

FAQ – Use of E-mail for City Business

ORS 192.005 (5) defines a public record for retention and disposition purposes: “Public record” includes, but is not limited to, a document, book, paper, photograph, file, sound recording or machine readable electronic record, regardless of physical form or characteristics, made, received, filed or recorded in pursuance of law or in connection with the transaction of public business, whether or not confidential or restricted in use.

1. Is every e-mail message considered a public record?

Only messages sent, received, filed or recorded in “pursuance of law or in connection with the transaction of public business, whether or not confidential or restricted in use are considered public records” under ORS 192.005 (5) for retention and disposition purposes. However, purely personal messages, as well as unsolicited messages and advertisements (spam), are not public records under the retention/disposition aspect of the law but may be accessible to the public under the access portion of the law (ORS 192.410(4)).

2. What e-mail messages are exempt from disclosure as public records?

The Oregon Public Records Law is primarily a disclosure law, rather than a confidentiality law. The law generally favors the public’s interest in access to government records, rather than the government’s interest in confidentiality. A public body that denies a records inspection request has the burden of proving that the record is exempt from disclosure. Exemptions do not prohibit disclosure and most exemptions are conditional; disclosure is more often favored. The policy underlying the conditional exemption statutes is that disclosure decisions should be based on balancing those public interests that favor disclosure of governmental records against those public interests that favor governmental confidentiality, with the presumption always being in favor of disclosure. ORS 192.501 contains a list of “conditionally exempted” records.

3. How long do I need to keep my e-mail?

Since e-mail is a method or a tool for communicating, a blanket retention for “E-mail Records” does not exist. Therefore each message needs to be evaluated for content to determine which retention to apply. The State Archives works with state and local government agencies to determine the proper amount of time (i.e. 3 years) a particular record needs to be kept. These “retention schedules” are your legal authority to dispose of public records and can be obtained through your City Recorder, County Clerk, agency records officer or by contacting the State Archives.

4. Are messages sent from the office using a free or private e-mail account public records?

Work done on private e-mail accounts as well as personally purchased computers and hand held devices might be considered a public record for both access and retention/disposition, if the work meets the requirements of a public record defined in ORS 192.

5. Is it acceptable for Commissioners to discuss City business using their personal e-mail systems without concern for open meeting laws?

No. In our quest for efficiency, we use computers to communicate with each other and with our constituents. This kind of communication may put us at risk of violating Oregon's open government laws, specifically the public records and open meeting laws. These laws were adopted to ensure that the government process remains open to the public. Oregon's Public Meetings Law applies to all government entities in Oregon and defines a meeting as the convening of an Oregon government entity "for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter." (ORS 192.610(5)) The requirements for a quorum can be met at a local government meeting (i.e. City Council meeting) or in any electronic forum. All records of conversations or discussions of the quorum, including paper records, e-mail messages, or transcripts of on-line chats, are considered public records for the purposes of access and retention.

6. Every e-mail message that I receive should be opened and read.

False, E-mail messages from unknown or suspicious addresses should not be opened in case they contain viruses. In addition, obvious spam messages should not be opened, because this verifies that your address is active and could subject you to additional spam messages.

7. When can I delete e-mail messages?

- a. Immediately
- b. When I no longer need them to do my job
- c. It depends on the retention period associated with the record

The correct answer is C. Before you can identify the retention period of an e-mail message, you must examine its content. You can then determine what type of record the e-mail actually is and which records series it should be filed with. In other words, each e-mail message must be categorized and classified according to its content, rather than simply lumped in with all other e-mail messages. E-mail should be retained in accordance with written retention policy and rules (see Chapter 2--Writing a Policy). Following these retention rules will protect both employees and the organization.

See Oregon City E-mail Policy for a description of E-mail categories: Transitory; Correspondence; Long-term Value. A main folder can be created for each city project and the 3 category folders assigned to each project.

8. If a public employee sends e-mail message from a personal account on work time, could the e-mail be considered a public record?

Yes, if the message is related to public business.

9. Do Internet Chat Rooms, Instant Messaging, and other forms of electronic communications fall under Oregon's Public Records Law and Public Meetings Law?

They can. Remember, Oregon's Public Records Law does not discriminate based on the medium used to transfer public information. If you do public business via these means, you may be creating public records

10. E-mail should be used for all forms of communication.

False. E-mail cannot replace personal contact. There is a tendency to be less formal or careful when communicating using e-mail and that can sometimes provoke anger. Remember that direct, person-to-person contact is best for handling sensitive, difficult, complex or emotional issues. In addition remember that e-mail is public. Don't say anything in an e-mail message that you would not want to be made public or forwarded to others. Never make any libelous, sexist or racially discriminating comments in an e-mail message and finally, e-mail should not be used to discuss confidential information. Sending an e-mail message is like sending a postcard. If you don't want your message to be displayed on a bulletin board, don't send it.

11. The use of e-mail is considered "informal"; therefore it is acceptable to write in an informal style.

False. Because it is a business communication tool it is important to represent your agency in a professional manner which will help to protect your agency from liability and unnecessary risk.

12. Because it is not on paper, it's okay to say what you really think about a co-worker in an e-mail.

False. It is never okay to use e-mail for libelous, sexist or racially discriminating comments about co-workers or any other individual for that matter. By sending or even just forwarding one libelous, or offensive remark in an e-mail message, you and your agency can face court cases resulting in multi-million dollar penalties.

13. You should clearly identify the subject contained in your e-mail.

True. You should try to use a subject that is meaningful to the recipient as well as yourself. Often this is the only clue the recipient has about the contents when filing and searching for messages.