

# A Proposal Regarding Privacy of Communication in the University of Delaware Community

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## Proposed Policy

The University of Delaware in recognition of the fact that unfettered communication is a fundamentally important aspect in the life of a healthy, vibrant, effective university community, hereby declares that all members of the University community have a reasonable expectation of privacy in all communication involving university telephones, university computer systems, and in written communication stored in their places of work or in their dormitory rooms.

In those exceptional cases when there is adequate evidence of the possibility that federal or state laws have been broken or University policy violated, then the University may access private information of individuals including computer files and/or voice mail files. In such cases, the access of the information must be approved in advance by an appropriate administration official. For example, in the case of faculty by the University Provost, in the case of staff by the Vice-President for Administration, and for students by an appropriate office (the Office of Judicial Affairs?).

Once per year there shall be a tally reported to the University Faculty Senate of the number of times that such accesses have been invoked.

## Discussion of Proposal

### Hypotheses

- That the primary purposes of the University are education, research and public service and that these activities are facilitated by a strong university community.
- That unfettered communication is a fundamentally important aspect of a healthy, vibrant, effective university community.
- That electronic communication is one of the most important modern modes of communication.

- That the confluence of concepts like privacy and communication are sufficiently important to our university and society to merit careful consideration and debate about policies involving these concepts.
- That the university can, through enlightened policies, educate our students and our society about wise ways to deal with some of our twenty-first century conundrums.
- That the University is both a community and a legal organization much like a corporation.
- That there are circumstances under which the University has a legitimate need to read private computer files, including email.

My position: that the University's current policies on privacy of email can be substantially improved and that it is important to do so.

In a nutshell here is my argument: (1) Consider the following statement, the fourth amendment of the Bill of Rights.

#### Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

(2) Consider the following statement from the current (Jan 2004) policies of the University.

While the University does not routinely monitor telephone conversations, e-mail, internet access or usage, or other electronic transmissions, it may be required to do so by civil authorities. Therefore, the University reserves the right to do so, at any time and without further notice.<sup>1</sup>

These are two very different statements about privacy, granted that they are in different contexts. But both contexts embody similar competing, fundamental issues. Namely, that (1) there is larger public/university needs that must be served, and (2) that the government/university has a legitimate need on occasion to violate the privacy of individuals.

Some particular points to consider:

- It may be argued that there are circumstances in which the IT staff must have quick or standing authority to inspect user files (including email) to protect the integrity of the computer systems. It is true that such authority could be helpful to the systems staff just as it would sometimes

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<sup>1</sup>Taken from the document "Employees' Use of E-Communication" dated Feb 2000, April 2003 and found at <http://www.udel.edu/ExecVP/polprod/1-19.html>.

be helpful to our law enforcement agencies to pursue suspected criminal activity without first getting a subpoena. But I think that the importance of privacy should not be subverted due to such operational issues. The IT staff has many tools at its disposal for dealing with problems including taking machines down until proper authority is obtained before looking at private files if such is absolutely necessary.

- It may be argued that whatever the policies are, the current practice is not to monitor private files and hence there is no need for a strong privacy policy. As far as I can tell, it is indeed the case that private files are rarely accessed, but one can never tell when circumstances may arise in which a university official might feel compelled, rightly or wrongly, to change this current practice. Circumstances could arise, even external to the University, in which the statement “**the University reserves the right to do so [i.e., monitor telephone conversations, e-mail, ...], at any time and without further notice,**” would become very chilling.
- I also think that over the long term wise policies on the kinds of issues that we are discussing can fundamentally affect an institution. Just think, for example, how different our country would be without the fourth amendment to the Constitution. A strong privacy policy adopted for the University community today could make a big difference in the the atmosphere at the University of Delaware over a period of time.

I would hope that our university will follow the wisdom espoused so long ago by our nation’s founding fathers.