

## State of Michigan Records Management Services

### Frequently Asked Questions About E-mail Retention

It is essential that government agencies manage their electronic mail (e-mail) appropriately. Like all other government records, e-mail is subject to Freedom of Information Act (FOIA) requests and litigation. Agencies can be held liable if they keep their e-mail messages too long, if their e-mail messages are not properly destroyed, or if they are destroyed too soon. Under all of these circumstances, an agency can be seriously injured by its failure to follow legally prescribed retention requirements. In addition, an agency can lose significant dollars attempting to protect itself, to produce the required records, to identify the relevant records, or to recover lost records.

**This information sheet is designed to help all government employees who use e-mail to follow existing procedures about the retention of e-mail and protect themselves and their agencies.**

#### **Q: What is e-mail?**

**A:** E-mail is a tool that is used to exchange messages and documents using telecommunications equipment and computers. A complete e-mail message not only includes the contents of the communication, but also the transactional information (dates and times that messages were sent, received, opened, deleted, etc.; as well as aliases and members of groups), and any attachments. E-mail is often a critical tool that facilitates government business operations.

#### **Q: Is e-mail a public record?**

**A:** E-mail messages are public records if they are created or received as part of performing a public employee's official duties.

#### **Q: Does my e-mail belong to me?**

**A:** All e-mail messages that are created, received or stored by a government agency are public property. They are not the property of employees, vendors or customers. Employees should have no expectation of privacy when using government computer resources.

**Q: What are my responsibilities as a government employee who uses e-mail?**

**A:** Employee responsibilities for managing e-mail messages are the same as those for other records.

- Employees are responsible for organizing their e-mail messages so they can be located and used.
- Employees are responsible for using an approved Retention and Disposal Schedule to identify how long e-mail messages must be kept.
- Employees are responsible for keeping e-mail messages for their entire retention period, and for deleting e-mail messages in accordance with an approved Retention and Disposal Schedule.

**Q: I sometimes use my home computer and personal e-mail account to conduct government business. Am I creating public records?**

**A:** Yes. Records created in the performance of an official function must be managed the same way as those created and received using government computer resources.

**Q: What is a Retention and Disposal Schedule?**

**A:** Michigan law requires that all records be listed on an approved Retention and Disposal Schedule that identifies how long the records must be kept, when they may be destroyed and when certain records can be sent to the Archives of Michigan for permanent preservation. Records cannot be destroyed unless their disposal is authorized by an approved Retention and Disposal Schedule.

**Q: How are Retention and Disposal Schedules developed?**

**A:** Retention and Disposal Schedules for state government are developed by the Records Management Services, through consultation with an agency about its records. Local government agencies submit proposed schedules to the Records Management Services for review. All schedules are approved by the Records Management Services, the Archives of Michigan and the State Administrative Board. In addition, state government schedules are approved by the Attorney General and the Auditor General.

**Q: Does all e-mail have the same retention period?**

**A:** No. Just like paper records, e-mail records are used to support a variety of business processes. E-mail messages must be evaluated for their content and purpose to

determine the length of time the message must be retained in accordance with the appropriate Retention and Disposal Schedule.

**Q: Who is responsible for retaining e-mail messages, the sender or the recipient?**

**A:** Just as in the case of paper records, e-mail messages may be evidence of decisions and activities. Both senders and recipients of e-mail messages must determine if a particular message should be retained to document their role in agency activities.

**Q: My e-mail messages are automatically purged after a specified period of time. Am I still responsible for their retention?**

**A:** Yes. Some e-mail mailboxes are programmed to automatically purge e-mail messages after a specified amount of time, such as 90 days. However, these purge routines are technology-driven and are not based upon Retention and Disposal Schedules. Many e-mail messages need to be retained longer than these periods of time. Employees are responsible for ensuring that e-mail messages with longer retention periods remain accessible until the appropriate Retention and Disposal Schedule authorizes their destruction. *Note: Records, including e-mail, cannot be destroyed if they have been requested under the Freedom on Information Act (FOIA), or if they are part of on-going litigation, even if their retention period has expired, until the request is fulfilled or the case is closed.*

**Q: How long do I have to keep transitory e-mail messages?**

**A:** Transitory messages are records that have very limited administrative value and should be retained until they no longer serve a purpose. Transitory messages do not set policy, establish guidelines or procedures, document a transaction or become a receipt. For instance, an e-mail message that notifies employees of an upcoming meeting would only have value until the meeting is held. *Note: Records, including e-mail, cannot be destroyed if they have been requested under FOIA, or if they are part of on-going litigation, even if their retention period has expired, until the request is fulfilled or the case is closed.*

**Q: How should I store my e-mail?**

**A:** Agencies have many options for storing e-mail, each of which has benefits and disadvantages. Agency directors should decide which option agency staff will use. Options include: 1) retaining the message within the "live" e-mail system, 2) saving the message on a network drive in a folder that contains other electronic records that

document the business process, 3) printing the message and filing it with other paper records that document the business process, 4) storing the message in an e-mail archive that is accessed by the e-mail software, and 5) filing the message in a Records Management Application repository. Regardless of which option an agency selects, a procedure for all staff to follow should be written and distributed to affected individuals.

**Q: How should I organize my e-mail?**

**A:** E-mail messages should be organized in a way that makes them easy to find. E-mail may be organized by subject, by case number, or by another logical system. Regardless of which technique is used, e-mail folders should be coordinated with any paper or other electronic filing systems that are in place.

**Q: Could my e-mail messages be released in accordance with FOIA or during litigation (discovery)?**

**A:** Just like paper records, e-mail messages might be subject to disclosure in accordance with FOIA. They can also be subject to discovery once litigation begins. E-mail accounts are provided to employees for conducting public business. Employees should be prepared to provide access to their e-mail to their FOIA Coordinator or an attorney representing their agency under these circumstances.

**Q: Are deleted e-mail messages destroyed?**

**A:** Individual employees are responsible for deleting messages in accordance with the appropriate Retention and Disposal Schedule. However, deleted messages may be stored on backup tapes for several days, weeks or months after they are deleted. *Note: The destruction of relevant e-mail messages on servers and backup tapes must cease when an agency becomes involved in litigation or when it receives a FOIA request until the request is fulfilled or the case is closed. Agencies are responsible for notifying information technology staff about relevant e-mail.*

**Q: Will my older e-mail messages be accessible when our technology (hardware and software) is upgraded or changed?**

**A:** Many e-mail messages need to be kept longer than the original technology that was used to send and receive them. New technology is not always compatible with older technology that agencies may have used. Agencies are responsible for ensuring that older e-mail messages remain accessible as technology is upgraded or

changed. Agencies may need to inform information technology staff about the existence and location of older messages when technology upgrades and changes take place, so the messages can be migrated to the new technology.

**Q: What happens to the e-mail of former employees?**

**A:** Agencies are responsible for ensuring that the e-mail (and other records) of former employees is retained in accordance with approved Retention and Disposal Schedules.



**Questions?**

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