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You've Got (Unwanted) Mail

By Billy Shields

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Gathered in a gray Miami conference room, a handful of lawyers sitting in front of laptops fumed about being betrayed.

The [Florida Bar](#) had sold them out -- hawking their e-mail addresses to third parties who filled their inboxes with unsolicited marketing posts they consider spam. At the Bar's midyear meeting, they debated what could be done.

"The Bar has taken the position that these are public records," said Ury Fischer, a [Lott & Friedland](#) shareholder in Coral Gables who has written The Bar repeatedly about the issue. An intellectual property lawyer with a degree in engineering, Fischer wrote The Bar last month to complain about what in his view was an invitation for abuse by marketers.

"I am disappointed that The Bar has adopted this position with regard to the commercial dissemination of its membership list," he wrote Bar general counsel Paul Hill. "I believe that there are very simple and inexpensive ways for The Bar to meet its public records obligations without exposing its members to spam abuse."

Contacted after the meeting of the computer and technology committee of the Bar's business law section, Hill noted the Bar is a public agency and its membership contact information is public.

"There's no question about that -- that call's been made by the Supreme Court," he said. The Bar is considered a "creature of the Florida Supreme Court" and a regulatory agency, and it models its disclosures after the [Florida Department of Business & Professional Regulation](#), he said.

But Fischer contends the Bar could take a more active role in ensuring information sold for marketing purposes doesn't end up as a tool for abuse.

"Right now, they're relying on the targets of unsolicited e-mails to enforce their rights," he said in a telephone interview.

Other attorneys at the meeting wondered aloud whether a public agency's disclosure responsibilities included packaging contact information into a convenient and searchable spreadsheet database burned onto a disc.

And these attorneys aren't your average practitioners.

Take Sarasota lawyer Steven Teppler, who also is CEO of a technology company specializing in authenticating data with cryptography and time stamps.

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He asked whether the Bar should be able to make money off public information, especially whether it should present lawyer information in slick and convenient packaging.

"To me, it runs counter to the idea of preventing commercialized access," he said. "The question becomes 'what's a public record?' A database compilation is not a public record, at least not a public record that is contemplated by the statute."

Fischer suggested Bar members should be allowed to opt out of marketing material distributions, but Hill suggested Bar members should simply use multiple e-mail addresses.

Another member of the committee, [Feldman Gale](#) shareholder Samuel Lewis in Miami, had a different take.

"From a legal point of view, I don't know if The Bar has a lot of room to move there. Unless the public decides it's such a big issue that it would amend the Constitution, I don't see this changing," he said. "This is unfortunately a reality of life now."

The Bar doesn't require members to provide e-mail addresses, but federal courts require attorneys to provide e-mail addresses for communication purposes. The Bar mandates members give phone numbers and physical postal addresses, which prompted Fischer to suggest lawyers should withhold their e-mail information from The Bar.

Fischer is an advocate of an opt-out provision to shield lawyers from e-mail marketing efforts, but such a provision would be expensive to implement and wouldn't do any good for a public agency anyway, said Dan Bennett, who handles commercial membership requests. Once a significant number of attorneys opt out of the commercial program, companies like continuing legal educators, political issue groups and law firms would simply turn around and file public records requests to get a more comprehensive list of addresses or other contact information maintained by The Bar.

Companies could save themselves money that way. Although time consuming, the estimated \$50 price tag of a public records request costs substantially less than the \$8,500 fee of a Bar contact information DVD, a dichotomy created before The Bar came under the state public records law in 1992.

"Years ago, before we got under public records, The Bar would provide a list of Bar member addresses, where we would apply labels to stuff" for mass mailings, Bennett said. "When the public records issue came along, we kind of figured everybody would start making public records requests, and this would go away."

But it didn't.

As technology whizzed forward, the label program morphed into a spreadsheet of e-mail addresses that rakes in about \$200,000 a year.

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The Bar provides lawyer e-mail addresses two ways -- handling public records requests by publications and concerned citizens, and dealing with the commercial side of the Bar's operations. The Bar's Web site lists a contract for potential third parties to purchase information.

Teppler believes the Bar could still meet its public records obligations by supplying the records of more than 84,000 Florida lawyers without making life easy for marketers.

"What would happen to this data if it weren't on a computer?" he asked. "You would have 85,000 records. It would be of limited use to a purchaser."

Teppler and others acknowledge they don't consider the issue earth-shattering within the scope of their practices. But even the Bar concedes the ubiquitous eyes of the Internet have put it in an odd position between its public duties and its responsibilities toward members.

"I'm sure the membership would much prefer we didn't give the information out at all," Bennett said. Before the Bar was considered a public agency, "you didn't have whackos out there doing stuff. But with public records, we don't have control of that anymore. It's a strange situation."