

DRAFT ELECTRONIC TELECOMMUNICATIONS POLICY

Electronic telecommunications systems (e-mail, text messages, voice mail, fax systems, PDAs, etc.) are a media for transport of communication and are methods to send, receive, or temporarily store correspondence. Communications generated through these systems are not City records retained in the ordinary course of business and subject to records retention policies until the communication has been printed and retained or downloaded into a local file folder and specifically recognized as a City record.

This is the same manner in which paper mail is managed: Employees determine what is a record that needs to be retained pursuant to the City's records retention schedule, what records are preliminary drafts, copies or non-records and then file, or dispose of the record based upon the City's records retention policies and procedures.

To qualify as a public record under CPRA, at a minimum, a writing must relate in some substantive way to the conduct of the public's business.¹

Retention of an e-mail, electronic, or paper record is determined because it is either (1) because a law required it to be kept or (2) because it is necessary or convenient to the discharge of the public officer's duties, and was made or retained for the purpose of preserving its informational content for future reference.²

E-mail is a business tool which will be used in accordance with generally accepted business practices and current law reflected in the California Public Records Act to provide an efficient and effective means of intra-agency and inter-agency communications.

These procedures apply to all employees, advisory body members, council members, contractors, interns, volunteers, and others when they are using City-provided electronic technology.

Users are solely responsible for the management of their mailboxes, just as they are their responsible for sorting through paper mail in their in-boxes from the US Post Office or inter-office memoranda. E-mail is not a records management system and staff are expressly forbidden to use it as such. E-mail in-boxes and out-boxes shall be emptied on a regular basis, after records have been appropriately saved, as outlined below.

- 1. Official Records Are Saved and Stored in Subject / Project File Folders.** E-mail messages which are intended to be retained in the ordinary course of the City's business are recognized as official records that need protection / retention in accordance with the California Public Records Act. Because the e-mail system is not designed for long term storage, e-mail communications which are intended to be retained as an official record (those that relate in a substantive way to the conduct of business, or those ARE made or retained for the purpose of preserving the informational content for future reference) should be printed out and the hard

¹ City of San Jose v. Superior Court (Smith). S218066. Supreme Court of California, 2017

² California Attorney General's Opinion, 64 Ops. Cal. Atty. Gen. 317

copy filed in the appropriate subject / project file, or saved in an electronic subject / project folder.

2. **Retention is Based on the Content of the E-mail.** The City will maintain all e-mail messages determined by staff to be official records (those that relate in a substantive way to the conduct of business, or ARE made or retained for the purpose of preserving the informational content for future reference) for the period of time designated in the City's retention schedule, based upon the **content** of the e-mail,) by printing and saving them in a paper subject / project file, or by saving them electronically in a subject / project folder.
 - i) **CEQA / NEPA** (usually the Planning Department) e-mails only: e-mail submitted to, or transferred from the agency, and all internal agency communications, including staff notes related to a non-exempt CEQA action are required to be retained until Completion of CEQA Process³.
 - (1) This does not include:
 - (a) "every e-mail and preliminary draft."
 - (b) "e-mail equivalent to sticky notes, calendaring faxes, and social hallway conversations — that is, e-mails that do not provide insight into the project or the agency's CEQA compliance with respect to the project — are not within the scope of section 21167.6, subdivision (e) and need not be retained to comply with section 21167.6."
3. **All City Policies Apply / Professional Communications.** All City policies (e.g., harassment policies) apply to electronic media. Make sure all your communications are appropriate and are within City policy. Employees are to use professional, courteous communications, and to abide by all laws and City policies.
4. **Deletion of E-mail.** E-mail communications that DO NOT relate in a substantive way to the conduct of business, or are NOT required to be retained by law nor by the City's Records Retention policies, and were NOT made or retained for the purpose of preserving the informational content for future reference (preliminary drafts, notes, transitory correspondence, interagency or intra-agency memoranda not retained in the ordinary course of business,) will be deleted by employees as soon as they are no longer required.

The City will auto-delete e-mails left in the following mail boxes on a routine basis:

- (1) In Boxes (delete what remains after 2 years)
 - (2) Sent Items (delete what remains after 2 years)
 - (3) Deleted Items (delete what remains after 90 days)
5. **Archiving and "Auto-Archiving"** of e-mails is allowed, but only for e-mails that need to be retained.
 - i) Employees shall NOT archive ALL e-mails they receive or send.
 - ii) Archives should only contain e-mails that need to be retained for the purpose of preserving its informational content for future reference.

³ Golden Door Properties, LLC v. Superior Court of San Diego County (County of San Diego, et al., Real Parties in Interest) (D076605, D076924, D076993) (4th Dist. 2020); PRC 21167,6

- iii) E-mail stored in archives that are responsive to a Public Records Act request must be searched and produced by employees.
6. **Personal Devices / Personal Accounts / Text messages.** The City discourages the use of Personal e-mail accounts, cell phones, or other personal devices to conduct City business. If any of these are used to conduct City business:
- i) If the e-mail from a personal device, personal account, or text contains **content that needs to be preserved**, it should be either:
 - 1. Memorialized via another record (memorandum, letter, or e-mail) that is saved for its retention period (based upon the content of the record); or
 - 2. Copy or forward the e-mail or text to a city e-mail account, where it will be properly saved in compliance with this policy.
 - ii) E-mails, records, and/or text messages stored on personal devices or in personal accounts relating to the conduct of City business may be subject to the Public Records Act.
 - iii) In the event a request for records is received, employees must locate all records responsive to such request, including any records stored on personal accounts or personal devices (unless an exemption applies.)
7. **Forwarding E-mails.** E-mails may only be sent or forwarded to appropriate persons with a need to know the information to conduct City business.
8. **Protection of Confidential E-mail.** Write the word, “Confidential” on protected e-mail. Do not “interfile” e-mail or other privileged correspondence from the City Attorney’s office with public documents (documents that are accessible to the public). These e-mails may be subject to the Attorney-Client and or the Attorney Work Product privileges, and the contents should not be disclosed without first checking with the City Clerk.
9. **Litigation Holds / Other Types of Holds.** E-mails subject to litigation (including a reasonable expectation of litigation,) claims, complaints, audits, records requests and/or investigations suspend normal retention periods (retention resumes after settlement or completion of the triggering hold).
10. **Separation / Transfer of Employees.**
- i) The City’s technology systems must be set up to immediately disable a separated employee’s access to City e-mail and/or other technology. Human Resources and Information Technology shall ensure timely notifications of all employee separations.
 - ii) During separation, Human Resources will ensure employees:
 - (1) Forward any e-mails or text messages relating to City business stored on personal devices or personal accounts to their City e-mail account.
 - (2) Employees are to close and/or remove any access to City e-mail or other technology systems from their personal devices.
 - iii) Information Technology shall ensure that the employee’s (former) Supervisor has access to the former employee’s e-mail account.

- iv) The records stored in the e-mail account (including any archives,) of an employee who separates or transfers shall be the responsibility of that employee's (former) supervisor.
- v) The Supervisor shall review the e-mails of the former employee, ensure the content of their e-mail account are preliminary drafts not retained in the ordinary course of business (the content does NOT relate in a substantive way to the conduct of the public's business,) then authorize their deletion, after appropriate records are retained for their retention period, if applicable.
- vi) E-mails that remain in an account (that are not saved in a subject / project file folder outside the e-mail system) will be routinely deleted after 2 years.