# E-mail Guidelines for Public Employees
*Last updated 7/17/2018*
(adapted from Wyoming State Archives)

## About e-mail

E-mail is sometimes referred to as the "fastest growing record repository." It is an easy and efficient communication tool available to public employees. In many respects, e-mail has replaced the telephone as the medium most often used to communicate with one another about daily business. Unlike the telephone, however, e-mail creates a written record of communication that is included in the definition of a state public record. This combination of communication and record creation/keeping has caused ambiguity in the record status of e-mail messages. E-mail and other electronic records are subject to the same retention requirements as paper records (http://boa.sd.gov/central-services/records-management-schedules.aspx). This includes all remote methods of accessing messages, including mobile devices such as smart phones, tablets, Blackberries, etc.

## Are e-mail messages and attachments considered public records?

An e-mail is a public record if it is created or received as part of a business transaction of a government or agency. Like paper records, certain e-mail messages have administrative, fiscal, legal, reference, and/or archival value. These records may contain evidence of a particular action, have information that protects the rights of individuals or the government, document decisions made during the course of state business, or have lasting historical or cultural value. Therefore, some e-mail messages must be kept as a record to satisfy office needs, record-keeping requirements, and to comply with the law.

## Why don't we have a set retention period for all e-mails?

E-mail itself is not considered a record series or category. Like paper or microfilm, e-mail is the format or medium by which this type of record is transmitted. Just as an office cannot schedule all paper or microfilm records together under a single retention period, you cannot simply schedule e-mail as a record series. Rather, retention or disposition of e-mail messages must be related to the information they contain or the purpose they serve. The content, transactional information, and any attachments associated with the message are considered records.

## How long should I retain e-mail messages meeting the definition of a record?

Simply backing up the e-mail system onto tapes or other media, or purging all messages after a set amount of time are not adequate strategies for managing e-mail. Their content and function will determine their retention period. The majority of e-mail messages in most agencies are minor administrative records having only brief convenience or reference value. Generally, senior administrators have a greater proportion of permanently valuable e-mail, given its greater degree of policy content. Record retention, the minimum length of time a record is required to be kept, is content (not format) driven. To determine how long an e-mail message must be kept, consider the content of the e-mail message and the function it documents. There are three retention classifications e-mail messages can have, **Transitory**, **Temporary**, and **Permanent**.

**Transitory records** do not document an office's functions, transactions, become a receipt, or set policies. This includes convenience or duplicate copies of e-mail records. Examples include e-mail exchanges between co-workers to set up a lunch date or communications received through a professional listserv that are not used for project development or creation of policy. The informal nature of transitory messages might be compared to a telephone conversation or a conversation in an office hallway. These records have only short-term value and should be deleted from mailboxes as soon as they are no longer needed. These are sometimes referred to as "non-records" because of their lack of long-term value and because they're often generated by an external source and are not your responsibility to maintain.

Examples of records with low value that might be sent via e-mail but do not be need to kept include:

- Travel reservations
- Most telephone messages
- Routine questions requiring no administrative action, policy decision or research
- Messages that transmit documents without comment
- Confirmations of appointments and event announcements
- Promotional material from vendors, unless used to document purchases
- Personal messages
- Junk mail and spam

**Temporary records** (also called "intermediate" or "reference" records) have some legal, fiscal, historical, or administrative value; but those values are not great enough to justify keeping the records permanently. They can have retention periods from a few months to decades. They will follow the same retention periods as other records of the functions they document. Records must remain accessible and readable for their entire retention period. Public inquiries about an office's services are an example of "Routine Correspondence," a temporary record. Other examples are: monthly or weekly reports, reports used for reference, and accounting documentation.

**Permanent records** have high administrative, fiscal, legal, and/or historical values. They provide documentation of day-to-day office operations and preserve the history of your department; access to these records will also allow your office to function more smoothly from a business perspective when decisions and discussions are documented. These records often document the functions and policies of an office. Local agencies must retain these records in a format that will allow them to be accessed permanently. Examples of records of permanent value include:

- Policies and directives
- Work schedules and assignments
- Drafts of documents circulated for approval or comment
- Messages that initiate, authorize, or complete a business transaction
- Final reports or recommendations
- Substantive correspondence, memos, or messages about office business
- Agendas and minutes of meetings

As of September 4, 2018, all state government e-mails over two years old will be automatically deleted from an employee's inbox, including e-mail stored in folders and sent mail. If an email needs to be kept for longer than two years, it can be tagged. Tagged e-mails may be kept in Outlook for up to five years. E-mails that must be retained longer than five years should be transitioned to another storage system and stored by position or topic, rather than by person.

## What about attachments?

E-mail is not a repository; save attachments elsewhere.

An e-mail may have a different retention period than its attachment. If an e-mail is used essentially as a cover letter with a minimal retention period, the e-mails are still important for documenting that something was sent and received, which may prove relevant to legal and other inquiries. For this reason, as well as for the sake of simplicity, retain the e-mail and the attachment for the longer of their two retention periods.

## What is the "record copy" of an e-mail?

Generally speaking, the individual who sends an e-mail message and the primary recipient ("To" not "CC") should maintain the record copy of the message.

Prompt deletion of duplicate copies of e-mail messages from an e-mail system makes the system as a whole much easier to manage and reduces disk space consumed by redundant information. In instances where several individuals participate in an extended e-mail conversation, the record copy would be the final thread in an e-mail instead of each individual e-mail. Governments and agencies may therefore decide to save all copies of e-mails relating to certain critical issues or received by individuals who are likely to be involved in those critical issues.

## How should I organize my own e-mail to make applying retention schedules easier?

By setting up a rational mailbox folder and subfolder system, users can simplify the decision-making process and aid in filing and retrieval. And, since electronic storage also has associated costs, careful e-mail management will help reduce the stress on that storage. Just as file cabinets are set up to house different sets of files and employees know where to file paper records in those files, e-mail files and folders reflect the business of your office. Also, e-mail messages must be managed in such a way that agencies can respond promptly to open records or litigation requests.

In addition to the Inbox and Sent Items boxes, automatically a part of the mail system, users are encouraged to organize e-mail by folders and subfolders. These folders can reside within your Inbox, Sent Items or Personal Folders. After brief periods in your mail boxes, messages should be transferred to titled folders or subfolders, specific to the function or program they document. Folders are more helpful if the individual's filing structure mirrors that of the office. Save attachments, either by e-mailing them back to yourself at the end of the thread or saving them to a network drive.

E-mail should include header information: sender name, e-mail address, recipient name(s), including cc's and bcc's, date of creation, time of transmission, and subject (file name) of the message. Best practice for signatures: sender's name, title/official position, name of agency and contact information. Limit the use of "Reply All" – does everyone really need to see it?

Always fill in the subject line. Make it concise and meaningful, clarifying the e-mail content. Subject lines become the file name when an e-mail is saved. Meaningful subjects help the recipient and sender to identify, file or retrieve messages quickly.

| Poor or confusing subject lines | Better, descriptive subject lines |
|---|---|
| "Helpful info" | "Contact info" |
| "Report" | "Quarterly Financial Report" |
| "Minutes" | "January 2001 Board Minutes" |
| "Important" | "Revised Administrative Procedure" |
| "News" | "New Agency Head Appointed" |
| "Contact Status" | "PO 12345 Delivery Status" |

## What about retention of instant messaging system messages?

Keeping records of instant messages is akin to recording every conversation in every hallway and office on your campus and retaining those recordings for responding to future discovery requests and litigation holds. People use instant messaging in a conversational way and do not intend those messages to be stored for future use or misuse. The more data you keep, the more records you will have to sort through for any number of audits, information requests, litigation holds, etc. So, if you have no obligation to keep something like instant messages that are generally useless, get rid of them!

## Is personal e-mail I receive in my state mailbox private?

No, it's not. Public employees have no reasonable expectation of privacy in e-mail communications voluntarily made via the state or other governmental e-mail systems. The general rule is: keep your private messages in your private e-mail account.

## Why should I care about e-mail retention? Are there legal implications?

Yes!

E-mails contain information about business activities which, like any other record, are subject to audit, open records requests, and legal processes such as discovery and subpoena. Yet e-mail users may have inappropriate expectations of privacy and informality. Case law shows that e-mail certainly is discoverable, and its inappropriate retention therefore may bring risk.

Resist the temptation to save it all "just to be safe." Not only will we all drown in an "electronic tidal wave," saving outdated material may cause more trouble than it avoids. Organizing and managing email will reduce legal exposure in discovery proceedings on records that otherwise should have been destroyed. In other words, if it exists and someone asks to see it, the office must produce it.