bringing me back to my question: if the institution has a policy that all comm related to student grades be kept forever and a faculty member deletes a message to a student telling them they got a D, does the institution have an overriding responsibility to retain an archive copy?

Guest 3: (13:44) exactly - our library has a cafe, gaming stations, etc. - it's like a rec room with books!

Brenda Hazard: (13:44) Visit my noisy library anytime!

Brian Burchett: (13:45) some library's have acoustic cafes, where you might hear music or poetry slams. that's very conducive to free speech events.

Brian Burchett: (13:45) libraries
P Brown, LSU Eunice: (13:46) The library speech issue is more about censorship (in collections as well as in posters, announcements, use of meeting spaces, etc.), but also things like disruptive behavior.

Ben Marsden, Smith College: (13:46) Mark, I'd argue that the owner of the record is responsible for its retention, not the service provider, so I'd argue that yes, its the email account owner's responsibility to appropriately retain -- as Seth says, regardless of media

Rick Lesniak - SUNY U. Buffalo: (13:49) Can we stipulate to employees who wish to use their own devices to access institutional data that their device must be configured according to university information security policy even if it requires their expense?

Brian Burchett: (13:55) is this statement to "explicitly state that any use of personal accounts or devices subjects them to institutional inspection and use" made primarily with employees in mind? can the school subject student owned devices to "institutional inspection"?

CHPC: (13:58) It "looked like they were doing something sneaky" because they were doing something sneaky.