



August 15, 2017

SUBJECT: ELECTRONIC MAIL COMMUNICATIONS AND RECORDS

PURPOSE:

The Delaware Public Archives (Archives) is issuing this policy for use by all agencies in state and local government in Delaware. The purpose of this policy is to provide agencies with a set of uniform best practices, the statutory requirements for managing an agency's information and record assets, and to ensure the preservation, retention and access to public records.

ELECTRONIC COMMUNICATIONS AND RECORDS

Electronic mail (email) is a primary method of communication among state and local government agencies and their public officers and employees due to its accessibility, convenience, and the speed in which a sender can deliver information to many recipients as required. It is a platform used to transfer a wide variety of information types that were previously committed to paper and transmitted via courier, facsimile, or mail. An email's informational value ranges from the mundane to the historically important. Integrating email systems into an agency's records program is essential to properly manage the access, administration, archiving, auditing, privacy, security and vital records maintenance.

The key to successfully managing email systems and their contents is to understand that a record is a record regardless of format or how it may be communicated. Agencies must maintain email systems just as they do traditional record keeping systems and comply with Delaware statutes concerning the creation, retention and access to public records.

DEFINITIONS

Email systems are storage-and-deliver software systems which transport messages from one computer user to another. Email systems range in scope and sizes:

- Local area network email system: shuffles messages to users within an agency or office;
- Wide area network email system: carries messages to various users in various physical locations; and
- Internet email: allows users with an internet address to send and receive messages from other internet users around the world.

Email are text documents which are created, stored, and delivered in an electronic format. As such, email messages are similar to other forms of communicated messages, such as correspondence, memoranda, and circular letters. Email may also contain features commonly associated with traditional records systems. They include calendars, directories, distribution lists, and attachments such as word processing documents, spreadsheets, or images that are incorporated into an email message.

A retention schedule is a listing of record series which describes an agency's records, establishes a minimum period for their retention by the agency, and provides mandatory instructions on what to do with records when they are no longer needed for current business.

BACKGROUND

[29 Del. C. § 502\(7\)](#) defines a "public record" as "any document, book, photographic image, electronic data recording, paper, sound recording or other material regardless of physical form or characteristics, including electronic records created or maintained in electronic information systems, made, used, produced, composed, drafted or otherwise compiled or collected or received in connection with the transaction of public business or in any way related to public purposes by any officer or employee of this State or any political subdivision thereof."

Email meets the public record criteria, as defined by the law, so all provisions of the Delaware Public Records Law ([29 Del. C. §§ 501-526](#)) apply. Agency heads should ensure that all employees understand that email messages may constitute a public record, thus requiring that its disposition be planned and managed according to the records retention, disposition schedules, and applicable Archives policies and procedures for authorizing records disposition. Email is also governed by the provisions set forth in the Delaware Freedom of Information Act, [29 Del. C. §§ 10001-10007](#) and [29 Del. C. § 504](#) in that public officials and employees have the responsibility to “adequately document the transaction of public business” and “retain and adequately protect all public records in their custody.”

The retention of records maintained in electronic format is the same as for similar records maintained in traditional paper formats unless otherwise specified by an authorized retention schedule. It is the record, its content, and functions, not the media, which determine retention and disposition decisions. Therefore, email shall be retained and disposed of in the same manner as other records.

RETENTION

Email, like other public records, fall into two broad categories:

- A. General Email: examples of records common to all agencies include, but are not limited to, weekly reports, purchase orders, administrative memoranda and routine correspondence. The approved retention periods and instructions for records common to all agencies can be found in [General Records Retention Schedules](#) issued by the Archives, and may be located at the following link:

<https://archives.delaware.gov/general-records-retention-schedules/>

- B. Agency Specific Email: examples of agency specific records include but are not limited to client case files, register of permits issued by the agency, or a student cumulative file. The approved retention periods and instructions for records unique to an agency can be found on its agency-specific records retention schedule. This schedule is the result of a collaborative process between the Archives and the agency and reviewed by the State Auditor and the Attorney General’s Office prior to becoming effective. Agency Specific Retention Schedules may be obtained from the Archives analyst assigned to support the agency.

[Analyst assignments](#) may be located at: <https://archives.delaware.gov/government-services/>

Classify email into four basic categories by using the Retention Schedules: Transitory Records, Retention Specific Records, Administrative Support Records and Policy and Program Records.

- A. Transitory Records are documents of short term interest that have no documentary or evidential value. These records must be retained in accordance with the applicable State or Local Government General Retention Schedule. Records meeting this definition may be destroyed after receiving an approved destruction notice. Examples of transitory files are:
 - 1. Routine requests for information or publications that require no administrative action, policy decision, or special compilation or research, and copies of replies.
 - 2. Originating office copies of letters of transmittal that do not add any information to that contained in the transmitted material and receiving office copy if filed separately from transmitted material.
 - 3. Quasi-official notices including memoranda and other records that do not serve as the basis of official actions, such as holiday notices, charity and welfare fund appeals, bond campaigns, etc.
- B. Retention Specific Records are records with retention periods that are time-limited or linked to specific events. These records must be retained for the length of their stated retentions. Records meeting this definition may be destroyed so long as there are no outstanding legal or audit issues and after receiving an approved destruction notice in writing from the Archives. Examples of retention specific records are case files, telephone logs, incident reports, unsuccessful applications, and record request forms.
- C. Administrative Support Records are records of a general facilitative nature created or received in the course of administering programs. These records must be retained at the agency in accordance with the applicable State or Local Government General Retention Schedule. Records meeting this definition may be destroyed after receiving an approved destruction notice in writing from the Archives. Examples of administrative support records are:
 - 1. Correspondence of a routine or repetitive type, such as requests for information;
 - 2. Inter-office or inter-departmental communications that do not subsequently result in the formulation of policy;
 - 3. Reference materials, sometimes of a technical nature, used but not created by the office;

4. Daily, weekly, or monthly office activity reports which are summarized in annual reports or which relate to routine activities (including work progress or statistical reports prepared in the office and forwarded to higher levels);
 5. Personnel data of office staff which is duplicated in departmental personnel record;
 6. Purchase orders, payment vouchers, travel expense statements or similar financial documents that are duplicated in department/division fiscal office files;
 7. Daily, weekly, or monthly work assignments (including duty roster files) for office staff;
 8. Calendars, appointment books, schedules, logs, diaries, and other records documenting meetings, appointments, telephone calls, trips, visits, and other daily activities of state employees; and
 9. Unpublished calendars of events and activities.
- D. Policy and Program Records (Primary Mission Files) are records that document the formulation and adoption of policies and procedures and the implementation, program management, or functions of the office or department. These records are to be retained permanently and scheduled for transfer to the Archives. Examples of policy and program records are:
1. Policies and procedures developed by the agency which govern the operation of the agency;
 2. Correspondence with citizens or other government officials regarding policy, procedure development, or program administration;
 3. Annual, ad hoc, narrative, or statistical reports on program activities, achievements or plans;
 4. Organizational charts and mission statements;
 5. Studies regarding department or office operations;
 6. Circular letters, directives or similar papers addressed to subordinate units or staff concerning policies, procedures or programs;
 7. Records related to significant events in which the department or office participated; and
 8. Photographs, published material, audio tapes and other record forms.

HOW TO RETAIN RECORDS FROM AN EMAIL SYSTEM

There are three methods to retain records from an email system: on-line storage, near-line storage and offline storage. Each method provides benefits and disadvantages and will be affected by an agency's information technology environment.

- A. On-line storage is the storage of email messages, metadata, and attachments within an email system. The system in use does not necessarily have to be the same throughout the retention. For example, a message stored in Outlook, Gmail, Yahoo, etc., may also be accessed, read, sent, and then stored again into another email system. Any solution to email retention which includes on-line storage should be done only after consultation with the agency Information Resource Manager and the agency network administrator.
 1. The advantage of on-line storage is that it maintains the full functionality of the email message and allows users to recall the message at any time for reference or responding.
 2. The disadvantage of on-line storage is the potential costs and effects of storage on the performance of the email system.
- B. Near-line storage transfers email messages, metadata, and attachments from the email system into an electronic record keeping system. This type of storage requires that the message, metadata, and attachments be removed from the on-line email system and stored in an electronic format. For example, a message stored in an on-line email system can be saved to a file on a local hard drive. The file should be stored in a format which is compatible with agency operations and filed according to filing practices established by the agency and/or user.
 1. The advantage of near-line is that the storage allows the user to maintain a moderate amount of functionality in that email messages stored near-line can be retrieved and referenced electronically.
 2. A caution to be considered with storing email messages, metadata and attachments - users must be careful to maintain a filing system which is consistent with established practices. This includes filing sequences as well as the use of naming conventions for computer files. In addition, users may want to consider protecting such records from alteration.

- C. Offline storage is defined as the storage of email messages, metadata, and attachments outside of an electronic record-keeping environment. The clearest example of this type of storage is to simply print out an email message to paper, with its contextual information and attachments in place, for filing within existing agency filing systems.
 - 1. The advantage of offline storage is that it offers users the ability to integrate the filing of records in email systems within existing hard-copy filing systems in agencies. Any email messages, metadata, and attachments stored offline should be done in a manner consistent with agency practice.
 - 2. The disadvantage of offline storage is that it dramatically reduces the functionality of the email message, as it is no longer retrievable in electronic form, and increases the costs associated with storing paper documents (containers, materials, facilities, personnel costs).

EMAIL MESSAGES, EMAIL SYSTEMS AND RESPONSIBILITIES

- A. State and local government records officers should be familiar with state and federal “rules of evidence” requirements and collaborate with their agency Information Resource Manager and/or Information Systems Administrator and consult as needed with their assigned legal counsel to understand the requirements. The federal rules of evidence place the burden for the identification of relevant records on the records’ creator and often within a very-short time period. At a minimum, agency records officers and local government records officials should ensure that:
 - 1. Email systems used to create, receive and maintain email messages have full, complete, and up-to-date systems documentation;
 - 2. Systems follow all Department of Technology and Information (DTI) recommendation for security;
 - 3. Complete system backups are regularly and consistently performed. The system should retain all data and “audit trails” necessary to prove its reliability as part of the “normal course of agency business.”
 - 4. Backup procedures need to be coordinated with disposition procedures and actions so that no copies of records are maintained after the retention period for the records has expired. Please note that the above practices are managed by DTI for the enterprise email systems provided to state agencies and certain school districts.
- B. State and local government records officers should collaborate with their agency Information Resource Manager and/or Information Systems Administrator and agency legal counsel as needed to develop internal procedures to identify “record copy” responsibilities for email systems. For example, an agency policy document transmitted via an email system to multiple recipients does not need to be maintained by each recipient beyond their need for the information. In this case it is recommended to assign the “record copy” responsibility with the creator of the policy document.
- C. Records officers should schedule periodic records maintenance to meet requirements for reliability and legal records disposition. Prompt deletion of duplicate copies of email messages from an email system makes the system easier to manage and reduces the space and costs related to the retention of redundant information.

ACCESSIBILITY

- A. The major challenge for records officers is to guarantee that records maintained in electronic information systems are accessible and functioning for the entire length of the retention period. Rapid changes and enhancements to the software programs and storage hardware require in-depth planning and constant consultation with the agency’s information technology experts prior to the purchase and implementation of programs and equipment.
- B. Email systems and agency servers have limitations in storage space that may cause operational or performance issues when messages are stored in the system beyond a specific period (such as 60 or 90 days). Organizations must establish policies and procedures to transfer records from the email system to another electronic records keeping system to meet retention requirements. Delaware Public Records Law requires state and local government agencies to follow the established record retention and disposition procedures; it is prohibited to destroy a public record, including records created in an email system, without prior written authorization by the Archives.
- C. Other administrative challenges exist that require procedures to ensure records created by email systems can be located when required; therefore, agencies must establish a plan for indexing files. This will increase productivity and efficiency within the agency. Arrange emails in an organized and consistent manner that mirrors the way the agency references the records. An organized system will help individuals locate records and ensure that files are not inadvertently lost or misplaced. Additionally, agencies should develop a standardized system for naming files and folders to eliminate confusion and allow for easy retrieval and sorting. Email records, whether maintained in electronic or paper format, must include the following metadata components:

1. Names and e-mail addresses of both the sender and recipient(s). This includes the names and addresses of all members of a distribution list
 2. Date and time e-mail was sent
 3. Subject line that describes the contents of the message
 4. Text in the body of the email
 5. Attachments
- D. Email involved in the request process regarding records or information subject to the Freedom of Information Act, pending audits, and litigation shall not be destroyed before the request, and any appeals, are satisfied. Emails associated with these requests become part of the record until the process is complete and destruction is authorized in writing using the appropriate retention schedule.
- E. Upon the termination or resignation of an employee, email messages should be retained in accordance with the appropriate records retention schedule.

Effective March 1, 1999/2002

Revised: August 15, 2017

References:

[Delaware Public Records Law:](#)

29 *Del. C.* c5

[Delaware Freedom of Information Act:](#)

29 *Del. C.* c100

[Delaware Uniform and Electronic Transactions Act:](#)

6 *Del. C.* c12a

[Delaware Public Archives Model Guidelines for Electronic Records](#)