



PROCEDURAL LEAFLET

Presented to the State Records Commission and Local Government Records Commission on October 23, 2013.

E-MAIL: FREQUENTLY ASKED QUESTIONS (FAQs)

Electronic mail (e-mail) is an important communication tool for conducting government business in the State of Alabama. E-mail combines the instant contact of a telephone call with the capacity for the detail and permanence of a written message. Other files, from word processing documents to photographs to complex computer programs, can be attached to e-mail messages and sent with relative ease.

Because of the dynamic and often informal nature of e-mail, many questions have arisen over the official and legal status of records. This leaflet aims to address many of the frequently asked questions regarding e-mail and record keeping.

Is e-mail a government record?

Alabama law stipulates that any document is a government record when it is created by a government employee in the course of conducting public business (Code of Alabama 1975, Section 41-13-1). E-mail messages are records and should be treated the same way paper records are treated.

Are e-mail sent via a private e-mail account government records if they document government business?

Yes. Code of Alabama 1975, Section 41-13-1 does not limit government records to those only created and/or stored on government property. Content determines whether or not a record is a government record, not format or the machines or e-mail accounts used to create the document.

Do agencies have to keep every e-mail message permanently?

No. Just as a large percentage of an agency's paper documents are retained for a set period, a large percentage of its e-mail messages are also retained temporarily.

How do agencies determine how long to keep e-mail messages?

Record retention, the minimum length of time a record is required to be kept, is content-, not format-, driven. Because e-mail is a format, it is not listed as a specific record series in agency Records Disposition Authorities (RDAs). To determine how long an e-mail message must be kept, consider the content of the e-mail message and the function it performs. There are three retention classifications e-mail messages can have:

- **Transitory records** are records which do not document an agency's functions, transactions, or policies. 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. These records can be disposed of once they are no longer needed.
- **Temporary records** are records with some legal, fiscal, historical, or administrative value; but those values are not great enough to justify keeping the records permanently. Temporary records can have retention periods from a few months to decades. Agency RDAs list retention periods for each type of record an agency creates. Records must remain accessible and readable for their entire retention period. Agencies document when the records are destroyed and report their destructions. State agencies document destructions on records destruction logs, which are summarized in the agency's Annual RDA Implementation Monitoring Report. Local government entities submit a destruction notice to ADAH each time they destroy records. Public inquiries about an agency's services are an example of "Routine Correspondence," a temporary record.
- **Permanent records** are records with high administrative, fiscal, legal, and/or historical values. These records often document the functions and policies of an agency. Meeting minutes of the agency's board of directors are an example of permanent records. For state agencies, most permanent records are transferred to the Alabama Department of Archives and History, which has optimum environmental and security controls to ensure the records' longevity. Local agencies must retain these records in a format that will allow them to be accessed permanently.

Reminder: the Code of Alabama 1975, Sections 41-13-21 and 41-13-23, prohibits a public official from destroying any public record without the approval of the State or Local Government Records Commissions. Such approval is obtained by following the normal records destruction procedures established for state and local agencies.

- **How do agencies obtain copies of their RDA?**

RDAs for state and local government agencies are available on the ADAH website. The link for state agency RDAs is www.archives.alabama.gov/officials/staterda.html; for local agency RDAs, the link is www.archives.alabama.gov/officials/localrda.html.

- **What should an agency do if it does not have an RDA?**

If an agency does not have an RDA, it cannot legally destroy records. Please contact the Government Records Division at the Alabama Department of Archives and History at (334) 242-4452 or records@archives.alabama.gov, to request staff assistance in developing an RDA.

Do agencies have to manage incoming and outgoing e-mail messages?

Yes, both incoming and outgoing e-mail messages are public records if they document the organization, functions, policies, decisions, procedures, or other activities of the office. Both senders and recipients of e-mail messages have the responsibility to document their activities and those of their organizations. Both sender and recipient have to determine whether a particular e-mail message is covered by a retention period listed on their RDA.

Do agencies have to save every copy of an e-mail message?

Just as in the paper world, there can be multiple copies of an e-mail message in existence. For e-mail messages sent *en masse* (for example, informing staff of an upcoming staff meeting), the record copy of the e-mail message is the one sent by the sender. The recipients do not have to keep their copies.

E-mail messages can be sent and responded to numerous times. If the individuals sending and receiving the messages continue to reply to the same message, resulting in one continuous message, only the final message needs to be retained. If employees are unsure who has the final message, they should save the e-mail message they received or answered last.

If the e-mails (sent and received) of the director, assistant director(s), and legal counsel are kept, is it necessary to keep any other emails?

In most cases, yes, an agency's permanent e-mails will be those of its director, assistant director(s), and legal counsel. However, each agency is different, and it is possible for other staff members to send and receive e-mail messages which document the functions and policies of the agency. It is recommended that agencies examine their organizational structure and decide which officials' or employees' e-mails should be considered permanent.

How do agencies manage the e-mail messages which must be kept?

If e-mail messages are to be retained in electronic form, employees should be trained in using the agency's e-mail application to create electronic folders for organizing their e-mail messages. A system of folders helps individuals to separate transitory, temporary, and permanent records and can help to ensure that important records are not accidentally lost or misplaced. Folders for temporary records should include the destruction date of the records contained within.

Ideally, the agency should have a folder structure used by all employees. In addition, the agency should develop a standardized system for naming files and folders to avoid confusion over the

contents of a file. See our pamphlet “Best Practices for Naming Electronic Files” for more information on naming conventions for electronic records.

How do agencies preserve e-mail messages?

The recommended method of e-mail message preservation is to preserve messages electronically. Electronic preservation allows quicker retrieval of the messages, while preserving their dynamic functionality. E-mail messages preserved electronically can be seamlessly integrated with other project-related files. Permanent e-mail messages should be moved to permanent folders separate from the e-mail server. Long-term temporary e-mail messages – those with retentions longer than 5 years – should also be stored separate from the e-mail server. For more information see our leaflet “Best Practices for Naming Electronic Files” {[put link here once approved](#)}.

E-mail messages can also be preserved by printing them out and filing them manually. This is not the preferred method, but it may be the only option for some agencies because of the IT requirements of electronic preservation. The advantage of a paper-based filing system is that the format is stable: if stored in proper environmental conditions, paper can last for many years, while electronic records systems change rapidly.

Is it enough to keep just the e-mail messages?

No. In addition to the e-mail message itself, other information must be preserved with the e-mail message to provide context and, in some cases, more detail.

- Attachments – Attachments provide context for the e-mail message. They often document the business of the agency.
- Transactional information (metadata) – Metadata is the information about the e-mail message that accompanies the message for routing, tracking, and usage purposes. It can include: the name of the sender, names of recipients, date the message was created and sent, information on the e-mail application used to create the message, and a record of all the systems and computers the message passed through. Many e-mail applications capture this information. For those that do not, the applications will need to be reconfigured to do so.
 - Distribution lists – the individual recipients of the distribution list must be preserved, not just the name of the list.
 - If codes or aliases are used to identify senders or recipients, a record of their real names must be documented.

The document must be readable for the entire length of its retention period. Thus, agencies which employ electronic filing systems must migrate all non-obsolete e-mail messages whenever the system is upgraded.

Does the public have a right to access an agency’s e-mail messages?

E-mail records are subject to the same legal requirements regarding access as any of the agency’s other government records. Although the Code of Alabama 1975, Section 36-12-40, states “every citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute,” the legal issues governing such access are frequently very complex

and may vary from one agency to another. Specific policies for each agency are likely to be the responsibility of the agency's legal counsel. For general guidelines in this area, see the procedural leaflet "Providing Access to Government Records," available on the ADAH website at: <http://www.archives.alabama.gov/officials/accessflt02.html>.

E-mail messages that are available for public inspection must remain accessible during their entire retention period and should be maintained in a manner which permits efficient and timely retrieval. Developing a standardized system of document naming and filing, and planning for indexing and retrieval points, will assist an agency in maintaining the accessibility of all e-mail messages throughout their required retention periods. Having e-mail messages that are inaccessible, either through hardware/software obsolescence or due to faulty indexing schemes, can be just as problematic to an agency as improperly destroying records.

How do agencies properly delete e-mail messages?

For temporary and transitory e-mail messages, steps should be taken to ensure that messages are fully and properly deleted when their retention periods expire. Simply deleting a message does not necessarily remove it from the hard drive or server. There are several utility programs that can be purchased to make sure hard drives are wiped clean and messages are completely removed. This procedure can help to eliminate wasted storage space and possible liability issues if discoverable messages are retained longer than legally required.

For more information:

These FAQs cover only the most basic issues involved, e-mail management is a very complex subject. In preparing e-mail policies and procedures, agencies should involve the agency's information technology, records management, and legal staff. For additional guidance, contact the ADAH Government Records Division at (334)242-4452, or records@archives.alabama.gov.

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