

Email and Retention of Records

What is email?

Electronic mail (email) is a means of exchanging messages and documents using computers. A complete email message includes the contents of the communication, the transactional information (dates and times that messages were sent, received, opened, deleted, etc.), and any attachments.

Is email a public record?

Email messages are public records if they are created or received as part of performing a public employee's official duties.

The Michigan Freedom of Information Act (FOIA) (1976 PA 442, as amended) defines a public record as "a writing prepared, owned, used in the possession of, or retained by a public body in the performance of an official function, from the time it is created."

I sometimes use my home computer and personal email account to conduct government business. Am I creating public records?

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.

What is a Retention and Disposal Schedule?

Michigan law requires that all public records be inventoried on an approved Retention and Disposal Schedule that identifies how long the records must be kept, when they must be destroyed, and when certain records can be sent to the State Archives of Michigan for permanent preservation. Public records cannot be destroyed unless disposal is authorized by an approved Retention and Disposal Schedule.

Is there a Retention and Disposal Schedule that covers municipal public records?

Yes. General Retention Schedule #8 covers municipal records. Additionally, the State of Michigan's Records Management Services has created department-specific schedules for local governments. If a municipality maintains records that are not listed on General Retention Schedule #8 or any of the department-specific schedules, a specific schedule must be created to address the retention of those records before they can be destroyed. Records Management Services is available to advise municipalities about Retention and Disposal Schedules and records management issues. Additional information is available from the Records Management Services' website, www.michigan.gov/recordsmanagement/.

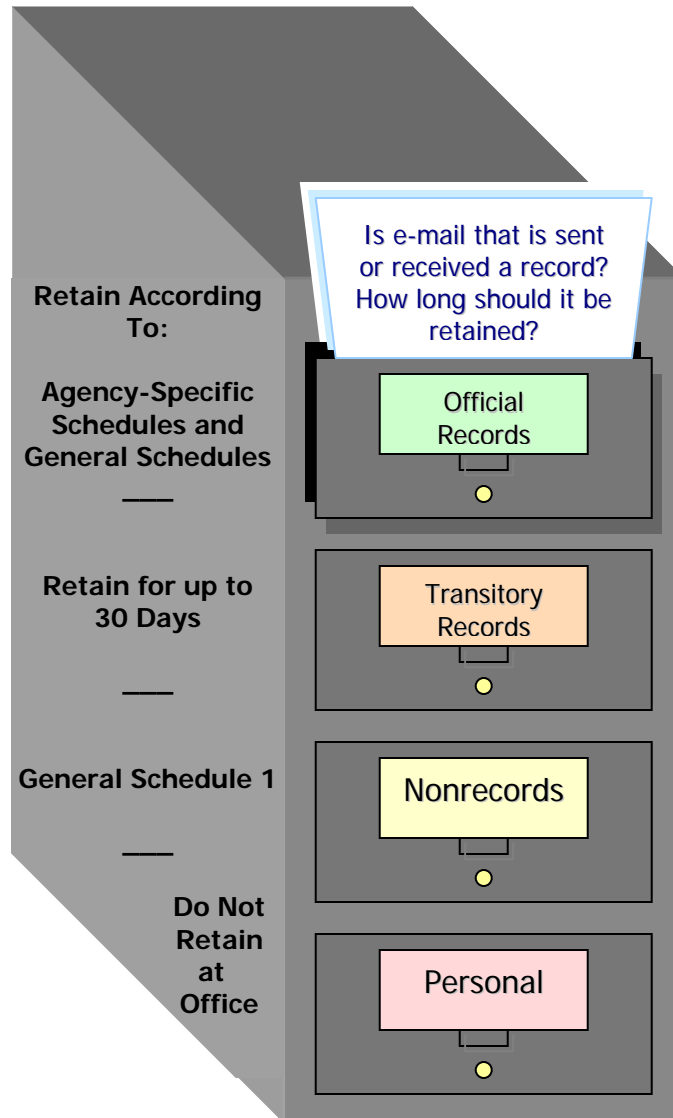
Does all email have the same retention period?

No. Just like paper records, email records are used to support a variety of business processes. Email 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.

"Plus" material was provided by the State of Michigan Records Management Services.



State of Michigan Records Management Services Electronic Mail Retention Guidance

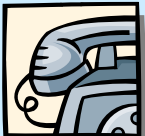
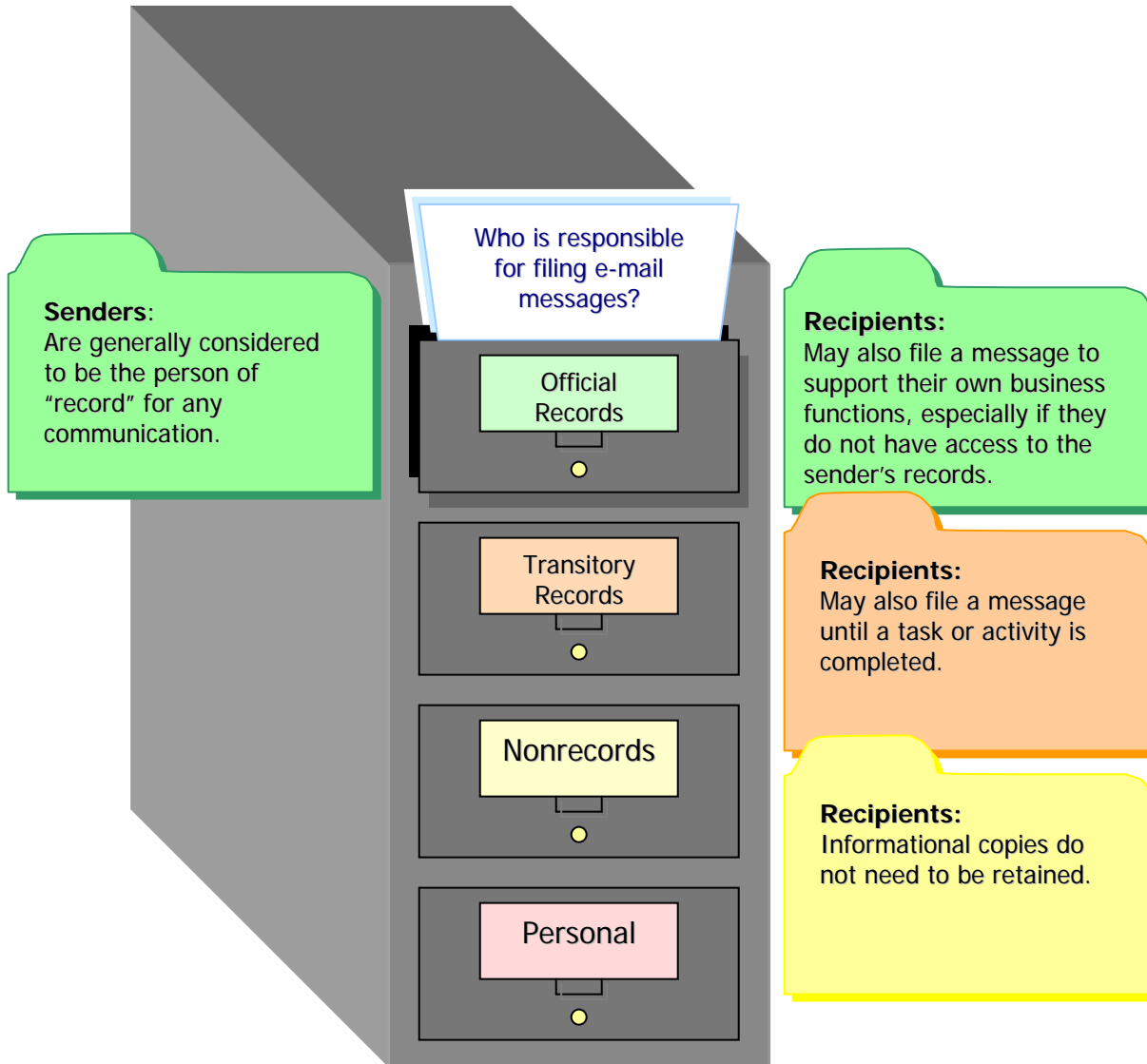


Warning! Do not dispose of (or allow the automatic disposal of) any relevant e-mail message, even if its retention period has expired, that is responsive to a FOIA request or which is likely to be required in litigation.



Caution! Litigation/discovery and FOIA requests both apply to all relevant e-mail messages, including metadata associated with messages and any associated data stored on server back-up tapes.

Electronic Mail Filing Guidance



QUESTIONS MAY BE DIRECTED TO:

State of Michigan
Records Management Services
(517) 335-9132

<http://www.michigan.gov/recordsmanagement/>

[AGENCY NAME]

POLICY FOR ELECTRONIC MAIL RETENTION

SECTION 1. INTRODUCTION

Electronic mail (e-mail) is a means of exchanging 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 names of members of groups), and any attachments.

SECTION 2. PUBLIC RECORDS

In accordance with the Michigan Freedom of Information Act (FOIA) (Public Act 442 of 1976, as amended), e-mail messages are public records if they are created or received as part of performing a public employee's official duties. All e-mail messages that are created, received or stored by a government agency are the property of the [agency name]. They are not the property of its employees, vendors or customers. E-mail accounts are provided to employees for conducting public business. Employees should have no expectation of privacy when using the agency's computer resources.

SECTION 3. RETENTION AND DISPOSAL SCHEDULES

Michigan law requires that all public 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. Retention and Disposal Schedules for local government agencies are approved by the Records Management Services, Archives of Michigan and the State Administrative Board. Records cannot be destroyed unless their disposal is authorized by an approved Retention and Disposal Schedule. The State of Michigan Records Management Services is available to advise local government agencies about a variety of records management issues.

SECTION 4. RETENTION POLICY

Just like paper records, e-mail messages are used to support a variety of business processes. Just like paper records, senders and recipients of e-mail messages must evaluate each message to determine if they need to keep it as documentation of their role in a business process. Just like paper records, the retention period for an e-mail message is based upon its content and purpose, and it must be retained in accordance with the appropriate Retention and Disposal Schedule.

SECTION 5. E-MAIL STORAGE AND MAINTENANCE

The [agency name] will retain its e-mail by [Agency administrators and information technology staff must agree upon and choose one of the five options listed below. Each option has its pros and cons, and other options may be available as well.]

- 1) Filing the e-mail in a Document Management System repository where it will be organized and automatically disposed of at the end of its retention period.
- 2) Storing e-mail online in the active e-mail system for its entire retention period. Employees are encouraged to establish folders for arranging e-mail according to their content, and they are responsible for disposing of e-mail that has met all of its retention requirements.
- 3) Creating online e-mail archives for storing messages that are accessible by the active e-mail system, but are not stored on the active e-mail server. Employees are encouraged to establish folders for arranging e-mail according to their content, and they are responsible for disposing of e-mail that has met all of its retention requirements.
- 4) Storing e-mail on hard drives or peripheral drives [*information technology staff must specify which drive to use; shared servers are recommended*]. Employees are encouraged to establish folders for arranging e-mail according to their content, and they are responsible for disposing of e-mail that has met all of its retention requirements.
- 5) Printing e-mail and related transactional information, and filing the paper in a manual filing system.

SECTION 6. EMPLOYEE RESPONSIBILITIES

Employees are responsible for organizing their e-mail messages so they can be located and used. They are responsible for keeping e-mail messages for their entire retention period, and for disposing of e-mail messages in accordance with an approved Retention and Disposal Schedule.

Many agencies have established automatic purge routines for e-mail messages that are 30 or 60 days old. 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 FOIA, or if they are part of on-going litigation, even if their retention period has expired.*

Employees who use a home computer and a personal e-mail account to conduct government business must manage their work-related e-mail the same way as those messages that are created and received using government computer resources.

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. Employees should be prepared to provide access to their e-mail to their FOIA Coordinator or an attorney for the [agency] under these circumstances.

SECTION 7. INFORMATION TECHNOLOGY STAFF RESPONSIBILITIES

Individual employees are responsible for deleting messages in accordance with the appropriate Retention and Disposal Schedule. However, deleted messages may be stored on servers and backup tapes for several days, weeks or months after they are deleted. Information technology staff will ensure that deleted messages are rendered unrecoverable within [insert timeframe; 1 week is the suggested maximum] of employee deletion. *Note: The destruction of e-mail messages on servers and backup tapes must cease when an agency becomes involved in litigation or when it receives a FOIA request.*

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. Information technology staff will ensure that older e-mail messages remain accessible as technology is upgraded or changed. Each time technology upgrades and changes take place information technology staff will ask agency administrators for information about the existence and location of older messages so they can be migrated to the new technology.

SECTION 8. ADMINISTRATOR RESPONSIBILITIES

Agency administrators are responsible for ensuring that their employees are aware of and implement this policy. They are also responsible for ensuring that their agency has an approved Retention and Disposal Schedule that covers all records (regardless of form or format) that are created and used by their employees.

Agency administrators are responsible for ensuring that the e-mail (and other records) of former employees are retained in accordance with approved Retention and Disposal Schedules.

Agency administrators are responsible for notifying information technology staff when the agency becomes involved in litigation or when a FOIA request that involves e-mail is received.

SECTION 9. FOIA COORDINATOR RESPONSIBILITIES

Just like paper records, e-mail messages might be subject to disclosure in accordance with FOIA. FOIA coordinators are responsible for identifying if the records that are requested by the public are stored in e-mail, even if the public does not specifically

request e-mail. They are also responsible for ensuring that information technology staff is notified that a FOIA request involving e-mail was received to prevent the destruction of relevant messages.

SECTION 10. ATTORNEY RESPONSIBILITIES

Just like paper records, e-mail messages might be subject to disclosure during the discovery phase of litigation. Attorneys representing Michigan government agencies are responsible for identifying if the records that are requested during the discovery process are stored in e-mail, even if the discovery order does not specifically request e-mail. They are also responsible for ensuring that information technology staff is notified that a discovery order involving e-mail was received to prevent the destruction of relevant messages.

QUESTIONS?

State of Michigan

Records Management Services

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