

STATE OF MAINE E-MAIL AND VOICE MAIL RETENTION GUIDE 2008



A Maine State Archives Publication
November 1, 2008

TABLE OF CONTENTS

FREQUENTLY ASKED QUESTIONS:

When is something "born digital" actually a record, as far as State of Maine law and policy is concerned?	1
How long do e-mails have to be kept?	1
What is a record copy, and who is responsible for keeping it?	1
How can I organize my e-mails to make retaining and retrieving them easier?	1
What about mailbox storage limits?	1
What about FOAA (the Freedom of Access Act)?	2
Is it acceptable to delete messages after I've saved them somewhere else or printed them for paper filing?	2
What about e-mail "chains" (threads, strings, etc.)?	2
Why not just keep it all (and isn't OIT doing that already, for heaven's sake)?	2
What about voice mail?	2
What about instant messaging?	3
A word about digital information in general	3

CONTACT INFORMATION

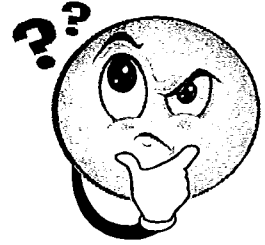
4

DEFINITIONS

5

INDEX

8



Frequently Asked Questions:

When is something "born digital" actually a record, as far as State of Maine law and policy is concerned?

If recorded information is created or received as part of your official duties, it's almost certain to be an official State of Maine record. The format used is irrelevant.

How long do e-mails have to be kept?

Record retention schedules must be approved by the State Archivist and the Archives Advisory Board, per the Archives and Records Management Law in Title 5. E-mails that qualify as official state records should be classified (matched up to the appropriate retention schedule) according to their content so they can be deleted when it's time, or (for about 5 percent of messages) retained permanently. There are ways to make classifying your messages easier than this may sound.

What is a record copy, and who is responsible for keeping it?

E-mail transactions automatically generate at least two copies, one for the sender and one for the recipient. There are often many more copies, because it's so easy to "cc" others and to forward messages. Generally the person who originates the message holds the so-called *record copy*, which is the one that must be kept for the full retention period. Those who receive other copies may (and should) delete them as soon as they've 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.

When the State of Maine is able to install a full-scale "Records Management Application" (*RMA*), that system will retain only one copy of any digital record for the longest retention period that applies. All other "copies" will actually be stubs leading to the record copy.

How can I organize my e-mails to make retaining and retrieving them easier?

Ask your *records officer* (every department or independent agency has at least one) to explain the records retention schedules that apply to your position. It's best to set up folders in your Outlook mailbox that organize e-mail messages according to your retention schedules, with subfolders set up by year and month. This will make it easy to delete messages that have fulfilled their retention periods, without having to look at individual messages again.

What about mailbox storage limits?

Outlook has an "auto-archiving" function that can be set up to move your older messages to a .pst file, automatically. Once that happens, the messages are available to you as easily as ever; but they're stored on a server drive, not in your mailbox. So they no longer count against your quota. Outlook will keep your filing

system when it "auto-archives" your older mail, and you will be able to search for messages that have been "archived" using the same Outlook tool you use within your mailbox.

What about FOAA (the Freedom of Access Act)?

Whether or not it's an official record, anything that's on a State of Maine computer is a *public record* legally speaking unless a privacy statute protects all or part of it from disclosure. Your permission is not necessary when officials responsible for FOAA responses to go through your e-mails and then release them to anyone who asks. The attorney or other official who reviews your messages before releasing them will only withhold what's confidential by statute. So if a FOAA search turns up personal messages, SPAM you and the system both failed to delete, or outdated official e-mails that you could and should have deleted per retention schedules, all of those things will be released. "Public record" status according to the Freedom of Access Act has nothing to do with the definition of an official record for retention purposes.

Is it acceptable to delete messages after I've saved them somewhere else or printed them for paper filing?

From a records retention standpoint only, yes. That's fine. However, 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's 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's 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.

What about e-mail "chains" (threads, strings, etc.)?

Saving the final message only would be fine for retention purposes alone, if no text or header information was deleted during the exchange. However, 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 not just keep it all (and isn't OIT doing that already, for heaven's sake)?

There are several reasons why keeping all e-mails that pass through the server gateway, indefinitely, is not the miraculous solution some people believe it to be (nor is this a regulatory requirement inflicted by the Federal government on all businesses and governmental units – that belief qualifies as an urban legend). First, storage is by no means free, or even cheap enough to justify treating it as if it were free. Second, the more messages stored, the longer and more complicated a task search and retrieval becomes. No tools now available can eliminate this seldom considered truth. Third, records kept beyond their retention date are a liability for the organization retaining them. What's there must be searched for and produced, if requested; and the costs of doing this otherwise needless work can be enormous. In fact, they already are becoming ruinous for some agencies.

What about voice mail?

State of Maine voice mail messages do not need to be treated as official state records now, but this could change as business processes adapt and employees find more extensive and effective ways to use the technology. There was a time, not that long ago, when State of Maine e-mail messages seldom had substantive content; so it's

likely that voice mail, which is generally transitory in nature today, will find substantive uses in the future. That's when we will need to classify, store, and retain it according to its content, just as we are now doing with e-mails and other born digital records.

What about instant messaging?

The private sector is already treating this as a record-creating technology, at least in some industries. Government employees tend to use it as if it cannot possibly create documentation, when that may well be happening without the knowledge of those "chatting" in the line of duty. So far there is no mandate to capture all instant messaging exchanges and make them available under FOIA, subject them to records retention requirements, etc. But that is likely to change within the next few years, so any systems the state purchases for managing, classifying and retaining e-mail should be capable of doing the same with messaging systems.

A word about digital information in general

A conversation, face to face or in a phone call, results in no recording unless someone deliberately arranges for that. Instant messaging exchanges, voice mail messages, and sending/receiving e-mail messages create recorded information automatically, though, as an essential part of the process. Some VoIP systems create an e-mail for each call they process. So far this is not true with the State of Maine's VoIP system.

Contact information

Director, Records Management Services, Nina Osier (Nina.Osier@Maine.gov).. 287-5799

Scheduling & Consulting, Barry Marshall (Barry.Marshall@Maine.gov) 287-5798

Definitions

Accession. To transfer physical and legal custody of documentary materials to an archival institution.

Archives. When used as a noun and capitalized, it means the Maine State Archives. When used as a verb, to denote the disposition of a Record, it means "save for permanent retention by the Maine State Archives."

Archiving. The storage of e-mail on the State system before Disposition action is taken.

Archives Advisory Board. The body, along with the State Archivist, that must approve the destruction of Records. This is done by the approval of Records Disposition Schedules indicating that all records in a Record Series may be destroyed after current business needs have been met.

Assistant Records Officers. Individuals, appointed and supervised by a Records Officer, who are responsible for records management within subdivisions of Maine State departments or agencies, such as bureaus or divisions.

Attachment. A record, object, or document associated with another document or record and filed in the e-mail archive or transmitted as part of the other document or record.

Born Digital. A record that is created in a digital format, and printed (if at all) only to create convenience copies.

Convenience Copies. Additional copies, created for informational purposes only, that may be destroyed when they are no longer useful. Convenience copies should never be kept longer than the record copy, as this can create confusion and resulting legal issues.

Delete. The process of permanently removing, erasing, or obliterating recorded information from a medium, especially a reusable magnetic disk or tape.

Destruction. In records management, the primary type of disposal action. Methods of destroying records include selling or salvaging the record medium and burning, pulping, shredding, macerating, or discarding it with other waste.

Disposition. Those actions taken regarding State records after they are no longer required to conduct current Agency business . These actions include:

Transfer of records to Agency storage facilities or the Maine State Record Centers.

Transfer of records from one Maine State Agency to another.

Transfer of permanent records to the Maine State Archives.

Disposal of temporary records no longer needed to conduct agency business, usually by destruction.

Document. Information set down in any physical form or characteristic. A document may or may not meet the definition of a record.

E-mail. E-mail means Electronic Mail.

Electronic Mail Message. A document created or received via an electronic mail system, including brief notes, formal or substantive narrative documents, and any attachments, such as word processing and other electronic documents, which may be transmitted with the message. Attachments are considered to be part of the message.

Electronic Record. Information recorded in a form that requires a computer or other machine to process it and that satisfies the legal definition of a record according to 5 M.R.S.A. §92-A.

File. An arrangement of records.

When used as a noun, this term is used to denote papers, photographs, photocopies, maps, machine-readable information, or other recorded information, regardless of physical form or characteristic. Files are accumulated

or maintained on shelves, in filing equipment, boxes, or machine-readable media, and they occupy office or storage space.

When used as a verb, this term is used to define the act of assigning and storing records in accordance with the file plan .

Freedom of Access Act. The Freedom of Access Act is the State of Maine statute defining the rights of the public to have access to, and copies of, non-confidential public records held by the State of Maine, its counties, municipalities, and other public entities. See 1 M.R.S.A., Chapter 13.

Legal Discovery (or Discovery). Legal discovery is a formal investigation, governed by court rules, that is conducted before trial. Discovery allows one party to question other parties, and sometimes witnesses. It also allows one party to force the others to produce requested documents or other physical evidence.

Metadata. Data describing stored data: that is, data describing the structure, data elements, interrelationships, and other characteristics of electronic records.

Move. Function that allows the user to relocate records and metadata.

Non-Record. A document that does not meet the definition of a Record and thus is not subject to a Retention Period. Non-records include documents that are personal, not related to State of Maine official business, or of minimal value for documenting government transactions.

Permanent Record. Records appraised by the Maine State Archives as having sufficient historical or other value to warrant continued preservation by Maine State Government beyond the time they are normally needed for a particular Agency's administrative, legal, or fiscal purposes.

Public Record: Per 1 M.R.S.A., Chapter 13, any recorded information in a state or local government's custody that is not restricted by statute.

Record. Information, regardless of medium, detailing business transactions. Records include all books, papers, maps, photographs, machine-readable materials, and other documentary materials, regardless of physical form or characteristics. Records are made or received by an Agency of the Maine State Government under law or in connection with the transaction of public business. Records are preserved or appropriate for preservation by the Maine State Archives as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the value of data in the record .

Record Copy. The copy of a record that must be retained for the term indicated by its related Records Disposition Schedule.

Record Series. A particular set of records, defined by the Maine State Archives, having a legally required retention period and disposition determination of destroy or Archives (permanent retention).

Record Series Identifier. An alphanumeric or numeric identifier, assigned by the Maine State Archives, indicating a unique Record Series.

Records Disposition Schedule (also: Records Retention Schedule, Records Schedule). A listing of Record Series with associated retention periods and final disposition (destroy or Archives).

Records Management. The planning, controlling, directing, organizing, training, promoting, and other managerial activities involving the life cycle of information, including creation, maintenance (use, storage, retrieval), and disposal, regardless of media. Records management procedures are used to achieve adequate and proper documentation of State policies and transactions and effective and economical management of Agency and organizational operations.

Records Officers. Records Officers are appointed by the agency head (commissioner or equivalent) to act on that person's behalf in complying with the requirements of the Archives and Records Management Law.

Scheduled Records. Records whose final disposition has been approved by the Maine State Archives and, for records whose disposition is "destroy," by the Maine Archives Advisory Board.

Storage. Space for non-active records. Can be digital, optical, or cubic feet.

Subject. The principal topic addressed in a record.

Transfer. The act or process of moving records from one location to another, especially from the office space in which the record is used to the Maine State Records Center, from one State Agency to another, or from office or storage space to the Maine State Archives for permanent preservation. Transfer does not relieve the owning organization of legal and management responsibilities for non-permanent records. Accessioning permanent records to the Maine State Archives does transfer legal ownership and responsibility for the records to the Maine State Archives .

Unscheduled Records. Records that do not have a Maine State Archives-approved final disposition and thus may not be destroyed.

Index

A

Accession, 4
Archives, 1, 4, 5, 6
Archives Advisory Board, 5
Archiving, 4
Assistant Records Officers, 4
Attachment, 4

B

Born Digital, 4

C

Convenience Copies, 4

D

Delete, 4
Destruction, 4
Discovery, 5
Disposition, 4, 5
Document, 4

E

Electronic Mail Message, 4
Electronic Record, 4
E-mail, 1, 4

F

File, 4
Freedom of Access Act, 2, 5

L

Legal Discovery, 5

M

Metadata, 5
Move, 5

N

Non-Record, 5

P

Permanent Record, 5
Public Record, 5

R

Record, 1, 4, 5
Record Series, 5
Record Series Identifier, 5
Records Management, 1, 5
Records Officers, 5
Records Retention Schedule, 5
Records Schedule, 5

S

Scheduled Records, 5
Storage, 6
Subject, 6

T

Transfer, 4, 6

U

Unscheduled Records, 6