

STATE OF NEVADA

Policy on Defining Information Transmitted via E-mail as a Public Record

Introduction

Electronic mail or "E-mail" is a tool used to transit information between two or more parties. Information sent or received via e-mail is in many ways identical to regular postal mail that must be sorted and managed.

The State Records Management Program studied the e-mail policies of 26 other states. The findings demonstrate that many states continue to struggle with how to classify information received via e-mail as public record or non-record categories. This document provides guidelines on how to classify information contained within e-mail transmissions and defines a State of Nevada Policy for dealing with information contained within e-mail when it is classified as public record.

It is important to note that the information contained within an e-mail should not automatically be defined as a public record. While the content of some e-mail transmissions may constitute public records, others are simply personal mail, duplicates, transitory items, and other types of non-record transmittals that can be acted upon and quickly deleted. It is important to understand the distinction between public records (i.e., official state records)¹ and non-records² and the requirements of each. It is also important to understand that defining an e-mail as a public record is independent of the question of whether the record is confidential³.

This policy shall apply to all State of Nevada employees, as well as all individuals contracted to perform work for the State. This policy is to be used in conjunction with the Department of Information Technology (DoIT) Standard 5.6 Internet/Electronic Mail.

Types of E-Mail Transmittals & Appropriate Disposition

The State Records Program classifies information contained within e-mail transmissions into four basic categories:

1. Personal Messages
2. Transitory Messages
3. Duplicate Records
4. Public Records

Every public employee who uses e-mail to transmit or receive information in the course of conducting State business must be trained and knowledgeable on his/her responsibilities for managing public records. The difficulty in this responsibility lies in determining which e-mail message contains information that constitutes a public record. This issue is further complicated as the classification of a message as a public record may differ between the sender and the receiver(s), since it depends on the affect the information has on the business operations of the party who may subsequently receive the information.

All information sent via e-mail should be prepared under the assumption that:

1. Information sent via e-mail is not confidential.
2. The targeted recipient may not be the final recipient.
3. The information sent may be determined to be and maintained as a public record by another party.

As such, public employees should prepare all e-mail transmittals to be a professional representation of the agency for which they work. This includes, but is not limited to, the appropriate level of formality for the targeted and possible recipient(s), correct spelling, grammar, and punctuation, and use of appropriate labels, titles, salutations, and closings.

Confidential or sensitive (personal identifying) information should only be sent via email when it is protected by encryption. Without such security, confidential or sensitive information should never be transmitted via email.

Additional standards under the authority of the Department of Information Technology (DoIT) regarding use of the State e-mail system may be found at:

<http://psp.state.nv.us/>

State employees should be trained in classifying information contained within e-mails into one of the following categories. Once properly classified, the information contained within the e-mail may be processed per the recommended disposition.

Personal Messages: E-mail has evolved into a substitution for the telephone and is a cost-effective means of communication that is often used by State employees for communication that has no bearing or relevance to conducting State business (i.e. “let’s do lunch” or “can I catch a ride home” types of messages). State employees should be aware that there is no guarantee of privacy or confidentiality for personal messages transmitted via the e-mail system as all messages are owned by the State and their contents may be monitored, viewed, printed, and further distributed at any time by other State employees.

NRS 281.481(7) provides State agency discretion to allow limited use of time, governmental property, equipment or other facility for personal purposes if: 1) the use is authorized by the appointing authority; 2) the use does not interfere with the performance of the employee’s public duties; 3) the cost or value related to the use is nominal; and 4) the use does not create the appearance of impropriety. This is not to suggest that an appointing authority may not establish policies preventing the use of e-mail for personal purposes. However, the appointing authority should consider the realistic ability to police any such policy as well as ensuring consistency in any action to be taken for violations of any such policy (i.e., action cannot be taken against a single employee caught sending or receiving a personal e-mail if other staff are also known to be sending and/or receiving personal e-mails).

Disposition: Personal messages are not public records and may be deleted immediately after receipt.

Transitory Messages: These types of messages do not set policy, establish guidelines or procedures, document agency business, certify a transaction, or become a receipt. The informal tone of transitory messages might be compared to communication during a telephone conversation

or conversation in an office hallway. These messages tend to convey information of temporary importance in lieu of oral communication and have a very limited administrative value. Many of these may have an official context, but may not be part of a business transaction. Examples of messages that are not public records include general departmental correspondence regarding routine business activities (transmittal messages and responses to routine questions); minor non-policy announcements; interoffice messages regarding employee activities (holiday parties, etc.); phone calls; published reference materials; invitations and responses to work-related events (meetings, etc.); listserv messages other than those posted in an official capacity (unless the messages are relied upon in the development of management, financial, operating procedures, or policy matters).

Disposition: Transitory messages are considered non-records and may be deleted when no longer administrative useful, i.e., when the message has no value to the agency.

Duplicate Records: E-mail as a medium promotes expedited communication to multiple users with great ease. Consequently, e-mail systems frequently contain duplicates of a record, such as copies or extracts of documents distributed for convenience or reference. "All Agency Memorandums" are often forwarded via e-mail within the State system in order to speed up distribution of certain critical and/or time-sensitive information. Information transmitted in this manner is simply a duplicate or non-record. The paper document received in the State mail system is the actual public record.

Disposition: Duplicate records are not public records and may be deleted immediately.

Public Records: Public records are information and other documents created or assimilated in the course of conducting public business that document the activities and business of public employees. An official State record includes "any materials which are made or received by a State agency and preserved by that agency or its successor as evidence of the organization, operation, policy or any other activity of that agency or because of the information contained in the material" (NRS 239.080 (4)(d)). If there is any doubt, a State employee should assume the information is a public record. Examples of information that could be transmitted in an e-mail that may constitute a public record include:

- Policies and directives
- Correspondence or memoranda related to official business (excluding duplicates)
- Work schedules and assignments
- Agendas and minutes of meetings
- Drafts of documents circulated for comment or approval
- Any document that initiates, authorizes, or completes a business transaction
- Final reports or recommendations

Once an e-mail transmittal is determined to be a public record, public employees of the State of Nevada have an obligation to apply the appropriate records retention schedule. For retention purposes, the records should be maintained in an easily accessible location, which may include:

1. Printing out a copy and filing a hard-copy in the relevant subject matter file, **or**
2. Moving the file out of the e-mail system and storing a copy of the e-mail in an electronic document management system.

Disposition: Public records should be retained for the period appropriate to their content and handled in accordance with approved records disposition authorizations (RDAs) (NRS 239.080).

Just as with any information maintained in an electronic format, agencies considering maintaining e-mail transmittals determined to be public records in an electronic format face unique challenges that must be addressed as agencies develop policies to meet the records retention requirements. Agencies contemplating maintenance of public records in an electronic format (as with any electronic record) must establish policies and procedures, taking the following minimum requirements into consideration:

- Establishment of a repository for holding and managing electronic files
- Policies which ensure that metadata information contained within the e-mail transmission is included in the public record (headers, forward headers, and transmission data)
- Procedures which address the ability to efficiently locate specific files when necessary
- Policies and procedures that ensure records remain fully accessible throughout the entire records retention period, including hardware, software, and data migration plans for electronic records that must be retained for six (6) years or more

Note: When there is doubt about the retrievability of an electronic record over its life span, the record should be printed and maintained in a hard copy format.

Permanent public records are archival records with legal, administrative or historical value that must be retained indefinitely. These records must be preserved in a medium that can be used by future generations. ~~Since no medium used to store electronic records is considered permanent, public records for permanent record storage cannot be maintained in an electronic medium. Records appraised as permanent must be converted to paper, microfilm, or another acceptable medium for permanent records retention (NAC 239.760(3)(5)). If or when an electronic medium is judged permanent, this policy will be re-evaluated and appropriate changes made.~~ [Note: Jeff Kintop, State Archives Manager, will evaluate and change this section]

[this draft found at: records mgnt (J:) E-mail Policy II draft]

¹ NRS 239.080(4) - Papers, unpublished books, maps and photographs; information stored on magnetic tape or computer, laser or optical disc; materials which are capable of being read by a machine, including microforms and audio and visual materials; and materials which are made or received by a state agency and preserved by that agency or its successor as evidence of the organization, operation, policy or any other activity of that agency or because of the information contained in the material.

² NAC 239.705 - ...published books and pamphlets, books and pamphlets printed by a governmental printer, worksheets used to collect or compile data after it has been included in a record, answer pads for a telephone or other informal notes, ...unused forms except ballots, brochures, newsletters, magazines, newspapers ..., scrapbooks, and property left or deposited with an office or department which would otherwise be defined as a record except that the ownership of that property does not reside with a local governmental entity.

³ NRS 239.010 (1) - All public books and public records of a governmental entity, the contents of which are not otherwise declared by law to be confidential, must be open at all times during office hours to inspection by any person, and may be fully copied or an abstract or memorandum may be prepared from those public books and public records...