

**Board of County Commissioners
Leon County, Florida**

Policy No. 96-4

Title: Public Records Law and E-Mail

Date Adopted: February 13, 1996

Effective Date: February 14, 1996

Reference: Ch 119, F.S.; County Policy No. 91-1, "Photocopying Fees"

Policy Superseded: N/A

It shall be the policy of the Board of County Commissioners that all County employees shall comply with Florida's Public Records Law and State Retention Schedules for Public Records, including electronic mail (e-mail).

Chapter 119, Florida Statutes, defines Florida's Public Records Law as follows:

All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software or other material, *regardless of physical form, or characteristics, or means of transmission*, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

E-mail created or received by Leon County employees in connection with official business, which perpetuates, communicates or formalizes knowledge, is subject to the Public Records law and, if not exempt, is open for inspection.

The "Rules and Procedures for Implementing Public Records Law and E-Mail" are attached to this policy and may be amended from time to time as required by law or as directed by the Board of County Commissioners.

A. How the Law Affects County Employees

If an E-mail falls within the definition of a public record, it may not be deleted except as defined in Chapter 119, Florida Statutes. Unless it falls within one of the specific exemptions described in the Public Records Statute, the County must produce that E-mail message to any person upon request. A person need not have a "legitimate" need for public records to be entitled to inspect them. Employees are not required, however, to compile or create records when they do not currently exist.

B. Exemptions to the Public Records Law

1. State and Federal law exempts certain categories of documents from disclosure under the public record's law. The exemptions which apply most often to Leon County records include:
 - a. Certain documents, involving personnel or personnel matters, which are confidential under Florida law;
 - b. Attorney work-product.

C. Responding to a Public Records Request

1. Public records requests may be made in writing or orally to the Public Information Officer. All public records requests should be referred to the appropriate program manager. The program manager or administrative supervisor is responsible for appointing one or more persons to gather the requested documents and then either arranging a time for inspection of the documents or making copies available to the requestor. E-mail that does not fall within the definition of a public record should not be produced. E-mail which is a public record but contains exempt information should be produced but the exempt information must first be deleted or redacted. If in doubt as to whether an e-mail message is a public record or contains exempt information, the group director of division director should contact the County Attorney's Office as necessary.
2. If the person making the records request wishes to obtain copies of the documents, the Public Records law allows Leon County to charge 15 cents per one-sided copy. In addition, if copying the public records requires extensive use of information technology resources or clerical and/or supervisory assistance, the County may assess a reasonable service charge based on Leon County's actual incurred costs. An estimate of the charges should be given to the requestor and approval obtained prior to the request. All charges must be collected before producing the documents; no invoices may be issued for this services.

D. Retention Periods for Public Records

1. Retention periods for public records, including e-mail, can be found in the State's records retention schedule, as defined in Chapter 119, Florida Statutes. Each year, administrative offices are required to file records destruction requests through the Director of Facilities Management for any obsolete public records that they wish to destroy. E-mail files should be a part of these destruction requirements.

2. Retention of most e-mail records falls within the following two categories:
 - a. **Retain Until Administrative Purpose is Served:**
 - (1.) Routine announcements and information, including notices of seminars or workshops, query regarding processes of ideas and general information regarding programs;
 - (2.) Reference files that are general-information files used in daily functions of the administrative area; and
 - (3.) Meeting notices, minutes, statistical records, reading files and recipient's inter-departmental memoranda.
 - b. **Retain for Three Fiscal Years:**

General correspondence, sender's inter-department memoranda, and most fiscal and budget records.
3. Retention schedules are based on a record's informational content, not its format. E-mail that falls into the category of "retain until administrative purpose is served" may be deleted on a daily basis once the records destruction requests have been submitted in advance through the Director of Facilities Management. E-mail that has a longer retention period - such as correspondence or sender's memoranda - must be kept through the three-year retention period.

E. Maintaining E-Mail Documents:

- A. Florida's Public Records law offers challenges to maintaining e-mail, mainly because e-mail documents are both informal and efficient. Most e-mail users prefer to reduce or eliminate the handling, filing and archiving tasks often associated with hard copy. Because of the differences in which e-mail and hard copy are used, many e-mail users do not have systems in place for periodically reviewing, storing or deleting e-mail.
- B. Public record e-mail can be deleted after it has been retained for the correct time period as determined by the retention schedules. A public record that is stored and accessible after this time is still a public record and must be produced upon request. A systematic deletion program not only eliminates obsolete documents from the files, but also saves resources by definitely and unnecessarily storing information beyond appropriate time lines.
- C. While methods for reviewing, storing or deleting e-mail vary, employees may comply with the retention requirements of the Public Records law by doing one of the following:
 - a. Print the e-mail and store the hard copy in the relevant subject matter file as with any other hard-copy communication. Printing the e-mail permits keeping all information on a particular subject matter in one central location, enhancing its historical and archival value. The employee must also determine if incoming e-mail must be printed before being deleted from your system.

b. Electronically store your public record e-mail according to the conventions of your e-mail system and retain it electronically pursuant to the County's retention schedules.

D. The technical details and methods of storing, retrieving and printing e-mail depend on the e-mail system. Consult with the Management Information Services Division, or your program manager, for details.

Some automatic periodic backup of e-mail by Leon County MIS or by individual program managers is done under the County's disaster recovery plan. It is not designed to comply with the Public Records law. Thus, employees must set up their own retention procedures as outlined above to ensure Compliance with this policy.

E. Questions

Q. What do I do when a reporter calls asking for my e-mail?

A. Notify your program manager who will coordinate with the Public Information Officer the gathering of the public record e-mail documents that need to be given to the reporter.

Q. Does a requestor need to show a "legitimate interest" in my public records e-mail before being allowed to see it?

A. No. Any person has the right to request to see a public record for any reason.

Q. Does a requestor have the right to conduct a "fishing expedition" and make "over broad" requests?

A. Not always. The law does not necessarily require the requestor to specify a particular document. However, you may want to call the Public Information Office when responding to "over broad" requests to seek advice on how to have the request narrowed.

Q. May I refuse to respond at all to a public record request because I just don't have the time right then to gather the documents?

A. No. However, if responding to a public records request requires a substantial amount of time, the law allows you a "reasonable response time," subject to workload, and to charge the requestor for the cost of that time.

Q. How do I determine what information is exempt from the Public Records law?

A. Contact the Public Information Officer if you have any questions. If additional advice is needed, the Public Information Officer will contact the County Attorney's Office.

Q. Am I required to produce personal, non-business-related e-mail upon request?

A. No. Only e-mail made or received pursuant to law or in connection with the transaction of official County business must be produced. Appropriate use of County equipment for personal reasons is addressed in other County policies.

Q. May I require requestors to put public records requests in writing?

A. No. Oral public records requests are as valid as written requests. However, you may ask for the request to be placed in writing so there are no misunderstandings about what is sought.

Q. Must I produce my public record e-mail in a particular format?

A. No. You are only required to produce existing records. The law does not require you to create new records.

Q. Does the Public Records law require me to answer questions regarding the content of public record e-mail?

A. No. You are only required to produce the documents. You do not have to answer any questions, although t times it may be helpful to do so.

Q. If the person who sent me a public record e-mail asked me to keep it confidential, can I refuse to produce it?

A. Yes, if it is exempt. Otherwise, if a document is a non-exempt public record, it must be produced upon request, even if the sender has asked that it be kept confidential.

Q. What happens if I refuse to turn over a public record upon request?

A. A person who knowingly violates the Public Records law is subject to disciplinary action.

Q. If I keep County public records at my house instead of my office, must I still produce them upon request?

A. Yes. All non-exempt public records must be produced regardless of where they are physically located if they are in your custody and control.

Q. What if the requested document contains exempt and public material? Can I withhold the entire document?

A. Not usually. When possible, the law requires you to delete the portion of the document that is exempt and provide the document to the requestor. If this is not possible, the Public Information Officer can help you comply with the law.