

Information Management Advice 4 Managing Electronic Communications as Records

Introduction

Whether an electronic communication is a record does not depend on its format or means of communication, rather it depends upon whether it was sent or received in the course of official business.

Electronic messages created or received by State and local government organisations are State records and must be managed in accordance with the provisions of the Archives Act 1983. Like records in other formats, electronic messages are subject to legislation such as the Freedom of Information Act 1991 and to other legal processes such as discovery.

Electronic messaging occurs in an increasing variety of communication and collaborative applications including email, SMS messaging, multi-media messaging services, voicemail, video conferencing, blogs and other collaborative workspaces.

2. Definitions

agency - is used in this advice to refer to all agencies, authorities, statutory offices, councils and other organisations that are subject to, and defined in, the *Archives Act 1983*.

disposal of records - involves either the destruction of records (including deletion); their transfer to the Archives Office for retention as part of the State archives; their transfer to another custodian; or some other process approved by the State Archivist which removes them from the custody of their creator or current keeper.

electronic communication systems – are networked messaging technologies, and collaboration tools (frequently referred to as ‘Web 2.0’ applications), on which information can be created, delivered, received, and retained. Currently these technologies include, but are not limited to, email, Instant Messaging (IM), mobile telephone-based Short Message Service (SMS), voicemail, Multimedia Message Service (MMS), Video Instant Messaging, Wikis, Blogs and other collaborative workspaces, including internet based social networking facilities.

record - a document or an object that is, or has been, made or kept by reason of any information or matter that it contains or can be obtained from it or by reason of its connection with any event, person, circumstance, or thing. A document includes any printed or written material and an object includes a sound recording, coded storage device, magnetic tape or disc, microfilm, photograph, film, map, plan, or model or painting or other pictorial or graphic work.

recordkeeping system - a system which captures, manages, and provides access to records through time. Recordkeeping systems can be either in an electronic or paper form.

relevant authority - means the Secretary or head of a Government department or agency, or the person directly responsible to the Minister concerned for the administration and direction of that department, service, or body. It means, in relation to a State authority or a local authority that is incorporated, that authority; or in relation to a State authority or a local authority that is unincorporated, the secretary, clerk, or other principal executive officer of that authority.

short-term value records - duplicate, ephemeral and other records that are of a trivial or transitory nature and do not support or contribute to the business functions of the agency.

State records - records of State government agencies/departments, State authorities, or local authorities. These public bodies are defined in Section 3 of the *Archives Act 1983*.

3. Categories of electronic communications

Electronic messages created or received by State and local government authorities can generally be divided into three different categories:

- **business** – electronic communications which relate to the business of the agency and which must be retained as records
- **short-term value** – electronic communications which are used to facilitate agency business but are of a trivial nature or of such short-term value that they do not support or contribute to the business functions of the Agency
- **personal** – electronic communications of a personal nature that have no relevance to the business of the agency

3.1 Business

Electronic business communications document the business activities of the agency.

Examples include:

- a communication between employees in which a formal approval is recorded
- a direction for an important course of action
- a discussion between employees which results in a decision being formulated
- business information distributed by email (as attachments) for example original copies of minutes, the master copy of a document
- business correspondence received from outside or inside the agency

Electronic business messages should be saved into a recordkeeping system in order to retain evidence of business activity and to meet legal requirements. Authority to dispose of these records **must** be in accordance with the relevant disposal schedule, or if the records are not covered by any schedule, a specific authority must be obtained from the State Archivist.

3.2 Short-term value

An electronic communication of short-term value is one which facilitates agency business but is of a trivial nature or of such short-term value that it does not support or contribute to the business functions of the agency. Examples of this type of communication include:

- duplicate copies of circulars or minutes
- communications regarding meetings
- advertising material and any other published material
- internal work-related messages received for information purposes only
- email cover notes
- informal electronic messages (staff newsletters, FYI, pamphlets, flyers distributed via email)

Electronic communications of short-term value may not need to be saved into a recordkeeping system and can be destroyed when reference ceases as authorised in the *Disposal Schedule for Short-term Value Records DA No. 2158*. This Schedule should be consulted for more detailed definitions of electronic communications that it covers.

3.3 Personal

A personal electronic communication is one which relates to a private or personal matter and has nothing to do with the business of the Agency and is therefore not a State record.

These include topics such as:

- personal/family arrangements
- personal correspondence

Personal electronic communications can be destroyed as soon as they are no longer required by the staff concerned. **If an electronic message incorporates both personal and work-related information, then it is a business record and should be saved into the agency's recordkeeping system.**

4. Legal issues relating to electronic communication systems

4.1 Privacy

Privacy must be considered if instant and short-messaging systems are used to discuss State or citizen business, or to communicate between departmental staff and members of the public. For example, other participants in an IM conversation cannot be positively identified so care needs to be taken when transmitting sensitive information.

Agencies need to be aware of their obligations under the *Personal Information Protection Act 2004*. If agencies wish to allow the public to use messaging technologies for routine communications, it may not be practical or desirable to insist on identity information being provided in each transaction. If agencies do wish to create records of every messaging transaction, they need to clearly inform citizens that the transaction will be recorded and offer an alternative method of contact if individuals wish to retain their anonymity (such as the telephone).

Personal Information Protection Principles are contained in Schedule 1 of the *Personal Information Protection Act 2004* and apply to the collection, use, and disclosure of personal information by public sector bodies, councils, the University of Tasmania, and particular contractors.

Effective protection of privacy can be achieved with a clear, stated policy and a consistent process for keeping records required when undertaking business on messaging systems.

4.2 Evidence

Instant communications are increasingly being used as evidence and requested in discovery claims. If government is unprepared for this development, agencies may find themselves in the position of being unable to refute another party's version of a record derived from, for example, IM or SMS systems. The absence of a message that establishes innocence may result in unwarranted liabilities.

It may also prove extremely costly to comply with evidence discovery if a message is simply kept without sufficient metadata to enable its discovery. This is the same problem that exists for all electronic records that are not carefully managed. The mass of data can overwhelm discovery to the point that utility is lost.

4.3 Freedom of Information

Increasingly electronic communications are subject to FOI enquiries. Inability to discover records of relevant actions because IM or SMS communications have not been retained may not be acceptable to government probity bodies.

4.4 Electronic transactions

The *Electronic Transactions Act 2000* requires that government retain useable electronic records for as long as they may be required for any purpose. Given that some IM and SMS messages may contain records that, by virtue of their subject matter, are required for very lengthy retention to comply with other legislative or administrative provisions, this suggests that IM and SMS messages must not only be saved but also rendered into a durable format.

4.5 Document destruction

When legal action against an agency has been taken, or there is a reasonable likelihood that such action will occur, any pending disposal of relevant agency records must be suspended. If the agency has not put in place procedures to ensure the retention and accessibility of electronic messages of business transactions it may be interpreted by the courts as reckless destruction.

4.6 Surveillance

In order to gain the broadest possible appreciation of all the requirements on keeping records from electronic messaging systems agencies need to be aware of the legislation and codes relating to telecommunications.

In addition to the Tasmanian legislative requirements of the *Listening Devices Act 1991* and the *Telecommunications (Interception) Tasmania Act 1999*, there are a number of Commonwealth Acts and industry codes which contain directions and restrictions that affect the retention of messaging communications.

The Commonwealth *Telecommunications Act 1997* sets out the obligations of service providers who have copies of messages on their servers and the permissible use/disclosure of those messages and the Commonwealth *Telecommunications (Interception) Act 1979* relates to interception and access to stored messages (e.g. SMS and email). Relevant industry codes include Participant Monitoring of Voice Communications, issued by the Australian Communications Industry Forum & approved by the Australian Communications and Media Authority.

5. Retaining records from electronic communication systems

The notes below outline some records retention strategies for systems currently in use. It can be anticipated that there will be rapid development of similar applications especially in the area of collaborative workspaces.

5.1 Instant messaging

If business decisions are being made in instant-messaging systems, then policy and business rules should be developed directing staff to make a file note or other record of these messages. IM is not recommended for use for business communications with clients who are external to government.

5.2 Voicemail

When using voicemail ensure that the date, time, and name of the caller and recipient is documented. If the system cannot do this, make a file note of information that needs to be recorded.

5.3 Video instant messaging (video conferencing)

File notes should be made to record the content of the discussions and call history logs retained in the Agency's recordkeeping system.

5.4 Email

The agency email platform should be able to support the retention and access to multiple types of email content, the quantity of messages generated, and length of time they need to be retained

The following components of email communications also need to be managed:

- *carbon copy (cc and bcc) email* - If an employee receives a cc or bcc of business email from an external party, the recipient needs to save the email in the agency's recordkeeping system. If the email was sent for information purposes from another agency employee, only the originator should save the email into the agency's recordkeeping system
- *email threads* - Each email message sent or received in an email thread that relates to agency business should be saved into the agency's recordkeeping system
- *attachments* - Documents attached to business email messages are an important part of the business record and must be saved with the email

5.5 Collaborative workspaces

When agencies use collaborative workspaces (including blogs, wikis, etc) they must ensure that content is monitored and that business transacted is recorded in accordance with the agency's business and legal requirements.

Where a number of State or local government authorities are involved in a project using a collaborative workspace then one should be identified as the agency responsible for keeping records of the collaborative work that is created in or posted to the workspace, consistent with the principles set out in TAHO, *State Records Guideline No 7 – Managing Electronic Communications as Records*. Other agencies involved in the collaboration will still need to monitor the business transacted in order to ensure they have continuing access to records that separately relate to their own specific functional responsibilities. This will be especially important when the collaborative work is concluded.

6. Checklist for retention of electronic communications

It is the responsibility of all employees to ensure that they save an electronic business communication into a recordkeeping system (RKS) as soon as possible after receipt or dispatch. If the message relates to duties or actions taken as an agency employee it is an official business document and is therefore a State record. The following checklist provides guidance for this assessment.

SENDER	
Is this official business correspondence?	Save into RKS
Am I sending an electronic communication which contains business information?	Save into RKS
Am I sending an electronic communication with business information attached i.e. copies of minutes, reports etc?	Save message including attachments into RKS
Am I sending a reply to a business communication?	Save into RKS
Does this electronic communication record an internal business decision?	Save into RKS
Am I sending an electronic communication to another employee/s authorising an action	Save into RKS
Am I sending an electronic communication to another agency employee/s which contains business information or instructions i.e. circular, notice etc?	Save into RKS
RECIPIENT	
Is this official business correspondence?	Save into RKS
Did I receive an electronic communication with business information attached i.e. copies of minutes, reports etc., from an external party?	Save message and attachments into RKS
Does this electronic communication record a decision made by an external party?	Save into RKS
Does this electronic communication record an internal business decision?	Message should be saved into RKS by the originator of the message.
Did I receive an electronic communication with business information attached i.e. copies of minutes, reports etc., from another agency employee?	Message should be saved in RKS by the originator of the message.
Was this electronic communication sent by another agency employee i.e. a circular, notice etc?	Message should be saved in RKS by the originator of the message.
Did I receive a Cc or Bcc of an electronic communication from an external party that relates to my agency's business?	Ensure that the message is saved once into RKS
Was the electronic communication forwarded for information purposes only i.e. as a Bcc or Cc and has no business value?	Delete copy of sent message.

Further Advice

For more detailed advice, please contact:

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