



August 24, 2024

Records Management and E-Mail

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Records Management and E-Mail

Reference Number: CTAS-1207

Many county officials have raised questions about how to handle e-mail or how long e-mail should be kept. You will not find an entry in the retention schedules specifically for e-mail. E-mail is more of a format for records than a type of record itself. An inter-office memorandum may be typed and distributed on paper or it may be sent to all staff via e-mail. Either way, the retention period or procedures for managing the record should be determined based on the content of the memo, not its method of delivery. Much of the volume of e-mail that passes through our computers does not reach the level of an official "record." Recall the general definition of "public record."

Public record ... means all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.^[1]

This general definition is not as specific as the definition of county public records,^[2] but it highlights the fact that the record may take many different forms. The definition also makes clear that a public record is something created pursuant to law or in connection with the transaction of official business. E-mails unrelated to county business are generally not considered to be public records. Additionally, most email communications that do relate to county business are in the nature of working papers - something which serves as input for final reporting documents and becomes obsolete immediately after use. We recommend the county public records commission establish a policy which authorizes the destruction of working papers as freely and easily as possible so they do not become overly burdensome. But suppose you send someone a notice of a promotion solely via e-mail. According to the listing in the retention schedule for Promotion Records of Notices (see item 16-031), this record should be kept for one year from the date the record is made or the action is taken, whichever is later. A copy of this e-mail should therefore be retained at least that long.

Network administrators or information technology specialists will tell you that it is highly complex or expensive to manage electronic correspondence on an individual e-mail basis. Some e-mail programs have archiving features or a means of designating for preservation. But most likely, your office has a policy of backing up all the data in an e-mail server for a limited period of time. Eventually, the back up tapes or disks will be discarded or over-written. Many e-mails will be deleted by the person receiving them and possibly never make it to a back-up tape. Of course, every copy of a public record does not have to be kept. If you have electronic correspondence that would be considered a public record based on its content, it is recommended that you print that out and preserve it as a paper record or that you institute some means of designating certain e-mail files for preservation. You may want to particularly keep this in mind for e-mails which consist of correspondence with members of the public regarding the official business of your office. The retention schedule entry for Correspondence Files (see entry 15-010) recommends keeping correspondence with citizens or government officials regarding policy and procedures or program administration for five years. This standard should apply whether the correspondence is by traditional "snail mail" or e-mail.

E-Mail and Privacy

If your office uses e-mail and the Internet, hopefully you have some policy in place stating whether or not personal use of e-mail or the Internet is allowed and whether or not all e-mail correspondence remains the property of the county. Such policies at least put employees on notice as to whether or not they have any expectation of privacy in their e-mails. If it has not happened yet in your county, you may expect that at some point in the future you will receive a public records request from the media or from citizens to get a copy of e-mail correspondence of the office. At the time this was written there were no reported appellate cases to date in Tennessee regarding e-mail as a public record, however there have been cases considering this issue in other jurisdictions. In the Florida case of *Times Publishing Company v. City of Clearwater*^[3] a newspaper reporter demanded copies of all e-mail of two city employees. The city allowed the employees to segregate their e-mail into two classes: public and personal. The city turned over the public e-mails, but refused to release the personal e-mails pending a determination by the court. Ultimately, the court ruled that personal e-mails which were not created or received in connection with the official business of the city did not qualify as "public records" subject to disclosure under Florida law and that it was proper for the city to remove them from the e-mails which were released.^[4] Whether or not a Tennessee court would reach the same conclusion under our public records statutes is unknown at this time. What is relatively clear is that the e-mails which related to the business of the city were considered public records and were subject to disclosure. Any county offices using e-mail correspondence to conduct

the business of the office should keep this in mind.

[1] T.C.A. § 10-7-301.

[2] See T.C.A. § 10-7-403.

[3] *Times Publishing Company v. City of Clearwater*, 830 So.2d 844 (District Court of Appeal of Florida, Second District, 2002).

[4] *Times Publishing Company*, at 847.

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