

Guidelines for Managing Public Records Sent and Received Via Electronic Mail

Scope and Responsibility

This document provides guidelines for the management (creation, maintenance, access and use, and disposition) of e-mail messages in accordance with state and federal legal requirements. Public officials and other custodians of public records (hereafter referred to collectively as “agencies”) shall preserve and protect public records in accordance with these guidelines and to maintain documentation as evidence that these standards are being met. These guidelines apply to state and local government agencies and political subdivisions in the State of Arizona.

Authority

These guidelines are established by the Director, Arizona State Library, Archives and Public Records pursuant to ARS § 41-1345.A.1. It is promulgated by the Arizona State Library, Archives and Public Records, an agency of the Legislature.

This document was initially prepared by a committee acting as advisors to the Director. The committee was composed of records management professionals with representation from State, County, and Municipal Government. Its purpose was to develop guidelines for managing electronic messages that are public records.

Guidelines

1. E-mail messages created or received by a government employee are public records under ARS 41 1350 if it documents the organization, functions, policies, decisions, procedures, operations or other activities of the political organization.
2. E-mail messages sent by an agency employee in their official capacity using another system (for example, a personal, home e-mail system) are public records.
3. An e-mail record includes metadata (minimally the sender, all recipients, date and time sent, subject), the body of the message, any attachments, documentation of all recipients. If an e-mail record is sent to a distribution list, it must be possible to demonstrate who received the message, not just the name of the distribution list.
4. Agencies shall establish policies and procedures for managing e-mail created or received by the agency, including preserving and filing, access and use, and disposition. Such policies shall address the use of e-mail for sending sensitive, proprietary, or confidential information and shall also address any state or federal legal requirements specific to the agency's work.
5. Agencies shall make employees aware that an e-mail may be a record and shall provide employees training in policies and procedures for properly managing e-mail.
6. Agencies must make all e-mail records available to the public upon request under the Arizona Inspection of Public Records Law (ARS 39-121) during the required retention period, unless the content of the message falls under one of the exceptions contained in the law or in any other statute, regulation, Executive Order, or rule of court.
7. E-mail messages that do not meet the criteria of the Arizona statutory definition of a public record may be deleted at any time, unless they become part of some official record as a result of special circumstances.

8. Agencies must retain e-mail records for the period of time specified on a records retention and disposition schedule approved by the Arizona State Library, Archives and Public Records. Retention or disposition of e-mail messages must be related to the information they contain or the purpose they serve. Agencies may not routinely delete all e-mail after an arbitrary amount of time.
9. Agencies must suspend destruction of e-mail records relevant to any reasonably foreseeable legal action, audit, or government investigation until the conclusion of such action, even if their retention period has passed. Agencies should suspend destruction of potentially relevant records as soon as there is reasonable expectation of such action, regardless of whether a legal notice of such action has been served.
10. Agencies must report the destruction of public records without legal, administrative, historical, or other value to Arizona State Library, Archives and Public Records (ARS § 41-1351) on an annual basis.
11. Agencies have the option of printing and filing e-mail records or may use software to facilitate the management and disposition of e-mail records. Agencies may not use backups of e-mail systems for retention of e-mail records.
12. E-mail records that have permanent retention periods must be transferred from the e-mail system and stored in either an electronic recordkeeping system or another proper recordkeeping system.