

Toyota e-mails reveal debate over Toyota recall

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It's almost a given in corporate America – communication meant to stay private won't stay that way.

E-mails exchanged between Toyota company executives, published Wednesday, suggest a heated debate within the company about when to release information about the company's now notorious mechanical problems with an accelerator assembly. "We are not protecting our customers by keeping this quiet," one executive wrote. "The time to hide on this one is over."

Now, Toyota faces a new public-relations challenge because, like many corporations, its employees didn't have a handle on how to write e-mails. Knowing what to put in and what to leave out of electronic communication can save workers and their companies a lot of public embarrassment – or worse.

Earlier this week, the Transportation Department announced it would propose fining Toyota \$16.4 million for failing to disclose potential safety defects, a move which could lead to other lawsuits against the automaker.

"E-mail creates electronic business records that are equivalent to DNA evidence," says Nancy Flynn, founder and executive director of the ePolicy Institute and author of *The e-Policy Handbook*. "Toyota is a good example of that."

In 2009, 24 percent of companies surveyed by Ms. Flynn reported that they'd had e-mails subpoenaed as part of an investigation or lawsuit. Forty-three percent of companies reported monitoring employee e-mails.

That means that employees need to be more vigilant about what they choose to put in an e-mail.

Though e-mail may be quick and convenient, it should be treated like any other form of corporate document, says Michael Fox, a lawyer with Ogletree Deakins in Austin, Texas.

"E-mails are so easy to fire off quickly," says Mr. Fox. But an e-mail's informality and lack of context could cause problems down the road. "You shouldn't write anything down you wouldn't want seen on a four-by-four billboard in a courtroom."

That's because corporations are legally obligated to save all documents relating to a series of topics, says Ben Heineman, a former senior vice president and general counsel at General Electric. That includes taxes, environmental issues, and anything related to current or impending investigations.

At GE, "we started to do training [with employees] to write accurately and not in an inflammatory way," says Mr. Heineman, now a senior fellow at Harvard University's schools of

law and government in Cambridge, Mass. That means encouraging employees to stick to facts in e-mails, rather than trying to draw conclusions.

But most companies don't offer this type of training. Less than half of companies that have policies in place to govern employees' use of e-mail provide training on policy implementation, says Flynn. "When it comes to Toyota, and the other e-mail gaffes we see almost weekly, almost all of it could be avoided if employers put employees through training."

[Apple's Steve Jobs](#) and former [Gov. Sarah Palin](#) have also felt the sting of private communication gone public. And in December's "Climategate" scandal, climate change skeptics used leaked e-mails from the University of East Anglia's Climatic Research Unit (CRU) to deny the existence of global warming. Prof. Phil Jones, the author of the most inflammatory e-mails, [stepped down as head of the CRU](#) while the University investigates the incident.

Irv Miller, author of the Toyota Jan. 16 e-mail quoted above, has also left Toyota. But he had been planning to retire for two years, he said by phone Thursday, adding that Toyota announced his intent to retire a month before he wrote the e-mails. His decision to leave was effective Feb. 1 and was not related to the e-mails, he said.

More training and greater attention to e-mail gaffes would help avoid such problems in the future. But they aren't likely to quell them completely, says Fox.

"Good judgment is something that's always in relatively short supply," he says. "If I could come up with a way to prevent people [from writing e-mails] in haste, I could retire."