

County of Tulare

County-wide Information Technology Security Program

Administrative Policy 4.0: E-mail Retention Policy

4. E-mail Retention Policy

Effective Date:

Prepared By: Information Technology Advisory Committee (ITAC)

Review Date:

Approved By: Information Technology Advisory Committee (ITAC)

Approval Date:

4.1. Purpose

This purpose of this policy is to define the general retention of County e-mail. This policy defines "record subject to retention" and, in the context of e-mails, what is or is not a "record subject to retention" and the retention and destruction implications of both. This policy is intended to supplement other County policies and guidelines regarding document handling.

4.2. Scope

This policy applies to all departments and offices of the County and other authorized Users. An exception to this policy may be established for department who submits a departmental wide E-mail Retention Policy to Information Technology. This exception will be reviewed by County Counsel, Human Resources and Information Technology for approval.

4.3. Policy

4.3.1. Overview

4.3.1.1. The County e-mail (electronic mail) is a powerful communication tool. Its ease of use and speed for communicating and delivering information are essential in today's business environment. However, the use of e-mail comes with its own significant security risks. For example:

- a. E-mail containing confidential or sensitive information transmitted unencrypted over the Internet is not secure and may be easily intercepted and misused by an unauthorized party.
- b. E-mail is one major means for introducing viruses or malicious programs and unsolicited commercial e-mail (also known as "spam").

- 4.3.1.2. There are other factors with e-mail usage that must also be taken into consideration. For example:
 - a. Even when the sender deletes the e-mail message, the e-mail may still exist with recipient(s) of the e-mail, and so it can still be retrieved.
 - b. E-mail can be forwarded to someone you did not intend (i.e., anyone receiving your mail could forward it to someone else).
- 4.3.1.3. Even though most County e-mails may not constitute "official records," such County e-mails are probably "public records" within the meaning of the Public Records Act, and could eventually have to be disclosed to outside parties or in a court of law.
- 4.3.1.4. In order to eliminate or minimize these security risks and other factors, the County has developed policies on proper use of County e-mail to protect the confidentiality and privacy of sensitive information. The County has also implemented an E-mail Management System that manages the volume of e-mails on the system through planned deletion of e-mails.

4.3.2. E-mail Management System Deletion

- 4.3.2.1. Most e-mail messages are generated simply as a means to communicate with others, and are not necessarily intended to create actual "public records." An e-mail message that is not a record subject to retention would not ordinarily be kept beyond some relatively short-term useful life. For purposes of accommodating this "short-term" useful life while also preventing e-mail system overload, the e-mail management procedure provides for permanent removal of all deleted e-mails.
- 4.3.2.2. Three days after placing email in the trash the trash will be automatically emptied. If there are no holds on the account trash may be emptied manually at any time. . . .
- 4.3.2.3. The backup of e-mail is done nightly. The retention of these backups is 60 days. After 60 days email will not be recoverable from backups.
- 4.3.2.4. The legacy backup tapes will be unavailable as of July 1, 2010.

4.3.3. E-mails and the Definition of "Record subject to retention"

- 4.3.3.1. An e-mail message may or may not constitute a record subject to retention. A "record subject to retention" is "a record made for the purpose of disseminating information to the public, kept for the purpose of memorializing an official public transaction as required by law, or is necessary and convenient to the discharge of a public officer's official duties". Records subject to retention do not typically include preliminary

drafts, notes or memoranda whose retention is not necessary for the discharge of a public officer's official duties.

- 4.3.3.2. If an e-mail message constitutes a record subject to retention, the user must take affirmative steps to save/retain the message. These types of e-mail messages should follow the same retention policies that would apply to the information if printed.
- 4.3.3.3. An example of an e-mail not subject to retention would be e-mails back and forth between the drafters of a Board letter. Assuming these e-mails are not "necessary or convenient to the discharge of a public officer's duties," those e-mails working toward finalization of the Board letter would not be a record subject to retention. It is the Board letter itself that is the record subject to retention.
- 4.3.3.4. If an e-mail message is not a record subject to retention, there is no need to preserve the message pursuant to the state law record retention requirements. Because e-mails are generally sent to others to simply communicate messages, they are not typically considered a record subject to retention. Therefore, most e-mail messages are not required to be saved and/or retained.
- 4.3.3.5. An example of record subject to retention e-mail would be an e-mail to another agency or outside party where the e-mail memorializes an official public transaction as required by law or is necessary and convenient to the discharge of a County officer's official duties.
- 4.3.3.6. The following helpful tips provide guidance on how to manage e-mail messages:
 - a. An e-mail that is a record subject to retention is always a "public record" within the meaning of the Public Records Act. It must be preserved pursuant to records retention requirements and schedules; and, absent applicable exemptions, must be disclosed pursuant to a Public Records Act request.
 - b. If an e-mail message is not a record subject to retention as defined above, but nevertheless relates to the public's business (as opposed to a purely personal e-mail unrelated to the public's business), it is still a "public record" for purposes of the Public Records Act so long as the record exists. Thus, if a non-official record e-mail has not been deleted by the time the user receives a Public Records Act request, and the request would include the e-mail, then e-mail must be preserved in the absence of applicable statutory exemptions to disclosure. Whether there is a statutory exemption excusing the user from disclosing the particular e-mail message must be determined on a case by case basis. Even if it is determined that there is an applicable exemption to disclosure and the e-mail is withheld from disclosure, the e-mail must be preserved until the threat of a legal challenge to the nondisclosure has passed. County Counsel should be consulted in this regard.

- c. If the user, for some reason, has taken affirmative steps to save a record not subject to retention e-mail e.g., the user may need to refer to it beyond the 60-day period, and thereafter receives a Public Records Act request for records that would include that e-mail, then the user must be sure to continue to preserve the e-mail message until the Public Records Act request is completely resolved.
- d. If the user knows there is no need to retain a record not subject to retention e-mail and thus intends to manually delete the e-mail, the user should be aware that simply deleting the e-mail from the user's own mailbox and folders will not delete the e-mail from the mailboxes of others who may have sent or received the e-mail. Thus, unless the e-mail is also deleted from those other users' mailboxes, the e-mail will remain in existence and will be subject to Public Records Act requests as described above.

4.3.4. Preservation of Evidence

- 4.3.4.1. Courts have held and both federal and state court rules provide that there is a duty to preserve electronic records, including e-mails, that may be needed as evidence in future litigation. This duty arises when the user knows or has reason to know that the records may be evidence relevant to probable future litigation.
- 4.3.4.2. From time to time a litigation hold is received. The rules provide that when this happens evidence which would otherwise not have to be retained must be retained and that there be an immediate suspension of any deletion, overwriting, or any other possible destruction of relevant documents and data, including a current document destruction policy and/or automatic deletion of electronic data and computer-generated documents. Any and all e-mail related to the subject matter of the litigation hold must be preserved. When this happens Risk or County Counsel become aware of the need for a litigation hold, County Counsel will notify the department head of Information Technology who will take the appropriate steps to begin retaining all email in the named mailboxes. The users named in the litigation hold will be unable to delete any email until the litigation hold is lifted.

4.3.5. Possible Consequences of Identified Misuse

- 4.3.5.1. Observance of these policies and departmental procedures is essential to the delivery of County services and programs, and to the integrity, security, and confidentiality of County data/information. Violation of these or other policies related to County data/information and/or information systems may result in any or all of the following:
 - a. Reporting of the incident(s) to management.

- b. Possible revocation of access privileges.
- c. Possible disciplinary action, up to and including termination.

4.4. Revision History

Version	Date	Chapter/Section	Details
2.0	6-21-2010	4.3.2.2	Deleted the automatic deletion of email in mailboxes after 60 days. Added the automatic emptying of trash after 3 days.
		4.3.3.6 b	Removed reference to automatic deletion after 60 days.