

# State of New Jersey Circular Letter 03-10-ST: Managing Electronic Mail : Guidelines and Best Practices

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**CIRCULAR LETTER**  
**NO: 03-10-ST**

**ORIGINATING AGENCY:** DIVISION OF ARCHIVES AND RECORDS MANAGEMENT, DEPARTMENT OF STATE

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**SUPERSEDES:** NONE

**SUBJECT:** MANAGING ELECTRONIC MAIL: GUIDELINES AND BEST PRACTICES

**ATTENTION:** ALL STATE AND LOCAL GOVERNMENT AGENCIES

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## **1.0 Managing Electronic Mail: Guidelines**

These guidelines apply to state and local government agencies in the State of New Jersey.

### **1.1 Intent and Purpose**

The intent of these guidelines is to provide and explain requirements, guidelines and best practices for electronic mail (e-mail) messages that meet the criteria for public records as defined by the Destruction of Public Records Act, P.L. 1953, c. 410 § 2 (N.J.S. 47:3-16) as amended.

These guidelines have a two-fold purpose:

- First, they are intended to assist state agency employees in complying with New Jersey's Open Public Records Act (OPRA), P.L. 2001, c. 404 (N.J.S. 47:1A-1.1) in their use of e-mail.
- Second, they are intended to promote best practices that facilitate the effective capture, management, and retention of electronic messages as public records.

### **1.2 Introduction**

Electronic mail systems, commonly called e-mail, have become the communications method of choice for many public officials and public employees in New Jersey. E-mail messages are often used as communication substitutes for the telephone as well as to transmit substantive information or records previously committed to paper and transmitted by more traditional methods. This combination of communication and record creation and

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record keeping has created ambiguities on the status of e-mail messages as government and/or public records.

The management of e-mail systems touches on nearly all functions on which a government agency is dependent for recordkeeping: privacy, administration, vital records management, administrative security, auditing, access, and archives. The need to manage e-mail messages and systems properly, then, is the same as for other recordkeeping systems to ensure compliance with New Jersey laws concerning the creation of, retention of, and access to public records.

Government agencies that use electronic mail have an obligation to make employees aware that e-mail messages, like paper records, must be retained and destroyed according to established records management procedures. Agencies should set up or modify e-mail systems to facilitate electronic records management. Procedures and system configurations will vary according to the agency's needs and the particular hardware and software in place, however, Division of Archives & Records Management (DARM) strongly encourages standardization to assist in the preservation of electronic records.

These guidelines are intended to supplement Policy Number 99-01, "Electronic Mail/Messaging Policy," Office of the Chief Information Officer (CIO), State of New Jersey (effective date January 11, 1999), and are based in large part upon the work done by the Maine State Archives, Delaware State Archives, Florida Department of State, and Electronic Records Committee (ERC) for the State of Ohio. (See Section 3.0, Endnotes, for citations)

### **1.3 Definitions**

#### **1.3.1 E-mail systems.**

E-mail systems are software systems that transport messages from one computer user to another. E-mail systems range in scope and size from a local e-mail system that shuffles messages to users within an agency or office over a local area network (LAN) or an enterprise-wide e-mail system that carries messages to various users in various physical locations over a wide area network (WAN) e-mail system to an e-mail system that sends and receive messages around the world over the Internet. Often the same e-mail system serves all three functions.

#### **1.3.2 E-mail messages**

E-mail messages are electronic documents created and sent or received by a computer system. This definition applies equally to the contents of the communication, the transactional information, and any attachments associated with such communication. Thus, e-mail messages are similar to other forms of communicated messages, such as

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correspondence, memoranda, and circular letters.

#### **1.4 Legal Requirements**

New Jersey State Statutes (N.J.S.) do not include a specific definition for electronic mail, however the recently passed Open Public Records Act (OPRA), P.L. 2001, c. 404 (N.J.S. 47:1A-1.1) defines a “government record” or “record” as:

“...any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file in the course of his or its official business by any officer, commission, agency, or authority of the State or of any political subdivision thereof, including subordinate boards thereof, or that has been received in the course of his or its official business by such officer, commission, agency, or authority of the State or of any political subdivision thereof, including subordinate boards thereof. The terms shall not include inter-agency or intra-agency advisory, consultative, or deliberative material.”

Clearly, an e-mail message is a document or item created or received by a public office. The deciding factor as to its status as a record is if the e-mail serves to document the organization, functions, policies, decisions, procedures, operations or other activities. This is true of any communication, whether electronic or paper.

All e-mail messages that meet the criteria of the definition of a government record per N.J.S. 47:1A-1.1 must be made available to the public upon request under the Open Public Records Act (OPRA) during the required retention period, unless the content of the message falls under one of the exceptions contained in the act or in any other statute, regulation, Executive Order by the Governor, rule of court, or federal law, regulation or order.

The definition for public records is found in P.L. 1953, c. 410 (N.J.S. 47:3-16) as amended, states in part:

“public records mean any paper, written or printed book, document or drawing, map or plan, photograph, microfilm, data processed or image processed document, sound recording or in a similar device, or any copy thereof, that has been made or required by law to be received for filing, indexing, or reproducing by any officer, commission, agency, or authority of the State or any political subdivision thereof, including any subordinate boards thereof, or that has been received in the course of his or its official business by such officer, commission, agency, or authority of the State or of any political subdivision thereof, including subordinate boards thereof, in connection with the transaction of public business and has been retained by such

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recipient or its successor as evidence of its activities or because of the information contained therein.”

Any public record as defined in the New Jersey Statutes (N.J.S. 47:3-16, as amended), whether it is subject to access by the general public or not, must be retained according to records retention and disposition schedules approved by the State Records Committee as established under P.L. 1953, c. 410, §6 (N.J.S. 47:3-20) as amended. Per P.L. 1953, c. 410, § 3 (N.J.S. 47:3-17), no public record may be destroyed without prior consent of the Division of Archives and Records Management of the Department of State and the State Records Committee, even if the retention period for a record has expired.

#### **1.5 Retention and Scheduling Requirements**

E-mail itself is not considered a record series or category *per se*. It is a means of transmission of messages or information. Like paper or microfilm, e-mail is the medium by which this type of record is transmitted. Just as an agency cannot schedule all paper or microfilm records together under a single retention period, an agency cannot simply schedule e-mail as a single record series. Rather, retention or disposition of e-mail messages must be related to the information they contain or the purpose they serve. The content, transactional information, and any attachments associated with the message are considered records (if they meet the criteria a public record in N.J.S. 47:3-16). The content of e-mail messages may vary considerably, and therefore, this content must be evaluated to determine the length of time the message must be retained.

Simply backing up all of the messages on an e-mail system onto tapes or other media or purging all messages after a set amount of time is not an appropriate strategy for managing e-mail. For more information on records management, contact your agency's records officer, records management liaison, or New Jersey's Department of State, Division of Archives and Records Management.

For the purposes of this document, there are Non-record e-mail Messages and three categories of Official Record e-mail message retention:

- Transient Retention
- Intermediate Retention
- Permanent Retention.

##### **1.5.1 Non-Record E-mail Messages**

E-mail messages that do not meet the criteria of the New Jersey statutory definition of a record per N.J.S. 47:3-16, as amended, may be deleted at any time, unless they become part of some official record as a result of special circumstances. These types of messages may include:

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#### *1.5.1.1 Personal Correspondence*

Any e-mail not received or created in the course of state business, may be deleted immediately, since it is not an official record. Examples of the type of messages that may be deleted are unsolicited e-mail advertisements, commonly called "SPAM," personal messages, or the "Let's do lunch" (not a State-business meeting over lunch) or "Can I catch a ride?" type of note.

#### *1.5.1.2 Non-Governmental Publications*

Publications, promotional material from vendors, and similar materials that are publicly available to anyone, are not official records unless specifically incorporated into other official records. This includes LISTSERV® messages (other than those you post in your official capacity), unsolicited promotional material, files copied or downloaded from Internet sites, etc. These items may be deleted immediately, or maintained in a "Non-Record" mailbox and deleted at a later time, just as you might trash unwanted publications or promotional flyers received in the mail. However, for example, if you justify the purchase of a "Zip Filing System" by incorporating the reviews you saved (from the "Files R Us LISTSERV®") in your proposal to your boss, those LISTSERV® messages become official records and must be retained in accordance with the retention schedule for purchasing proposals.

### **1.5.2 Official Record E-mail Messages**

E-mail messages that meet the definition of a record in N.J.S. 47:3-16, as amended are official records and must be scheduled, retained and disposed of as such. These official records fall into the following categories:

#### *1.5.2.1 Transient Documents*

Much of the communication via e-mail has a very limited administrative value. For instance, an e-mail message notifying employees of an upcoming meeting would only have value until the meeting has been attended or the employee receiving the message has marked the date and time in his/her calendar.

Transient messages do not set policy, establish guidelines or procedures, certify a transaction or become a receipt. The informal tone of transitory messages might be compared to a communication that might take place during a telephone conversation or conversation in an office hallway. These types of records are transient documents and can be scheduled using the General Retention Schedules established by the State Records Committee. Transient documents include telephone messages (such as "While You Were Out" notes), drafts, and other documents that serve to convey information of temporary importance in lieu of oral communication. E-mail messages of a similar nature should be retained until they are no longer of administrative value and then destroyed.

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*Retention:* Retained until no longer of administrative value and then destroyed

#### 1.5.2.2 Intermediate Documents

E-mail messages that have more significant administrative, legal and/or fiscal value but are not scheduled as transient or permanent should be categorized under other appropriate record series. These may include (but are not limited to):

- General Correspondence  
Including correspondence from various individuals, companies, and organizations requesting information pertaining to agency and legal interpretations and other miscellaneous inquiries. This correspondence is informative (it does not attempt to influence agency policy).
- Internal Correspondence  
Including letters, memos, and requests for routine information; monthly and weekly reports; and documents advising supervisors of various events, issues, and status of on-going projects.
- Minutes of Agency Staff Meetings  
Minutes and supporting records documenting internal policy decisions.

*Retention:* These categories of e-mail should be retained for the appropriate period of time per the records retention schedules approved for your agency by the State Records Committee or the General Retention Schedules for your type of agency.

#### 1.5.2.3 Permanent Documents

E-mail messages that have significant administrative, legal and/or fiscal value and are scheduled as permanent also should be categorized under the appropriate record series. These may include (but are not limited to):

- Executive Correspondence  
Correspondence of the head of an agency dealing with significant aspects of the administration of their offices. Correspondence includes information concerning agency policies, program, fiscal and personnel matters.

*Retention:* 3 years, then periodic review for transfer to State Archives in accordance with standards and protocols.

- Departmental Policies and Procedures  
Includes published reports, unpublished substantive reports and policy studies.

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Retention: Retain until superseded, obsolete or replaced, then periodic review for transfer to State Archives in accordance with standards and protocols.

- Minutes of Boards, Commissions, etc.  
Including approved minutes of official bodies, attachments, and transmittal documents. This does not apply to drafts of minutes or minutes that have not been approved. Copies may be retained in electronic form, but retention of hard copy is required.

Retention: Permanent. Periodic review for transfer to State Archives in accordance with standards and protocols.

Not all e-mail messages will fall into these record series. For more suggested retention periods, consult the State of New Jersey General Schedule and your agency's retention schedule.

## **2.0 Managing Electronic Mail: Best Practices**

### **2.1 Record Copy E-mail**

E-mail users should be aware that e-mail messages are often widely distributed to a number of various recipients. Determining which individual maintains the record copy of the message (i.e. the original message that must be retained per the retention schedule) is vital to e-mail management. If the holder of the record copy is not identified or aware of his or her responsibility, the agency may find that no one retains the message or that everyone retains the message. Neither of these scenarios is appropriate.

For example, agency policy documents which are transmitted to multiple recipients via an e-mail system need not be maintained by each recipient beyond his or her need for this information if record copy responsibility is established so that the record is maintained by some office or agent for its established retention period. In this example, a logical record copy responsibility rests with the creator of the policy document. Prompt deletion of duplicate copies of e-mail messages from an e-mail system makes the system as a whole much easier to manage and reduces disk space consumed by redundant information.

Generally speaking, the individual who sends an e-mail message and the primary recipient ("To" not "CC") should maintain the record copy of the message. However, the varied uses and wide distribution of e-mail may result in many exceptions to this rule that will have to be dealt with internally.

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#### **2.2 Filing**

Non-transitory e-mail messages should be filed in a way that enhances their accessibility and that facilitates records management tasks. Agencies should set up or modify e-mail systems to facilitate records management and appropriate filing systems. Procedures and systems configurations will vary according to the agency's needs and the particular hardware and software in use.

In addition to the IN and OUT boxes that come with your mail system, you usually have the option of creating other "mailboxes" or "folders." After brief periods in your IN-OUT boxes, messages should be transferred to other boxes, based on business and retention requirements. Furthermore, provisions should be made for migration of any documents with long-term retention periods to other systems to ensure continued access.

Employees should be responsible for classifying messages they send or receive according to content, the agency's folder/directory structure and established records series.

#### **2.3 Distribution Lists**

If you send to a "distribution list" (not a LISTSERV®, but a specified list of individuals), you must also keep a copy of the members of that list for as long as you are required to keep the message itself. It is of little value to know that the "Security Alert"; notice went to "SWAT Team 7," without knowing whether Arnold S. received the message. Nicknames present a similar problem.

#### **2.4 Subject Lines**

Fill in the subject line on your e-mail both to help your recipient identify and file messages, and to help you file your Out box messages that must be retained for some period. Subject lines should be as descriptive as possible.

Where and when appropriate, it may be advisable for e-mail users to label their e-mail as containing confidential or inter-agency or intra-agency, "advisory, consultative, or deliberative" (ADC) material or other information which falls under the exceptions to public access under the Open Public Records Act (OPRA).

#### **2.5 Storage and Archiving of E-mail**

##### **2.5.1 Storage of E-mail**

It is recommended that agencies explore three options when retaining records from an e-mail system:



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- on-line storage
- near-line storage
- off-line storage.

It is important to remember that messages only have to be retained and stored for as long as the retention period requires. Very few messages must be maintained for a long period of time or permanently. The storage method of e-mail may also depend on the retention period of the record. Messages that need to be retained for six months should be relatively easy to maintain on the current mail system and then deleted. Storage decisions for messages that need to be retained permanently will require more careful consideration.

Each of these options carries with it benefits and disadvantages and may be affected by your agency's information technology environment. In all these scenarios it is important to incorporate metadata considerations into your storage decision (In this context metadata refers to information such as sender, recipient, date, routing, subject lines, system information and manuals, etc.).

#### *2.5.1.1 On-line Storage*

On-line storage is defined as storage of e-mail messages, metadata, and attachments in an e-mail system that is being used at an agency. The system in use does not necessarily have to be the same throughout the retention. For example, a message stored in the "ABC e-mail System" may also be accessed, read, and then stored again by using the "XYZ e-mail System". On-line storage maintains the full functionality of the e-mail message, and allows users to recall the message at any time for reference or responding. A disadvantage of on-line storage is the potential costs and effects of storage on the performance of the e-mail system. Any solution to e-mail retention that includes on-line storage should be done only after consultation with the agency information resource manager and the agency network administrator.

#### *2.5.1.2 Near-line Storage*

Near-line storage is defined as storage of e-mail messages, metadata, and attachments in an electronic record keeping system. This type of storage requires that the message, metadata, and attachments be removed from the on-line e-mail system and stored in an electronic format. For example, a message stored in an on-line e-mail system can be transferred to a file in a document management or electronic records management system on another server. The file should be stored in a format that is compatible with agency operations, and filed according to filing practices established by the agency and/or user. It is not recommended to transfer messages stored in an on-line e-mail system to a file on a local hard drive as typically there are not have adequate backup policies and procedures for desktop computers.

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Near-line storage allows the user to maintain a moderate amount of functionality, in that e-mail messages stored near-line can be retrieved and referenced electronically. In storing e-mail messages, metadata, and attachments, users should be careful to maintain a filing system that 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.

#### *2.5.1.3 Off-line storage*

Off-line storage is defined as the storage of e-mail 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 e-mail message to paper, with its contextual information and attachments in place, for filing within existing filing systems in the agency. Off-line storage may also include such methods as computer-output-to-microfilm (COM) or the writing of e-mail messages, attachments and metadata to electronic storage media such as magnetic tape or optical disk. E-mail messages may no longer be searchable or retrievable in electronic form and/or the searching and retrieving functionality may be dramatically reduced in off-line storage conditions. However, off-line storage may offers users the ability to integrate the filing of records in e-mail systems within existing hard copy filing systems in agencies. Any e-mail messages, metadata, and attachments stored off-line should be done in a manner consistent with agency practice.

#### **2.5.2 Archiving of E-mail**

E-mail messages that meet the requirements for permanent retention eventually will have to be removed from the e-mail system and stored in either a near-line or off-line manner.

Should an agency choose to store the e-mail messages in a near-line environment, they need to be cognizant of the potential impediments to digital preservation. The agency will need to develop plans for the refreshing, migration, emulation, and/or encapsulation of these electronic records.

Should an agency choose to store the e-mail messages in an off-line environment, they need to be cognizant of the potential impediments to paper and microfilm preservation, as well as the preservation of electronic storage media. As with the near-line storage environment, should the off-line storage environment contain records stored on electronic media, there may be a need to refresh, migrate, emulate and/or encapsulate the records.

In any of the aforementioned situations, storage of records should be in compliance with State records storage standards as set forth in N.J.A.C. 15:3-6.

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#### **2.6 E-mail Messages and the Rules of Evidence**

Agency personnel should be familiar with both state and federal “Rules of Evidence” requirements. For records maintained in electronic information systems, including e-mail systems, courts concentrate on assurances that records, and the systems in which the records are created and maintained, are reliable. The reliability of the process or system used to produce records, not the type of media or technology used, determines the admissibility of records in evidence.

At a minimum, agency personnel should ensure the following:

- E-mail systems used to create, receive and maintain e-mail messages have full, complete, and up-to-date systems documentation;
- E-mail systems follow all recommendations for system security complete systems backups are regularly and consistently performed;
- E-mail system retains all data and audit trails necessary to prove its reliability as part of the normal course of agency business the record copy of a message is identified and maintained appropriately;
- Backup procedures should be coordinated with disposition actions so that no copies of records are maintained after the retention period for the records has expired;
- Agency records officers need to plan for records maintenance and record copy responsibilities for the records system to meet requirements for reliability and legal records disposition;
- E-mail system should allow the server administrator to prevent destruction of records for legal and/or audit purposes.

#### **2.7 Access**

A major challenge for agency records officers is to guarantee that records maintained in electronic information systems are accessible and usable for the entire length of the retention period. Rapid changes and enhancements to both hardware and software compound this challenge. As many e-mail systems have limitations in storage space that cause operational problems when messages are stored in the system beyond a specific period (such as sixty or ninety days), procedures must be in place to transfer records from the e-mail system to another electronic recordkeeping system to meet retention requirements. Messages should be maintained in a format that preserves contextual information (metadata) and that facilitates retrieval and access. The system should allow deletion of messages once their retention periods expire.

Beyond the generic challenge of technological change, there are more mundane, but equally critical steps, that must be faced in order to ensure that records created by e-mail systems can be located and retrieved when required. Central to this process is the creation of standard e-mail addresses per the Office of Information Technology (OIT)

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Standard Practice: 01, Personal Name Standard for E-Mail Addresses, and establishment of a system of standardized naming conventions and filing rules within the e-mail systems.

E-mail messages should be indexed in an organized and consistent pattern reflecting the ways in which records are used and referenced. Records maintained electronically, including e-mail messages, have an advantage over conventional hard copy document filing systems in that indexing for multiple access points is relatively simple and inexpensive, provided an effective indexing framework is in place. Time spent indexing records and establishing retrieval systems is time well spent. On the other hand, excessive time expended on identifying and retrieving poorly managed electronic records is not a productive use of staff time, and is an annoyance to the public as well. Messages should be stored in a logical filing system that is searchable by multiple data (metadata) elements.

#### **2.8 Responsibility**

Roles and responsibilities of agency personnel should be clearly defined. Employees must understand and carry out their role in managing e-mail and agencies must ensure compliance with agency procedures and New Jersey law. The creator and recipient(s) e-mail messages should make decisions regarding the categorization and retention of messages per established retention schedules. Unauthorized users should not be able to access, modify, destroy or distribute records.

Agency administrators, individual agency employees, records managers, information technology (IT) managers and server administrators share responsibility for managing electronic records. Agencies should clearly identify the roles of each staff member, adopt procedures, train staff, and monitor compliance on a regular basis. The agency should take appropriate measures to preserve data integrity, confidentiality and physical security of e-mail records.

When an employee separates from an agency whether it is due to resignation, retirement, or termination, knowledgeable agency administrator(s) should review the employee's email account to determine which e-mails should be retained and what the appropriate retention periods should be.

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## 3.0 Endnotes

*American Historical Association v. Peterson*. United States District Court for the District of Columbia. ["PROFS Case"], 876 F. Supp. 1300 (D.D.C. 1995)

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For the Department of State

Regena L. Thomas, Secretary of State