

# TOWN OF ELLINGTON

## Policies & Procedures

### Electronic Messages Record Retention Policy

#### Introduction

Computers, internet access, cell phones and electronic mail are effective and important technological resources in today's municipal environment. The Town of Ellington has installed computers, internet access and e-mail system to enhance our business operations. In addition, some Town employees and elected officials have been issued cell phones.

Electronic messages include emails, facsimiles, instant messages, text messaging, voice mail and web-based messaging services. Electronic messages may be transmitted by a variety of mediums, including computers and mobile computing devices (i.e. laptops, netbooks, PDAs, tablets and cellular phones with internet browsing capabilities, such as iPhones®). In addition to the body of the message, electronic messaging systems also contain metadata, such as transactional information (i.e., date and time sent, sender/receiver) and may contain attached files (i.e., PDF or JPEG).

#### Record Retention & Freedom of Information

Public records retention and Freedom of Information Act requirements must be satisfied in the use of electronic communications systems. Connecticut General Statutes §1-200 and the Freedom of Information Act (FOIA) defines a **public record** as "recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under Connecticut General Statutes §1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photo-stated, photographed or *recorded by any method.*" While not specifying electronic messages, this definition has been broadly construed by the Freedom of Information Commission to include such communications.

The Connecticut Uniform Electronic Transaction Act (CUETA) defines an **electronic record** as "a record created, generated, sent, communicated, received or stored by electronic means, including, but not limited to, facsimiles, electronic mail, telexes and Internet messaging" (CGS §1-267).

Based on the above-mentioned statutes, electronic messages sent or received in the conduct of public business are public records. Town Employees and Elected Officials should not use private e-mail accounts to conduct public business. These messages are subject to disclosure under FOIA, a court action, or an audit and should be treated in the same manner as any other recorded information.

Electronic messages do not comprise a unique records series. Retention is based on the content of the message, not the media type. Most electronic messages have limited value and can be deleted immediately upon receipt. However, electronic messages that document agency functions and provide evidence of agency business must be retained according to the

equivalent records series. Electronic messages are similar to traditional postal mail – the message must be evaluated for action and subsequent retention.

Steps to determine the retention period of electronic messages:

- Step 1:** Determine whether the message is a public record or a non-record.
- Step 2:** If the message is a non-record, destroy at will (i.e., spam and unsolicited advertisements).
- Step 3:** If the message is a record, determine to which record series the message belongs:
  - If the message is Transitory Correspondence (i.e., transmittal faxes/memos and out of office replies), delete at will, without obtaining approval of the Public Records Administrator.
  - If the message is Routine Correspondence, retain for two (2) years and destroy after receipt of signed Record Disposal Authorization (Form RC-075).
  - If the message is All Other Correspondence (i.e., may have historical value), retain for the equivalent records series. For example, if an email is related to a complaint, retain two years after resolution and destroy after receipt of signed Record Disposal Authorization (Form RC-075).
- Step 4:** Maintain the messages for the required period under the equivalent records series. Once the retention period has been satisfied, submit a Records Disposal Authorization (Form RC-075).

The following items provide detailed information about characteristics unique to electronic messages and guidelines on how to manage electronic messages:

- **Record Copy:** The record copy is the original or official copy of a record
- **Record Custodian:** The record custodian is responsible for retaining the record copy. In most cases, the sender is the person responsible for retaining the message sent within an organization. If the sender is from outside an organization (i.e., the public), the recipient is the record custodian.
- **Copies/Duplicates:** Many electronic messages are disseminated to groups of personnel, which results in the proliferation of multiple copies of the same communication (a key indicator is the use of 'cc' or 'bc' in e-mail). Because the sender of the message is usually responsible for the record copy, the recipient(s) may destroy their copy at will.
- **Threads:** Similar to conversations, a thread is a string of electronic messages. After a thread is completed, the record custodian may retain only the last message (as long as it includes the prior messages) as the official record copy.
- **Metadata:** Metadata (data about data) is used to ensure authenticity, reliability, and integrity of electronic records. An example of metadata is the transmission information describing an e-mail (date and time the message was sent, sender/recipient). Please note, if electronic messages are printed to hard copy for permanent retention, the associate metadata should be included with the hard copy.
- **Attachments:** If the electronic message is a record and contains attachments, the attachments should be retained as part of the record. In these cases, the retention period should be the retention requirements of the message, or the retention requirements of the attachment, whichever is longer.
- **Deletion vs. Destruction:** In most computer operating systems, the deletion of a record does not physically erase the record. Likewise, simply emptying the trash or recycle folder does not permanently remove the record. In addition, other copies of the message may

reside on backup storage tapes after the record should have been destroyed (the media upon which the record resides should be destroyed or overwritten).

- **Backups:** Backup systems or tapes are not acceptable for the retention of electronic messages. Backups should only be used to protect vital records in the event of a disaster or to retrieve a record due to loss of data.
- **Disclosure of electronic messages:** Town employees and public officials should keep in mind that electronic messages sent as part of their workdays are not “private” but are discoverable communications and may be subject to Freedom of Information Act requests and are admissible as evidence. Since messages may be retained at different locations or levels of the system, users must remember that their messages can be retrieved during formal discovery processes. Therefore, discretion is an important consideration when using electronic messages to send, record and/or retain communications.

A record may not be destroyed if any litigation, claim, audit, FOIA request, administrative review or other action involving the record is initiated before the record has been disposed of (even if its retention period has expired and approval has been granted). The record must be retained until the completion of the action and the resolution of all issues that arise from the action.

### Voice Mail

Pursuant to CGS §1-213, Voice Mail is “all information transmitted by voice for the sole purpose of its electronic receipt, storage and playback by a public agency.” Voice Mail may consist of information recorded to voice mail systems, answering machines or other Web based systems (i.e., Google Voice™). Although voice mail messages are recorded in audible formats, they can be recorded and delivered as email attachments or transcribed into text formats.

However, pursuant to CGS §1-213(b), “nothing in the Freedom of Information Act shall be deemed in any manner to: ... (3) REQUIRE ANY PUBLIC AGENCY TO TRANSCRIBE THE CONTENT OF ANY VOICE MAIL MESSAGE AND RETAIN SUCH RECORDS FOR ANY PERIOD OF TIME.” As such, voice mail is transitory in nature, and may be deleted at will.

There are times, however, where voice mail may require a longer retention period. This would occur in cases where messages may be potentially used as evidence in trials (i.e., bomb threat or other illegal activity) and pursuant to certain business functions. Voice mail is also subject to the discovery process in litigation.

Note: The **use** of the Town of Ellington internet and the electronic message systems is addressed in the *Personnel Rules & Regulations, Section 10-7. Workplace Privacy, Monitoring and Use of Electronic Communications Systems*.

<b>BOS Approved:</b>	09/20/10
<b>BOS Revised:</b>	06/16/14

**ACKNOWLEDGEMENT:**

I received and reviewed the Electronic Messages Record Retention Policy

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Retain policy for your records; return this portion only to the First Selectman's Office