

## DOCUMENT RETENTION GUIDANCE

The Legal Department is currently in the process of formulating comprehensive document retention policies for the Office of the Governor. In the meantime, here is some guidance regarding those emails, texts, and voice mails which should be kept and those which may be deleted.

If you have any questions or concerns regarding this guidance, please contact the Legal Department and we can discuss.

### Text Messages

- **The bottom line:** You may delete any text message that is a routine communication and is not “required to control, support or to document the operations of government.”
- **Explanation:** Every single text message that you send or receive likely qualifies as a “transitory record.” Transitory records are defined (under 1.21.2.7(H) NMAC) as “messages which serve to convey information of temporary importance in lieu of oral communication.” Such messages are “only required for a limited time to ensure the completion of a routine action or the preparation of a subsequent record.” They are also “**not required** to control, support or document the operations of government.” Practically speaking, this means that any conversation that you have with someone via text message that you could have had through a phone conversation is a transitory record. Transitory records are defined as “non-records” (1.21.2.7(E) NMAC), which are not required to be retained and may be regularly deleted. See 1.13.4.7(F), 1.13.4.11(D), 1.13.4.13(C) NMAC. The key question to ask yourself is whether the text message could have been conveyed via an in-person or phone conversation. If so, then you may delete it.
- **Recommendation regarding deletion of non-public records:** We recommend that you delete all text messages which are “transitory records” every ten days. You may delete them more often if you wish.

### Voicemails

- **The bottom line:** You may delete any voicemail that is a routine communication and is not “required to control, support or to document the operations of government.”
- **Explanation:** Much like text messages, nearly every single voicemail that you receive is a transitory record that may be deleted. Please consult the section on text messages above for an explanation of transitory records. Again, the key question to ask is whether the information conveyed over the voicemail could have been conveyed via an in-person or phone conversation. If so, then you may delete it.

- **Recommendation regarding deletion of non-public records:** We recommend that you delete all voicemails which are “transitory records” every ten days. You may delete them more often if you wish.

### **Emails/Documents**

Email retention presents a more complicated set of questions and the documents that you may delete and those that you should retain are therefore discussed in some detail below.

#### **Emails/documents that may be deleted**

**“Non-records”:** The following types of email messages, email attachments, and other documents on your computer are defined as “non-records” and may be deleted:

- personal correspondence and other materials not created in connection with the transaction of state business;
- extra copies of documents kept solely for convenience of reference;
- promotional material from vendors and similar materials that are publicly available to anyone;
- messages to or from email distribution lists (listserv) not directly related to agency business;
- duplicate messages and attachments;
- preliminary drafts of letters, reports and memoranda (**please note that draft or working versions of documents should be marked as such and any existing versions should be deleted once you have completed the document**);
- messages considered brainstorming or preliminary thought processes, reflecting the exchange of ideas preliminary to the development of a final decision or position;
- sample letters and forms;
- junk mail or spam; and
- media advisories, news and press releases sent for informational purposes (unless the employee drafted or created the documents).

**Transitory emails:** As discussed above, these are all messages and attachments that convey information of temporary importance in lieu of oral communication, are required only for a limited time to ensure the completion of a routine action or the preparation of a subsequent record and are not required to control, support or document the operations of government. However, you should be more careful in applying the “transitory” label to emails than to text messages and voice mails because emails are more frequently required to control, support, or document government operations. Examples of transitory email are announcements, transmittal messages, routine requests for information or publications and replies to those requests (e.g., “the address is...” or “the deadline is...” or “the proper agency to contact is...”), invitations to meetings and other work-related events, internal reminders and out-of-office replies.

#### **Emails that you should not delete**

##### **Public records**

You need to retain any emails that may be classified as public records.

Public records are defined as those “made or received by an agency in pursuance of law or in connection with the transaction of public business and preserved, or appropriate for preservation, by the agency as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government or because of the materials’ informational and historical value.”

The safest approach is to retain any email that documents or memorializes any public business conducted by this Office. However, keep in mind that draft proposals and preliminary discussions of policies, decisions, operations, etc. are not public records and do not need to be retained.

Finally, if the contents of an email message include information classified as public records and information of a personal nature or other non-records or transitory email, the email message must be retained as a public record.

#### **Recommendation regarding email/document deletion**

We recommend that you delete all emails which qualify as non-records or transitory records (as described above) at least once every thirty days. You may delete them more often if you wish. You should mark any draft or working documents as such and delete any working/draft versions when they are no longer useful to you or as soon as you have completed a final version of the document.