

# U-M keeps E mail messages from graduate

(AP) — Electronic mail messages are not subject to the state Freedom of Information Act, the University of Michigan has claimed in refusing to release copies of computer messages from its president.

The university's attorneys used the argument to deny the FOI request by a 1993 Michigan graduate, Chetley Zarko had asked for the E-mail of President James Duderstadt, Vice Provost Walter Harrison, Vice Provost Douglas Van Houweling, and his assistant Virginia Rezmierski. "I just wanted to see if I could get it," said Zarko, an Ypsilanti resident, a computer buff and free-lance writer.

But it remains to be seen whether E-mail isn't a record, said state Sen. David Honigman, R-West Bloomfield, who has been talking about revising the state's

FOI Act. He said he thinks the intent of the original FOIA would encompass government E-mail.

"How is (E-mail) different from a memo?" Honigman asked. "It is a permanent record. Like any record, it can be erased, but so can a piece of paper or a computer tape."

Lawyers for the university say the E-mail is protected by the federal Electronic Communications Privacy Act and several exemptions to the Michigan FOIA law. They outlined their stance in a letter to Zarko.

E-mail is exempt because: It isn't "prepared, owned, used, in the possession of or retained by a public body in the performance of an official function," and it isn't a "means of recording or retaining meaningful content, University General Counsel Elsa Cole and attorneys for a Detroit law firm

said. The university also said that it would be impractical to recover certain messages from among the more than one million sent.

Kirk Tabbey, a Jackson County assistant prosecutor who serves on the state's computer crime task force, said how E-mail is used should determine whether it is subject to disclosure.

"I think U-M has a good argument that it's replacing telephone calls," which aren't subject to FOIA disclosure, he said.

On the other hand, if E-mail is being used to pass around draft documents that otherwise would have been put on paper, "I would say that's something that the public has a right to view," Tabbey said.

The university has no policy against using E-mail for official business or against storing im-

portant messages on paper or magnetic media, but E-mail wouldn't fulfill the university's requirement that certain kinds of business be conducted in writing, said Harrison, vice president for university relations. E-mail didn't exist when Michigan's Freedom of Information Act was written in 1976 and it's still very much a gray area in the law.

"We haven't drawn all the lines yet," Tabbey said.

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