

Email Retention

Is everything on my computer a public record?

Whether or not it is an official record, anything that is stored on a State of Maine computer is a public record legally speaking unless a privacy statute protects all or part of it from disclosure.

Do I have to manage incoming and outgoing e-mail as records?

Yes, both sender and recipient 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 a necessary part of that documentation.

If there are several people attached to a particular e-mail, who is actually responsible to retain?

The person who started the email officially started the 'record copy' which is considered the original. The only records that should be archived are those that are made or received in connection with the transaction of official government business; and maintained as evidence of the agency's functions, policies, decision, procedures, operations and other activities; or because of informational value. There are often many more copies, because it is so easy to "cc" others and to forward messages. Generally the person who originates the message holds the record copy, which is the one that must be kept for the full retention period. Those who receive other copies should delete them as soon as they have served their purpose. However, if the recipient is required to do something after receiving the message that may mean an additional record copy has been created. Example #1: Your boss assigns work to you by sending you an e-mail. You will be held responsible for completing the assignment, so reading this e-mail and then following its instructions is part of your job. You must therefore treat it as an official record. Example #2: The Governor's Office sends out an e-mail reminding all employees to use public transportation whenever possible. This message has only one record copy, held by the person whose job it was to send it. Everyone else can and should delete the message after reading it.

If each employee is required to maintain their own e-mail records, will there be sanctions against the employee that fails to maintain their records properly, and if so, to what extent?

There aren't sanctions in place if an employee fails to maintain their records properly, but the Records Officer may be asked why they didn't provide assistance in doing this and the employee's supervisor may be asked to explain why the employee didn't follow the policy protocol. If employees are prematurely deleting records/emails then this practice prevents fulfilling the legal requirements of FOAA.

Note: Whoever knowingly and willfully removes or destroys records can be punished by a fine of not more than \$5,000 and by imprisonment for not less than one year nor more than 3 years. (1 M.R.S.A. § 452).

Is it better to just keep all my email messages?

There are several reasons why keeping all e-mails indefinitely is not a proper management solution. First, storage of digital records is not free and can get unnecessarily expensive if records are not managed efficiently and effectively. Second, the more messages stored, the longer and more complicated a task search and retrieval becomes. Third, records kept beyond their retention date are a liability for the organization retaining them. What is there must be searched for and produced if requested; and costs of doing this otherwise needless work can be enormous.

If the same information is kept on electronic records and paper, do both mediums have to be retained?

If paper and electronic make up the records together, then yes, they both need to be kept under Record X schedule, but if the paper is a "copy" of the electronic version then it does not need to be retained - it is duplicate information and what we are trying to get agencies to move away from - saving an electronic version in their agency and sending paper copies of the same material to the Records Center.

Is it okay to just save the last email in a string or print out emails and save them in paper format?

Although it may seem adequate for the retention of the record to delete email messages after the content has been saved in another program or has been printed for paper filing, when a FOAA search or legal discovery proceeding includes review of a state employee's e-mails, missing messages can create two problems. First, it is apparent to the person performing the

review that certain messages are no longer there. This can be confusing to the reviewer, and it may be viewed by the requestor as an attempt by the State of Maine to conceal records instead of releasing them. Second, every e-mail message has metadata attached. This "data about data" is invisible to the e-mail user, but it is often exactly what most interests a FOAA or legal discovery requestor. So destroying it by deleting the original message, even after saving the text to another format (paper included), can be treated by the courts as a deliberate act of bad faith. Deleting the individual messages in "threads" creates the same problems as saving them in other formats. A FOAA requestor may not get the information actually sought, and a court may rule that the State of Maine's response to a discovery proceeding is deliberately inadequate because original messages cannot be produced with all their metadata attached.

Why is it necessary to keep the transmission data about the sender, receiver, date and time of the e-mail?

You should treat e-mail messages the same way you treat paper correspondence. You would not delete the names of the sender and addressee, the date, or a time stamp from a letter on paper. The data identifying the sender and recipient(s), the time and date the message was sent, and, on the recipient(s) copy, the time and date it was received are equally essential elements that constitute a complete e-mail record.

What do I do with attachments I receive with e-mail?

File them with other electronic documents on your PC or network and apply the appropriate retention schedule. Your PC files should be organized similar to your e-mail. Attachments can then be filed in the PC folder that corresponds with the e-mail folder.

Should e-mails that go back and forth between sections dealing with routine daily operations be retained?

The only records that should be retained are those that are made or received in connection with the transaction of official government business; and maintained as evidence of the agency's functions, policies, decision, procedures, operations and other activities; or because of informational value.

Are instant messages (IM) records?

Yes, in certain circumstances. They are similar to e-mail messages; that is, if the messages are needed to substantiate your work, you must treat them the same way you would any e-mail record. You need to capture the text of the message, as well as who the message is to/from and the date and time. Also, due to the informal and sometimes cryptic nature of IM, it may be necessary to transcribe or capture the message in another format much as you would for a telephone conversation or other verbal communication if it is needed to document your activities. And finally, it is important to be careful if you use a personal product to communicate with external users because it could result in unauthorized disclosure of information.

When employees leave, who is responsible to catalog and store information?

It is the responsibility of Agency managers and supervisors to secure and archive records of former employees. For steps on how to archive e-mail, see the instructions on the State internal website at: <http://inet.state.me.us/foaa/archiving.aspx>.