

Date: August 13, 2008

Item No. 2

File No. _____

SUNSHINE ORDINANCE TASK FORCE

Compliance and Amendments Committee

AGENDA PACKET CONTENTS LIST*



Board of Supervisor Document Retention Policy



Completed by: Frank Darby

Date: August 8, 2008

***This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

** The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.

BOARD OF SUPERVISORS, OFFICE OF THE CLERK OF THE BOARD

RECORDS RETENTION AND DESTRUCTION SCHEDULE

Effective: July 1, 2001

ITEM NO.	RECORD SERIES TITLE	RETENTION PERIOD			REMARKS, STATUTES INSTRUCTIONS, AND/OR TRIGGER
		TOTAL	CURRENT	STORAGE	
A0200	ASSESSMENT APPEAL APPLICATION FILES	Active +5 Years	Active +3 Years	2 Years	Applications filed by taxpayers, appealing the assessed value of their property. Cal. Code of Regulation, Title 18, Property Tax Rule 305; Gov. Code §25105.5
A0200A	APPLICATION FOR CHANGE ASSESSMENT	Active +5 Years	Active +3 Years	2 Years	Timely filing of an appeal to lower property value. Cal. Code of Regulation, Title 18, Property Tax Rule 305; Gov. Code §25105.5
A0200B	BOARD INSTRUCTIONS/PARTIES RESPONSE	Active +5 Years	Active +3 Years	2 Years	When Board needs additional information for case. Cal. Code of Regulation, Title 18, Property Tax Rule 305; Gov. Code §25105.5
A0200C	EVIDENTIARY DOCUMENTS	Active +5 Years	Active +3 Years	2 Years	Evidence for Board consideration in property value. Cal. Code of Regulation, Title 18, Property Tax Rule 305; Gov. Code §25105.5
A0200D	FINDINGS OF FACT	Active +5 Years	Active +3 Years	2 Years	Legal summary of facts the board used in rendering its decision. Cal. Code of Regulation, Title 18, Property Tax Rule 305; Gov. Code §25105.5
A0200E	HEARING OFFICER RECOMMENDATION OF VALUE	Active +5 Years	Active +3 Years	2 Years	Used only for single-family, owner occupied cases; tentative decision. Cal. Code of Regulation, Title 18, Property Tax Rule 305; Gov. Code §25105.5
A0200F	NOTICE OF HEARING DATE/FEEES DUE	Active +5 Years	Active +3 Years	2 Years	Advise taxpayer of hearing date and fees due. Cal. Code of Regulation, Title 18, Property Tax Rule 305; Gov. Code §25105.5
A0200G	NOTIFICATION OF BOARD DECISION	Active +5 Years	Active +3 Years	2 Years	To advise parties of board decision of value. Cal. Code of Regulation, Title 18, Property Tax Rule 305; Gov. Code §25105.5
A0201	BOARD HEARINGS & MEETINGS	Active +5 Years	Active +3 Years	2 Years	Information pertaining to the hearings and meetings of the AAB. This series documents the activities of the AAB.

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		TOTAL	CURRENT	STORAGE	
A0201A	AGENDA - APPEAL HEARINGS	Active +5 Years	Active +3 Years	2 Years	Advise public of appeal cases to be heard by the Board
A0201B	AGENDA - CLOSED SESSIONS	Active +5 Years	Active +3 Years	2 Years	Advise public of matters to be discussed in private.
A0201C	AGENDA - SPECIAL MEETINGS	Active +5 Years	Active +3 Years	2 Years	Advise public of meetings relating to special items.
A0201D	CONTROLLER LETTERS	Active +5 Years	Active +3 Years	2 Years	Reports changes that need to be made on the Assessment Roll as a result of Board decisions. Initiates the process of property tax refunds.
A0201E	HEARING RECORD SUMMARY SHEET	Active +5 Years	Active +3 Years	2 Years	Advise Assessor's office of scheduled hearings.
A0201F	HEARING TAPES	Permanent	3 Years	Indefinite	Official transcript of the Board proceedings. Sunshine Ordinance
A0201G	JOURNALS OF PROCEEDINGS (MINUTES)	Permanent	3 Years	Indefinite	Summary of Board action(s) on agenda items. Revenue & Taxation Code § 1611.
A0202	GENERAL ADMINISTRATIVE FILES	Until Superseded	Until Superseded	N/A	General information regarding the AAB and other city departments.
A0202A	EMERGENCY PLANS	2 Years or Until Superseded	2 Years or Until Superseded	N/A	Instructions on what to do in an emergency. Keep for two years or until superseded, whichever is longer.
A0202B	GENERAL CORRESPONDENCE	Until Superseded	Until Superseded	N/A	Inter-departmental memos and correspondence.
A0202C	OFF-SITE RECORDS INVENTORY LOG	Until Superseded	Until Superseded	N/A	Used to track files stored in the Records Center.
A0202D	PUBLIC NOTICES	2 Years or Until Superseded	2 Years or Until Superseded	N/A	Posting requirements per Revenue & Taxation Code section 1601. Keep for two years or until superseded, whichever is longer.
A0202E	VARIOUS BUSINESS FORMS	Until Superseded	Until Superseded	N/A	Required forms for business operations.
A0203	REFERENCE MATERIAL & PUBLICATIONS	Until	Until	N/A	Required reference material and publications for

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		TOTAL	CURRENT	
A0203A	AAB LOCAL RULES & PROCEDURES	Superseded Until Superseded	Superseded Until Superseded	AAB operations. Procedural guide for Board members administration to which establishes efficient department operations.
A0203B	AAB MANUAL	Until Superseded	Until Superseded	Training and reference manual for Board members.
A0203C	ANNOUNCEMENTS & ASSESSMENT HANDBOOK INFORMATION	Until Superseded	Until Superseded	Various State Board of Equalization reference materials that document pending or recent changes in the law that affect valuation or equalization of property.
A0203D	CALIFORNIA REVENUE & TAXATION CODE BOOKS, VOLUMES I, II, & III	Until Superseded	Until Superseded	Property taxes law guide which establishes the law governing the assessment appeals process
A0203E	TAXING CALIFORNIA PROPERTY, VOLUMES I, II, & III	Until Superseded	Until Superseded	Reference material for Board members.
A0204	REPORTS	5 Years	5 Years	Reports on the status of appeal applications, decision deadlines, and other business activity.
A0204A	APPEALS DISPOSITION SUMMARY	5 Years	5 Years	Annual Report to show board activity and decisions.
A0204B	OPEN APPLICATIONS BY STATUS	5 Years	5 Years	Quarterly report that lists all pending applications in detail.
A0204C	STATE BOARD OF EQUALIZATION (SBE) ACTIVITY REPORT	5 Years	5 Years	Annual AAB activity report submitted to the SBE for publication.
A0204D	SUMMARY OF APPEALS TO BE HEARD	5 Years	5 Years	Monthly report summarizing the number of pending appeals by when the decisions are due
C0100	ALCOHOLIC BEVERAGE CONTROL NOTICES	30 Days	30 Days	Copies of applications.
C0101	ANNUAL REPORT	Until Superseded	Until Superseded	Listing of active Boards, Commissions, Committees, and Task Forces with Membership requirements, and with seats that have a term expiring.
C0102	ANNUAL REPORTS, CITY DEPARTMENTS	1 Year	1 Year	For information/reference only.

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ITEM NO.	RECORD SERIES TITLE	RETENTION PERIOD			REMARKS, STATUTES INSTRUCTIONS, AND/OR TRIGGER
		TOTAL	CURRENT	STORAGE	
C0103	APPLICATIONS, BOARDS & COMMISSIONS (APPOINTED)	Active +2 Year	Active +2 Year	N/A	Active until the person vacates the position.
C0104	APPLICATIONS, BOARDS & COMMISSIONS (NON-APPOINTMENT)	Active +1 Year	Active +1 Year	N/A	Active until vacancy is filled.
C0105	ATTENDANCE REPORTS	5 Years	5 Years	N/A	Listing of meetings attended by Board members.
C0106	BOARD & COMMITTEE CALENDAR, MARKED	2 Years	2 Years	N/A	
C0107	BOARD CLOSED SESSION NOTES	Permanent	Indefinite	N/A	Notes are Confidential. Audio/Video recordings are kept permanently as per the Sunshine Ordinance § 67.8-1
C0108	BOARDS & COMMISSIONS FILES	Permanent	Indefinite	Indefinite	
C0109	BUDGET ANALYST REPORT	3 Years	3 Years	N/A	General reports not related to current legislation. See Communication Pages.
C0110	BUDGET, MAYORS PROGRAM (COUNTER)	Active	Active	N/A	Counter copy is active during the current fiscal year
C0111	CALENDAR, DEPARTMENT HEAD	2 Years	2 Years	N/A	Admin Code §67.29-5
C0112	CHARTER	Permanent	Indefinite	N/A	Gov. Code § 34458-34460
C0113	CIVIL SERVICE RULES	Until Superseded	Until Superseded	N/A	Copy of rule used for reference
C0114	CLAIMS REPORT-CITY ATTORNEY	3 Years	3 Years	N/A	Confidential quarterly report submitted by the City Attorney listing a summary of claims.
C0115	CODES, ADMINISTRATIVE	Permanent	Indefinite	N/A	
C0116	CODES, BUILDING	Permanent	Indefinite	N/A	
C0117	CODES, ELECTRICAL	Permanent	Indefinite	N/A	
C0118	CODES, FIRE	Permanent	Indefinite	N/A	
C0119	CODES, HEALTH	Permanent	Indefinite	N/A	
C0120	CODES, HOUSING	Permanent	Indefinite	N/A	
C0121	CODES, MECHANICAL	Permanent	Indefinite	N/A	
C0122	CODES, PARK	Permanent	Indefinite	N/A	
C0123	CODES, PART III	Permanent	Indefinite	N/A	
C0124	CODES, PLANNING	Permanent	Indefinite	N/A	

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		TOTAL	CURRENT	STORAGE	
C0125	CODES, PLUMBING	Permanent	Indefinite	N/A	
C0126	CODES, POLICE	Permanent	Indefinite	N/A	
C0127	CODES, PUBLIC WORKS	Permanent	Indefinite	N/A	
C0128	CODES, SUBDIVISION	Permanent	Indefinite	N/A	
C0129	CODES, TRAFFIC	Permanent	Indefinite	N/A	
C0130	COMMUNICATION ("C") PAGES	3 Years	3 Years	N/A	General correspondence received by the Clerk's Office that does not relate to a Legislative File. AKA Subject Files. See General Correspondence
C0131	CONFIDENTIAL LEGISLATIVE HISTORY FILES	Permanent	Active +3 Years	Indefinite	Confidential files that are retained separate from the legislative file.
C0132	CONFLICT OF INTEREST - FILING OFFICER REPORTS	7 Years	5 Years	2 Years	Memo sent by the Clerk to report on 700's.
C0133	CONFLICT OF INTEREST - FORM 700	7 Years	5 Years	2 Years	Formally known as Form 730. Gov. Code § 81009(d)(e)
C0134	CONFLICT OF INTEREST - REGULATION 18730	Permanent	Indefinite	N/A	2 Cal AC 18730 as of 1/5/90
C0135	CORRESPONDENCE, BOOK PUBLISHING	10 Years	N/A	10 Years	
C0136	CORRESPONDENCE, BOARD OF SUPERVISORS	3 Years	3 Years	N/A	General correspondence not related to current legislation. See Communication Pages.
C0137	CORRESPONDENCE, CITY ATTORNEY	3 Years	3 Years	N/A	General correspondence not related to current legislation. See Communication Pages.
C0138	CORRESPONDENCE, CLERK	3 Years	3 Years	N/A	Letters that go out under the Clerk's signature. AKA Reading Files
C0139	CORRESPONDENCE, DOYLE DRIVE	10 Years	N/A	10 Years	
C0140	CORRESPONDENCE, GENERAL	3 Years	3 Years	N/A	See Communication Pages.
C0141	CORRESPONDENCE, MISSION BAY	10 Years	N/A	10 Years	
C0142	CORRESPONDENCE, PRESIDIO	10 Years	N/A	10 Years	
C0143	CORRESPONDENCE, VIACOM CABLEVISION	10 Years	N/A	10 Years	
C0144	DECLARATIONS/INTERROGATORIES	2 Years	2 Years	N/A	Documents sent by the City Attorney for

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		TOTAL	CURRENT	STORAGE	
C0145	DESK PROCEDURE MANUALS	2 Years or Until Superseded	2 Years or Until Superseded	N/A	signature. Includes the Supervisors and Aides handbook, and Rules of Order. Retain for two years or until superseded, whichever is longer.
C0146	ELECTION FILES/MATERIALS	Permanent	Indefinite	N/A	
C0147	EMERGENCY PLANS	2 Years or Until Superseded	2 Years or Until Superseded	N/A	Retain for two years or until superseded, whichever is longer.
C0148	EQUALIZATION FILES	Permanent	Indefinite	Indefinite	
C0149	FRANCHISE FILES	Permanent	Indefinite	N/A	Gov. Code § 34090
C0150	HISTORY CARDS	Permanent	Indefinite	N/A	
C0151	INDEX, JOURNAL, BINDERS	Permanent	Indefinite	N/A	A.k.a. Board Minutes
C0152	INDEX, JOURNAL, BOUND COPY	Permanent	Indefinite	N/A	A.k.a. Board Minutes
C0153	INDEX, JOURNAL, CARDEX (IN BINDERS)	Permanent	Indefinite	N/A	
C0154	INDEX, JOURNAL COMPUTER	Permanent	Indefinite	N/A	
C0155	LEGISLATIVE CORRESPONDENCE, BOARD OF SUPERVISORS	Permanent	Active +3 Years	Indefinite	Correspondence related to and retained in a Legislative File.
C0156	LEGISLATIVE CORRESPONDENCE, CITY ATTORNEY	Permanent	Active +3 Years	Indefinite	Correspondence related to and retained in a Legislative File.
C0157	LEGISLATIVE OPINIONS, CITY ATTORNEY	Permanent	Active +3 Years	Indefinite	Privileged and Confidential. Related to and retained in a Legislative File.
C0158	LEGISLATIVE PETITIONS	Permanent	Active +3 Years	Indefinite	Related to and retained in a Legislative file.
C0159	LEGISLATIVE POLICY ANALYST	3 Years	3 Years	N/A	Reports from the old office of the Legislative Analyst
C0160	LEGISLATIVE PROGRAM BUDGET, MAYORS	Permanent	Active +3 Years	Indefinite	Retained in the Legislative file
C0161	LEGISLATIVE REPORT, BUDGET ANALYST	Permanent	Active +3 Years	Indefinite	Related to and retained in a Legislative File
C0162	LOCAL AGENCY FORMATION COMMISSION	Permanent	Indefinite	N/A	Gov. Code §56382. Includes Agenda, Minutes,

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		TOTAL	CURRENT	STORAGE	
	(LAFCo)				Resolutions, Public Ad Notices, etc.
C0163	MEETING NOTICES, CITY DEPARTMENTS	Active	Active	N/A	Active until meeting has occurred.
C0164	MUNICIPAL REPORTS	Permanent	Indefinite	N/A	Historical
C0165	OATHS OF OFFICE, MEMBERS OF THE BOARD	Permanent	Indefinite	N/A	Original retained by the County Clerk and a copy maintained in their personnel file.
C0166	OFFSITE RECORDS REQUEST TRANSMITTAL	1 Year	1 Year	N/A	
C0167	OPINIONS, CITY ATTORNEY	10 Years	10 Years	N/A	General opinions not related to current legislation. Privileged and Confidential.
C0168	OPINIONS, CITY ATTORNEY (Bound)	Permanent	Indefinite	N/A	Bound copy maintained in the vault. Historical
C0169	OUTREACH & LEGAL ADVERTISEMENT	1 Year	1 Year	N/A	Non-official advertisements sent to minority newspapers.
C0170	PAMPHLET, VOTER	Permanent	Indefinite	N/A	
C0171	PETITIONS, GENERAL	2 Years	2 Years	N/A	Sent to the Dept. of Elections if referred to a Ballot measure. See Communication Pages. Gov. Code § 6253.5, 50115
C0172	POLICIES & PROCEDURES	2 Years or Until Superseded	2 Years or Until Superseded	N/A	Retain for two years or until superseded, whichever is longer.
C0173	PUBLIC RECORDS REQUEST	3 Years	3 Years	N/A	Request pursuant to various Local, State, and/or Federal statutes.
C0174	PUBLIC REVIEW FILE (COUNTER)	30 Days	30 Days	N/A	Copies of various files maintained at the front counter for convenience and review by the public. Admin Code §67.23
C0175	READING FILES	3 Years	3 Years	N/A	Letters that go out with the Clerk of the Boards signature. See also "Clerk Correspondence."
C0176	RECORDS, BOARD MEMBERS	2 Years	60 Days	22 Months	Documents/records received from members of the Board to be retained by the Clerk's Office. Not part of a legislative file.
C0177	RULES & REGULATIONS	Until	Until	N/A	Received from various City Departments for

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ITEM NO.	RECORD SERIES TITLE	RETENTION PERIOD			REMARKS, STATUTES INSTRUCTIONS, AND/OR TRIGGER
		TOTAL	CURRENT	STORAGE	
C0178	RULES OF ORDER	Superseded	Superseded		reference only.
C0179	SPEAKER CARDS	Permanent 3 Years	Indefinite 3 Years	N/A	Rules Developed by the Board Filed with the Board and Committees meeting notes as part of the minutes. See Meeting Notes
C0180	STATE OF CITY MESSAGE	Permanent	Indefinite	N/A	Rules Committee action. State of the City message from the Mayor is an annual file and is kept permanently. Extra copies are retained for 5 years only. Amended by Rules Committee.
C0181	STREET FILES	Permanent	Indefinite	N/A	Prepared by the Dept of Public Works. Retained for research.
C0182	SUBJECT FILES	2 Years	2 Years	N/A	General files organized by subject, but not part of legislative file.
C0183	TAPES OF BOARD AND COMMITTEE MEETINGS	Permanent	90 Days	Permanent	Original. Admin Code § 67.16 (7da)/Sunshine Ordinance
C0184	TAPES OF BOARD AND COMMITTEE MEETINGS (CLOSED SESSION)	Permanent	90 Days	Permanent	Original. Admin Code § 8.3-1 /Sunshine Ordinance
C0185	TRANSCRIPTS OF HEARINGS	Permanent	Active +3 Years	Indefinite.	Transcripts are retained only when a person, outside of the BOS, hires a court reporter to transcribe the meeting and the transcript is provided to the Clerk's Office. The transcript is then maintained with the Legislative file.
C0186	ZONING MAPS	Permanent	Indefinite	N/A	Part II, Chapter II, SF Municipal Code amendments for 9/17/1972 & 2/2/1975
D0300	ADVERTISEMENT RECEIPTS	2 Years	2 Years	N/A	Receipts signed by Cal. Newspaper Service for Board & Committee meeting notices/advertisements.
D0301	AGENDA PACKET	Permanent	Active +3 Years	Indefinite	The Legislative File containing all items that has been assigned to a particular Committee or the full Board.
D0302	AGENDA, BOARD	3 Years	3 Years	N/A	A list of items to be addressed by the Board

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		TOTAL	CURRENT	
D0303	AGENDA, COMMITTEE	3 Years	3 Years	during its meeting. Gov. Code § 54954, 54954.2 A list of items to be addressed by the Committee during its meeting.
D0304	BALLOT MEASURES	Permanent	Indefinite	Measures acted on and sent to the Dept. of Elections consisting of Charter Amendments, Ordinances, Policy Directions, and Referendums that were adopted by the Board. Gov. Code § 34458-34460
D0305	CHARTER AMENDMENTS	Permanent	Indefinite	Charter Amendments refused submission. Gov. Code § 34458-34460
D0306	CLOSED SESSION TAPE LOG	Indefinite	Indefinite	This is a cross-reference for the audio-tapes of Board and/or Committee meetings that are turned over to the City Attorney. Retained in office as long as the City Attorney keeps the audio-tapes.
D0307	ELECTION BALLOT PAMPHLETS	Permanent	Indefinite	Pamphlet sent to voters identifying items up for vote.
D0308	ELECTION MATERIAL	Permanent	Indefinite	COPIES of documents sent to the Secretary of State concerning charter amendments passed by voters. It consists of ballot books, list of measures, and certification resolution. The OFFICIAL file is with the Department of Elections, who assumed reporting responsibility in 11/00
D0309	FISCAL IMPACT MEMORANDUM	2 Years	2 Years	Report from the Budget Analyst noting whether a matter has or has no fiscal impact.
D0310	GENERAL PLAN AMENDMENTS	Permanent	Indefinite	Plan for land use for the City sent by the Planning Department.
D0311	IN MEMORIAM LETTERS	2 Years	2 Years	Notice/letters of condolence sent to members of the public that were introduced by Supervisors at

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D0312	LEGISLATION INTRODUCED REPORT	2 Years	2 Years	N/A	the Board meeting. A list of matters introduced at a Board meeting, which are not on the printed agenda, but are incorporated into the Boards minutes.
D0313	LEGISLATIVE FILE	Permanent	Active +3 Years	Indefinite	(AKA BOARD/COMMITTEE PACKET) Information created, received or maintained by the BOS concerning a particular issue considered by the Board or its standing committee for action. It may include the Legislation, Budget & Legislative Analyst reports, Public Correspondence ("C" pages), etc.
D0314	MATTERS	Permanent	Indefinite	N/A	Ordinances or Resolutions that were vetoed by the Mayor, and/or were refused adoption by the Board.
D0315	MEETING NOTES, BOARD	3 Years	3 Years	N/A	Notes taken at regular meetings to create the Board Minutes. May include Speaker Cards, Legislation Introduced Report, Request Granted, etc.
D0316	MEETING NOTES, COMMITTEES	3 Years	3 Years	N/A	Notes taken at regular meetings to create the Committee minutes. May include Speaker Cards, Legislation Introduced Report, Request Granted, etc.
D0317	MINUTES, BOARD	Permanent	Indefinite.	N/A	Official summary of actions and/or information covering points to be remembered of discussions or decisions made during the Board meeting. Sunshine Ordinance; Gov. Code § 25102, 36814, 40801.
D0318	MINUTES, COMMITTEE	Permanent	Indefinite	N/A	Official summary of actions and/or information covering points to be remembered of discussions or decisions made during the Committee meeting. Sunshine Ordinance; Gov.

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D0319	MINUTES, DRAFT	60 Days or Until Finalized	60 Days or Until Finalized	N/A	Code § 25102, 36814, 40801 Unofficial draft of minutes (notes) for the Board and Committees, containing votes; used to create the final minutes.
D0320	MOTION	Permanent	Indefinite	N/A	A formal proposal put to the vote under parliamentary procedures.
D0321	MOTION LOG	Permanent	Indefinite	N/A	A list of enacted numbers assigned during a calendar year.
D0322	ORDINANCE	Permanent	Indefinite	N/A	A statute or regulation enacted that affects the citizens of San Francisco. Sunshine Ordinance; Gov. Code § 25102, 36814, 40801, 40806.
D0323	ORDINANCE LOG	Permanent	Indefinite	N/A	A list of enacted numbers assigned during a calendar year.
D0324	PENDING LIST	3 Years	3 Years	N/A	A list of items that are waiting to be addressed or re-addressed by the committee. BOS Rules of Order Rule 2.13 mandates Pending List for each committee.
D0325	PUBLISHED AD PROOFS	Permanent	Indefinite	N/A	Published advertisement proofs for every Board, Committee, or special meetings of the Legislative branch.
D0326	RESOLUTION	Permanent	Indefinite	N/A	A formal statement of a decision or expression of opinion put before or adopted by the Board. Sunshine Ordinance; Gov. Code § 25102.1
D0327	RESOLUTION LOG	Permanent	Indefinite	N/A	A list of enacted numbers assigned during a calendar year.
D0328	VACANCY NOTICE – RULES	3 Years	3 Years	N/A	Annual Report created by the Rules Clerk to notify the public of unexpected vacancies on various Boards and Commissions. Gov. Code § 54974
D0329	VACANCY NOTICE – WEB	Until	Until	N/A	Public Notice sent to the Web Master for posting

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L0400	ADMINISTRATIVE CORRESPONDENCE, LEGISLATIVE ANALYST	Superseded Active +2 Years	Superseded Active +2 Years	N/A	until position is filled. Communications to and from the Clerk of the Board and/or Deputy Clerk.
L0401	AGENDAS, LEGISLATIVE ANALYST	30 Days	30 Days	N/A	Agendas used to structure internal Legislative Analyst staff meetings.
L0402	CASE FILES, LEGISLATIVE ANALYST	3 Years	3 Year	N/A	Official documents and reports within Legislative Analyst case files 1) the original request form, 2) final Legislative Analyst report, and 3) signed approval form. Case files may also include list fo persons contracted, footnoted materials, and research notes. Electronic copies are retained indefinitely.
L0403	CORRESPONDENCE, LEGISLATIVE ANALYST	Active +30 Days	Active +30 Days	N/A	Communications sent and received by Legislative Analyst Office during preparation of reports, briefings, etc.
L0404	INFORMATIONAL MATERIALS, LEGISLATIVE ANALYST	Until Superseded	Until Superseded	N/A	Information prepared about the Legislative Analyst for reference and administrative purposes including the 1) Service Delivery Model, 2) strategic planning materials, 3) Succession and Knowledge Management Plan, and 4) Performances Measures.
L0405	INTERNAL REFERENCE MATERIALS, LEGISLATIVE ANALYST	Until Superseded	Until Superseded	N/A	General/Administrative records including: 1) Ola Procedure Manual, 2) Legislative Analyst roles and responsibilities, 3) standard forms/templates, 4) office chronology, 5) staff assignments, and 6) report distribution list, used by staff internally as reference materials/guidelines.
L0406	RECRUITMENT FILES, LEGISLATIVE ANALYST	Active	Active	N/A	Used in hiring staff for the office. Active until position is filed; then sent to BOS Payroll/Personnel section. Includes the job

NOTE: Retention periods are pursuant to Admin. Code § 8, except as otherwise specified.

BOARD OF SUPERVISORS, OFFICE OF THE CLERK OF THE BOARD

RECORDS RETENTION AND DESTRUCTION SCHEDULE

Effective: July 1, 2001

ITEM NO.	RECORD SERIES TITLE	RETENTION PERIOD		REMARKS, STATUTES INSTRUCTIONS, AND/OR TRIGGER
		TOTAL	CURRENT	
L0407	REPORT INSTRUCTIONS & PROCEDURES, LEGISLATIVE ANALYST	2 Years or Until Superseded	2 Years or Until Superseded	N/A announcements, letter of job offer, letter to unselected applicants, interview schedules and questions. Staff instructions for preparation of Legislative Analyst reports, used to train new staff, and used by staff as reference in preparing reports. Official policies and procedures for preparation of Requests/Reports
L0408	STANDARD FORMS, LEGISLATIVE ANALYST	Active	Active	N/A Forms used to facilitate preparation and completion of reports/requests. Retained until report/request completed and distributed. Includes E-mail and Fax Transmittals, Request to Duplicate and Distribute, and Distribution List. Locally developed systems (e.g., BCMCI, CTA). Application will be available until data requiring its use is no longer needed. Application will be retained beyond the 1 year if it's still needed to access data
R0500	APPLICATION SOFTWARE (CUSTOMIZED)	Active +1	Active +1	N/A All commercial software in use (e.g., Office 97). Application will be retained beyond the 1 year if it's still needed to access data
R0501	APPLICATION SOFTWARE (OFF SHELF)	Active +1	Active +1	N/A Includes the Business Folio, Project Questionnaire, etc.
R0502	COMMITTEE ON INFORMATION TECHNOLOGY (COIT) REPORTS	5 years	5 years	N/A List of department computer equipment including mobile equipment. Retain while active or two years, whichever is longest.
R0503	HARDWARE INVENTORY	Active or 2 Years	Active or 2 Years	N/A Log of service provided to departmental users; including training. Retain while active or two years, whichever is longest.
R0504	HELP DESK LOG	Active or 2 Years	Active or 2 Years	N/A May include the Budget and Project Request, Summaries, etc.
R0505	INFORMATION TECHNOLOGY BUDGET MATERIALS	5 Years	5 years	N/A

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		TOTAL	CURRENT	STORAGE	
R0506	MAINTENANCE OPERATIONS	Active	Active	N/A	Active while equipment is still in use. Includes service calls, equipment repairs, inspections, etc.
R0507	MANUAL, ADMINISTRATORS	Active or 2 Years	Active or 2 Years	N/A	Database structure and data descriptions needed as long as data is used by the department. Used for IT administration. Retain while active or two years, whichever is longest.
R0508	MANUAL, CUSTOMIZED SOFTWARE APPLICATIONS	Active +1	Active +1	N/A	User manuals are retained until the software is no longer used or needed.
R0509	MANUAL, EQUIPMENT	Active +30 Days	Active +30 Days	N/A	Manuals are retained until the equipment is no longer used.
R0510	MANUAL, OFF SHELF SOFTWARE APPLICATIONS	Active +1	Active +1	N/A	Manuals are retained until the software is no longer used or needed.
R0511	MEDIA/INQ BROADCAST CONFIRMATION	90 Days	90 Days	N/A	Electronic committee agendas, press release receipts/notices.
R0512	NETWORK DATA	2 Weeks	2 Weeks	N/A	All data on the Departments server. Backed up on ten rotating tapes
R0513	POLICIES AND PROCEDURES	Until Superseded	Until Superseded	N/A	Polices and Procedures in effect for the Records & Information Management Division.
R0514	PROJECTS, INFORMATION TECHNOLOGY	Active +2	Active +2	N/A	All files pertaining to the departments IT initiatives.
R0515	RECORDS RETENTION SCHEDULES	Active +2	Active +2	N/A	Schedules for the Board and its Divisions.
R0516	TRAINING EVALUATIONS	3 Years	3 Years	N/A	Course evaluation forms completed by trainees after training.
R0517	TRAINING LOG	Active or 2 Years	Active or 2 Years	N/A	Log of training received by current staff. Retain while active or two years, whichever is longest.
S0601	BLANKET PURCHASE ORDERS	5 Years	5 Years	N/A	Ongoing Purchase Orders for maintenance/rental of office equipment, and off-site records storage. Retention per the Controllers guidelines.

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		TOTAL	CURRENT	STORAGE	
S0602	BOARDS & COMMISSIONS MAILING LIST (BCMCI)	Until Superseded Active +2	Until Superseded Active +2	N/A	Database used to generate mailing labels and list.
S0603	BOND ISSUES	Active +2	Active +2	N/A	Duplicate Legislation, used for research purposes, consisting of resolutions, ordinances, motions, and/or news ads. Gov. Code §29940
S0604	CLAIMS LOG	Active +5 Years	Active +5 Years	N/A	Log of claims received by the Board for personal injury, damages, wrongful death, indemnity, etc. before it is delivered to the Controllers Office. Active until final action on the claim. Gov. Code §25105.5
S0605	CLERK TO ACT	2 Years	2 Years	N/A	A statement of actions to be performed by the Clerk that includes the document, Introduction Form, and the Letter of Inquiry, and the database tracking system.
S0606	CONTRACT ORDERS	Active +20 Years	Active +20 Years	N/A	Contracts for professional and specialized services. Retention per the Controllers guidelines.
S0607	CONTROLLER'S JOURNAL ENTRY	5 Years	5 Years	N/A	Transfer of funds; additional allotments; Correcting/adjusting entry. Retention per the Controllers guidelines.
S0608	DIRECT PAYMENT REQUEST	5 Years	5 Years	N/A	Payments of bills from vendors, reimbursement payments to staff and members for travel and training. Retention per the Controllers guidelines.
S0609	EMPLOYMENT APPLICATIONS & RESUMES (NON-EMPLOYEES)	Active +2 Years	Active +2 Years	N/A	Submitted by individuals that were not selected for a specific vacancy. Active until vacancy is filled. Retention of "casual" applications is optional to the department.
S0610	EMPLOYMENT RECORD	50 Years or Until Death	Indefinite	N/A	Access database of employee's information and data used to generate reports.
S0611	ENCUMBRANCE PAYMENT REQUEST	5 Years	5 Years	N/A	Encumbrance and payment request for official

NOTE: Retention periods are pursuant to Admin. Code § 8, except as otherwise specified.

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ITEM NO.	RECORD SERIES TITLE	RETENTION PERIOD			REMARKS, STATUTES INSTRUCTIONS, AND/OR TRIGGER
		TOTAL	CURRENT	STORAGE	
	(FAMIS)				advertisement. Retention per the Controllers guidelines.
S0612	FAMIS PAYROLL/LABOR DISTRIBUTION REPORT	9 Years	9 Years	N/A	For the Board of Supervisors
S0613	INFORMATION REQUEST FORM	2 Years	2 Years	N/A	Information indicating records request from the Clerk's Office.
S0614	INTER-DEPARTMENTAL WORK ORDER	5 Years	5 Years	N/A	Work order from various performing departments. Retention per the Controllers guidelines.
S0615	MAILING LIST CORRECTION NOTICE	60 Days	60 Days	N/A	Notices received requesting corrections to the mailing list.
S0616	MEETING ROOM RESERVATIONS	1 Year	1 Year	N/A	Record of meetings scheduled for the Board Chambers, Committee Room, Conference Room, and Training Room
S0617	OFFSITE RECORDS - INVENTORY LOG	Active +2 Years	Active +2 Years	N/A	Inventory list of non-current or active records storage
S0618	PAYROLL REPORTS	50 Years or Until Death	Active +5 Years	45 Years or Until Death	Payroll reports generated by the Payroll & Personnel Services Division each pay period and year-end: for solving payroll problems or verifying employee's income. Includes report forms 10, 121, 170 and etc. Permission from SFERS required prior to destruction.
S0619	PERSONNEL ACTION REQUEST (PAR), EMPLOYEE	50 Years or Until Death	Active +5 Years	45 Years or Until Death	Personnel data containing payroll information of the employee. Permission from SFERS required prior to destruction.
S0620	PERSONNEL FILE/FOLDER, EMPLOYEE	50 Years or Until Death	Active +5 Years	45 Years or Until Death	Personnel information and data for each employee. May elect to keep permanently (See Personnel Record, Supervisor).
S0620A	APPOINTMENT PROCESSING	50 Years or Until Death	Active +5 Years	45 Years or Until Death	Required by Department of Human Resources for appointing an employee. Permission from

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		TOTAL	CURRENT	STORAGE	
S0620B	BENEFIT PAYROLL FORM	50 Years or Until Death	Active +5 Years	45 Years or Until Death	SFERS required prior to destruction. Form processed for employee's Health Services and Retirement benefits. Permission from SFERS required prior to destruction.
S0620C	EMPLOYEE EVALUATION	50 Years or Until Death	Active +5 Years	45 Years or Until Death	Periodic evaluation of the employee by the department manager or appointing officer. Permission from SFERS required prior to destruction.
S0620D	EMPLOYEE HISTORY SUMMARY	50 Years or Until Death	Active +5 Years	45 Years or Until Death	Employee's information and employment history summary. Permission from SFERS required prior to destruction.
S0620E	EMPLOYMENT APPLICATION & RESUME (EMPLOYEE)	50 Years or Until Death	Active +5 Years	45 Years or Until Death	Required by Department of Human Resources for city employee. Permission from SFERS required prior to destruction.
S0620F	EMPLOYMENT ELIGIBILITY VERIFICATION (I-9 FORM)	50 Years or Until Death	Active +5 Years	45 Years or Until Death	Required by the Immigration Naturalization Service to check the eligibility of employment before hiring an employee. Permission from SFERS required prior to destruction.
S0620G	EMPLOYMENT VERIFICATION	50 Years or Until Death	Active +5 Years	45 Years or Until Death	Verification requested by other Departments or the public. Permission from SFERS required prior to destruction.
S0620H	OATH OF OFFICE, EMPLOYEE	50 Years or Until Death	Active +5 Years	45 Years or Until Death	Oath of office for each employee. Permission from SFERS required prior to destruction.
S0620I	PAYROLL RELATED DOCUMENTS	50 Years or Until Death	Active +5 Years	45 Years or Until Death	Documents required by the Payroll & Personnel Services Division for setting up the employee in the Controller's payroll system. Permission from SFERS required prior to destruction.
S0620J	SEPARATION REPORT	50 Years or Until Death	Active +5 Years	45 Years or Until Death	Document required by Department of Human Resources for employee's change of position, department or termination. Permission from

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ITEM NO.	RECORD SERIES TITLE	RETENTION PERIOD			REMARKS, STATUTES INSTRUCTIONS, AND/OR TRIGGER
		TOTAL	CURRENT	STORAGE	
S0620K	WORKERS COMPENSATION OR STATE DISABILITY INSURANCE	50 Years or Until Death	Active +5 Years	45 Years or Until Death	SFERS required prior to destruction. Worker's Compensation of State Disability Insurance occurrence by employee. Permission from SFERS required prior to destruction.
S0621	PERSONNEL RECORD, SUPERVISORS	Permanent	Permanent	N/A	Personnel information and data for each Board member.
S0622	PERSONNEL REQUISITION	50 Years or Until Death	Active +5 Years	45 Years or Until Death	Record of all personnel requisitions generated and used to appoint all employees. Permission from SFERS required prior to destruction.
S0623	PURCHASE ORDERS	5 Years	5 Years	N/A	Requisition for office equipment, furnishings, and supplies. Retention per the Controllers guidelines.
S0624	RECEIPTS PROCESSING FORM	5 Years	5 Years	N/A	Deposits to Treasurer (Fees & Refund Checks). Retention per the Controllers guidelines.
S0625	RESERVATION REQUEST FORM	1 Year	1 Year	N/A	Request to reserve the Board Chambers, Committee Room, Conference Room, and Training Room
S0626	REVOLVING FUND, BOS	5 Years	5 Years	N/A	Replenishment of Revolving Fund - Checks issued for small expense items. Retention per the Controllers guidelines.
S0627	SUMMONS & COMPLAINTS LOG	2 Years	2 Years	N/A	Log of summons and complaints received by the Board before it is delivered to the Mayor's Office.
S0628	TIME SHEET, EMPLOYEE	50 Years or Until Death	Active +5 Years	45 Years or Until Death	Submitted bi-weekly by each employee. Information logged on Master Time Sheet. Permission from SFERS required prior to destruction.
S0629	TIME SHEET, MASTER	50 Years or Until Death	Active +5 Years	45 Years or Until Death	Posted time sheets of all employees' attendance record, approved (signed) for each pay period. Permission from SFERS required prior to destruction.

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ITEM NO.	RECORD SERIES TITLE	RETENTION PERIOD			REMARKS, STATUTES INSTRUCTIONS, AND/OR TRIGGER
		TOTAL	CURRENT	STORAGE	
S0630	WORKERS' COMPENSATION QUARTERLY REPORT	6 Years	6 Years	N/A	Occupational Injury/Illness Quarterly Reports submitted to the Department of Public Health - Occupational Safety and Health Program. 29 Code of Federal Regulations 1904.6
S0630A	OCCUPATIONAL INJURIES AND ILLNESSES/LOSSES	6 Years	6 Years	N/A	Log and summary for preparing Workers Comp. Quarterly report. 29 Code of Federal Regulations 1904.6
S0630B	POLICY PERIOD ANALYSIS	6 Years	6 Years	N/A	For preparing Workers Comp. Qtr. Report 29 Code of Federal Regulations 1904.6
S0630C	QUARTER WORKED HOURS CALCULATION SHEET	6 Years	6 Years	N/A	For preparing Workers Comp. Qtr. Report 29 Code of Federal Regulations 1904.6
S0630D	REPORT 863	6 Years	6 Years	N/A	For preparing Workers Comp. Qtr. Report 29 Code of Federal Regulations 1904.6
T0700	AGENDAS AND MINUTES	Permanent	Indefinite	N/A	For the full Task Force and its Committees.
T0701	ADMINISTRATORS REPORT	2 Years	2 years	N/A	Monthly update
T0702	ANNUAL REPORTS	Permanent	Indefinite	N/A	Sunshine Ordinance Requirement
T0703	ANNUAL RESPONSIBILITIES AND OBJECTIVES, TASK FORCE	3 Years	3 Years	N/A	
T0704	ATTORNEY GENERAL	Permanent	Indefinite	N/A	Letters to Attorney General; guidelines
T0705	AUDIO TAPES OF MEETINGS	Permanent	3 Years	Permanent	Proceedings to Task Force Meetings. Pursuant to Admin. Code 67.14(b)
T0706	BOARDS & COMMISSIONS	Until Superseded	Until Superseded	N/A	General information
T0707	BROCHURES	Until Superseded	Until Superseded	N/A	Information for public in English, Spanish, Chinese, & Vietnamese.
T0708	BY-LAWS	Permanent	Indefinite	N/A	Sunshine Ordinance Requirement
T0709	CITY ADMINISTRATOR'S REPORT	3 Years	3 Years	N/A	Semi-annual reports
T0710	COMMUNICATIONS LOGS	3 Years	3 Years	N/A	Listing of calls, letters, e-mails, personal visits.
T0712	COMPLAINT PROCESS	Until Superseded	Until Superseded	N/A	General description of the complaint process.

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ITEM NO.	RECORD SERIES TITLE	RETENTION PERIOD			REMARKS, STATUTES INSTRUCTIONS, AND/OR TRIGGER
		TOTAL	CURRENT	STORAGE	
T0713	COMPLAINTS	5 Years	5 Years	N/A	Complaints filed by the public; including those received by e-mail.
T0714	COMPLAINTS LOG	5 Years	5 Years	N/A	Listing of complaints received.
T0715	CORRESPONDENCE GENERAL	3 Years	3 Years	N/A	Miscellaneous Correspondence
T0716	DEPARTMENT HEADS LISTING	Until Superseded	Until Superseded	N/A	Listing of Department Heads
T0717	GRAND JURY REPORTS & LETTERS	Permanent	Indefinite	N/A	
T0718	LEGISLATIVE REQUESTS	5 Years	5 Years	N/A	Request from the Task Force to the Board of Supervisors
T0719	MAILING LISTS	Until Superseded	Until Superseded	N/A	Used Daily
T0720	MEETING PACKETS	Permanent	Indefinite	N/A	Packets for Task Force Meetings.
T0721	MEMOS TO TASK FORCE	3 Years	3 Years	N/A	Informal Information to Task Force
T0722	NON-PROFIT ORGANIZATIONS	3 Years	3 Years	N/A	General Information.
T0723	OATHS OF OFFICE	Permanent	Indefinite	N/A	Oaths required of Task Force members.
T0724	ORDERS OF DETERMINATION	Permanent	Indefinite	N/A	Determinations of complaints from Task Force
T0725	PRESS RELEASES	2 Years	2 years	N/A	Information to media and public
T0727	PUBLIC RECORDS	2 Years	2 years	N/A	General information regarding public records
T0728	RECORDS RETENTION SCHEDULE	Until Superseded	Until Superseded	N/A	Statement of actions governing the disposition of all records produced or maintained by the Task Force.
T0729	REQUESTS OF TASK FORCE MEMBERS	2 Years	2 years	N/A	General request of Task Force Members.
T0731	SB 90 REPORT/MANDATED COST REIMBURSEMENT	2 Years	2 years	N/A	Monthly report required by State Law requesting reimbursement for fees expended by the City for State mandated cost.
T0732	STANDARDS OF CONDUCT	3 Years	3 Years	N/A	General Information
T0733	SUNSHINE ORDINANCE HISTORY	Permanent	Indefinite	N/A	Historical
T0734	SUPERVISOR OF PUBLIC RECORDS REPORTS	7 Years	7 Years	N/A	Sunshine Ordinance Requirement
T0735	TASK FORCE MEMBERS LISTING	Permanent	Indefinite	N/A	Listing of current and former members of the

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ITEM NO.	RECORD SERIES TITLE	RETENTION PERIOD		REMARKS, STATUTES INSTRUCTIONS, AND/OR TRIGGER
		TOTAL	CURRENT	
T0736	TASK FORCE OPINIONS & ADVICE LETTERS	Permanent	Indefinite	Task Force.
T0737	TASK FORCE PROCEDURES	Until Superseded	Until Superseded	General procedures of the Sunshine Ordinance Task Force
Y0800	AGENDAS, YOUTH COMMISSION	Permanent	5 Years	Indefinite Includes notices of special and cancelled meetings for full Commission and Committees. Essential to the planning of Commission projects. Admin. Code §8
Y0801	ANNUAL REPORTS, YOUTH COMMISSION	Permanent	Indefinite	N/A Annual Summary of achievements.
Y0802	APPLICATIONS (APPOINTED)	2 Year	2 Year	N/A Applications received from individuals who were appointed to the Youth Commission
Y0803	APPLICATIONS (NON-APPOINTMENT)	2 Year	2 Year	N/A Applications received from individuals requesting appointment to the Youth Commission who were not selected.
Y0804	APPOINTMENTS, YOUTH COMMISSION	Permanent	Indefinite	N/A Names and applications of members appointed to the Youth Commission
Y0805	AUDIO TAPES, YOUTH COMMISSION	Permanent	1 Year	Indefinite Audio recordings of full Commission meetings as required by the Sunshine Ordinance.
Y0806	BROCHURES, YOUTH COMMISSION	Until Superseded	Until Superseded	N/A Information for the public regarding the Youth Commission.
Y0807	BY LAWS, YOUTH COMMISSION	Permanent	Indefinite	N/A
Y0808	LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUEER AND QUESTIONING (LGBTQQ) YOUTH TASK FORCE	Permanent	5 Years	Indefinite Notes, reports, and information including a summary of the projects that the Task Force worked on.
Y0809	MINUTES, YOUTH COMMISSION	Permanent	5 Years	Indefinite Minutes and notes essential to the planning of full Commission projects. Sunshine Ordinance.
Y0810	MONTHLY CALENDARS, YOUTH COMMISSION	Permanent	Indefinite	N/A Schedule of monthly Youth Commission activities/events.
Y0811	PRESS RELEASE, YOUTH COMMISSION	2 Years	2 Years	N/A Public meeting notices sent to Calif. Newspaper Services

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		TOTAL	CURRENT	STORAGE	
Y0812	RESOLUTIONS, YOUTH COMMISSION	Permanent	Indefinite	N/A	Formal statement of decisions adopted by the Youth Commission

RECORDS RETENTION AND DESTRUCTION POLICY

BOARD OF SUPERVISORS, OFFICE OF THE CLERK OF THE BOARD

The Clerk of the Boards Records Retention and Destruction Policy is adopted pursuant to Chapter 8 of the San Francisco Administrative Code, which requires each department head to maintain records and create a records retention and destruction schedule.

The Records Retention Schedule is a comprehensive written statement of actions governing, on a continuing basis, the disposition of all records produced, used or maintained by the Clerk of the Board. It assists the department in effecting the prompt disposal of records no longer needed, the storage of records that must be retained temporarily after they are no longer needed for current operations, and the preservation of records which are of lasting value.

This policy covers all records and documents, regardless of physical form or characteristics, which have been made or received by the Clerk of the Board in connection with the transaction of public business.

POLICY AND PROCEDURES

I. RETENTION POLICY

The Clerk of the Board shall retain records for the period of their immediate or active/current use, unless longer retention is necessary for historical reference, to comply with contractual or legal requirements, or for other purposes as set forth below. For record retention and destruction purposes, the term "record" is defined as set forth in Section 8.1 of the San Francisco Administrative Code. Documents and other materials that do not constitute "records" under that section, including those described below in Category 4, may be destroyed when no longer needed, unless otherwise specified.

A. STATEMENT/DEFINITION OF TERMS

The records of the Clerk of the Board shall be classified for purposes of retention and destruction as follows:

Category 1: Permanent, Vital, & Indefinite Records. Records that are permanent shall be retained and preserved forever.

- **Permanent records.** Permanent records are records preserved because of their historical or research value and are required by law to be permanently retained. When permanent records have been microfilmed according to specified standards the original paper records may be destroyed (*See* Administrative Code Section 8.4). Duplicate copies of permanent records

may be destroyed whenever they are no longer necessary for the efficient operation of the Department.

- Vital records. Vital records are records necessary for the continuity of government and the protection of the rights and interests of individuals. Admin. Code Section 8.9.
- Indefinite records. Indefinite records are records having an undetermined/uncertain time period for particular records to be kept. The two types of perpetual records are identified as Active or Current.
 - ✓ Active records – indicates some ongoing process or activity not yet complete for which no definite time frame is known, such as a legislative case file. They are active until the file has been completed or until the matter has been adjudicated or resolved in some way. They need to be readily available for the immediate daily, weekly, monthly, semi-annual, or annual activity of the department. Usually they are referred to more than once per cubic foot per month.
 - ✓ Current records – indicates that the record is in force or has some effect even though there is no activity or ongoing process directly related to it. For example, policies, procedures, standards, guidelines, and organization charts would be current until revised, superseded or rescinded. They are necessary for conducting the current business of the office/department and therefore must be maintained.

Category 2: Current/Office Records. Office records are records that for convenience, ready reference or other reasons are retained in the office space and equipment of the Department. Office records shall be retained as follows:

- Where retention period specified by law. Where federal, state, or local law prescribes a definite period of time for retaining certain records, the Clerk of the Board will retain the records for the period specified by law.
- Where no retention period specified by law. Where no specific retention period is specified by law, the department must specify the retention period for those records that the department is required to retain. Records shall be retained for a minimum of two years, although such records may be treated as “storage records” and placed in storage at any time during the applicable retention period.

Category 3: Storage Records. Storage records are records that are removed from office space and retained offsite in less expensive space. Storage records are subject to the same retention requirements as office records.

Category 4: No Retention Required. Documents and other materials that are not "records" as defined by Admin. Code section 8.1 need not be retained unless otherwise specified by local law (e.g., department head calendars). Documents and other materials (including originals and duplicates) that are not otherwise required to be retained are not necessary to the functioning or continuity of the Department and which have no legal significance may be destroyed when no longer needed.

B. RECORDS NOT ADDRESSED IN THE RECORD RETENTION SCHEDULE

Records and other documents or materials that are not expressly addressed by the attached schedule may be destroyed at any time provided that they have been retained for the periods prescribed for substantially similar records. Further, any advice from the City Attorneys Office regarding the retention of records that are not expressly addressed in the schedule will be considered by the Department.

C. STORAGE OF RECORDS

Records may be stored in the Board of Supervisor's office space or equipment or in the City's off site storage facility. The Clerk's Office will determine the appropriate location based on the Board's on site space constraints, convenience, and/or ready reference. Inactive records, for which use or reference has diminished sufficiently to permit removal from the Clerk of the Boards office space or equipment, may be sent to the City's off-site storage facility or a commercial records center. Regardless of the storage location, the records will be retained according to the total retention required.

D. HISTORICAL RECORDS

Historical records are records which are no longer of use to the Department for day to day administration; but which have enduring research value, because they reflect significant historical events or document the history and development of a department, ruling, etc. Historical records may not be destroyed except in accordance with the procedures set forth in Administrative Code section 8.7.

E. DESTRUCTION OF RECORDS

Records that have met their retention requirement shall be destroyed in accordance with procedures set forth in Administrative Code sections 8.3 and 8.7.

II. HEADINGS AND ABBREVIATIONS

A. Headings Explanations

The following is an explanation of the headings used on the retention schedule.

- **Item No** – A unique five to six character alphanumeric number that has been assigned to a record series. Each number begins with a letter, which correspond to a division or group within the Clerk of the Boards office, as follows:

C0100's = Clerk's Office

A0200's = Assessment Appeals Board

D0300's = Legislation Division

L0400's = Legislative Analysts Office

R0500's = Records and Information Management Division

S0600's = Special Services Division

T0700's = Sunshine Ordinance Task Force

Y0800's = Youth Commission

- **Records Series Title** – It is the name given to a group of related records arranged under a single filing system or kept together as a unit because they deal with a particular subject, result from the same activity, or have a special form. The title of each record is based on the activity or function of the record.
- **Retention Period** – The time period for particular records series to be kept. The retention periods are pursuant to Administrative Code § 8, except as otherwise specified. There are three categories identified under retention period, which is described below:
 - ✓ **Total** – Describes the entire retention period of the record. It identifies the length of time that the record(s) will be maintained regardless of it's physical location (i.e. office, storage).
 - ✓ **Office** – Describes the length of time that the record(s) will be retained in office space. For records that are listed as active, current, or indefinite the records will be held in office space until they are no longer needed or until space constraints suggest otherwise. However, the record(s) will be retained for the total retention period indicated.
 - ✓ **Storage** – Describes the length of time that the record(s) will be retained in less expensive county operated or commercial storage facility (i.e. Records Center). For records that are listed as indefinite the records will be held in storage until they have met their retention requirement or until

they have been converted to microfilm. However, the record(s) will be retained for the total retention period indicated.

- **Remarks, Statutes, Instructions, and/or Trigger** – Describes the subject or purpose of the record series, statutes governing its retention, and any other information which will explain, or clarify treatment of the records.

B. Explanation of Abbreviations

The following is an explanation of abbreviations that are used:

AC = Administrative Code	RTC = Revenue & Taxation Code
CCR = California Code of Regulations	SBE = State Board of Equalization
GOV. CODE = Government Code	SFERS = San Francisco Employee Retirement System

III. AMENDING THE SCHEDULE

A. Amendments

The Clerk of the Board will adjust the schedule to extent the retention period of a record(s) upon finding that doing so would provide better service to the Board and the public, or to meet a legal requirement.

Amendments to the schedule will be performed when one or all of the following occur:

- A new series of records are created.
- A series of records becomes obsolete.
- The retention period of an existing series of records is changed.
- The responsibility for a series of records is moved to another department.

B. Values

An appraisal of the records to determine the various assigned values based upon their usefulness to the department/division, for both immediate and future use will be performed. The following values will be used to aid in determining the retention of the records:

- **Administrative Value** – Records that are useful for conducting the current business for which the department has established.

ELECTRONIC MAIL POLICY

5.0 Policy Statement

Electronic mail (E-Mail) is a computer software tool made available to staff in order to enhance efficiency in job performance. City and Internet E-Mail are two resources provided to support the accomplishment of official Departmental business. This policy is to provide guidance on access to and usage of citywide and Internet E-Mail; it applies to all Departmental employees and interns/volunteers who use City-provided access to E-Mail.

This policy may be changed at any time, with such notice as is deemed appropriate.

5.1 Who May Use Electronic Mail

As is true of City telephones, word processors, copiers, etc, the E-Mail system is City property. E-Mail may be used in the performance of your duties as a City employee. All information contained in E-Mail messages is considered City property. Only persons who are Supervisors and their staff, the Clerk of the Board and staff, and staff of the Legislative Analysts Office, the Youth Commission, the Assessment Appeals Board, the Sunshine Ordinance Task Force, and the San Francisco Local Agency Formation Commission, and interns/volunteers who have been approved for E-Mail privileges by the Department, may use the E-Mail system.

5.2 Remote Access

Virtual Private Network (VPN) access and remote dial up access to the City's internal network is available to Supervisors, their staff, the Clerk of the Board and managers. This application requires that additional software, which is provided by DTIS, be installed on a users remote PC or laptop. RIM staff will not install the software, but will provide minimal technical support during regular business hours. If you have installation or support questions contact the DTIS Help Desk at (415) 554-5700. Upon termination of employment the user must permanently remove the VPN application from their remote PC or laptop.

Contact RIM at the Computer Help Desk if you desire remote access.

5.3 User Responsibilities

All Departmental staff under the Clerk of the Board shall check for incoming messages once a day at minimum. Staff assigned to the department's general mailbox (BOS) shall check for incoming messages at minimum once in the morning and once in the afternoon. Messages that require responses should be answered in a timely manner.

- Using E-Mail for personal business, except incidental or minimal use, as defined by Government Code section 8314, which states that personal purposes, excludes incidental and minimal use of city resources, such as computer equipment, for non-work activities.

If you abuse the privilege of E-Mail you are subject to discipline ranging from loss of your E-Mail privileges to termination of your employment.

5.7 Privacy

All electronic mail messages that are created, received, transferred to or from, or maintained on City computer systems are the property of the City. As with all City records, employees have no personal or property right to E-Mail messages. There is no legitimate expectation of privacy with regard to E-Mail messages. The department, under the guidance of the City Attorney, reserves the right to access and disclose the contents of E-Mail messages, but will do so only when it has a legitimate business need.

Electronic mail messages are considered public documents and may be subject to public disclosure. Works-in-progress may also be subject to disclosure. Drafts should be clearly marked as such in the body of the text before they are distributed via electronic mail.

The department's RIM staff do not monitor electronic mail message content, but do monitor space usage, and may on occasion encourage individuals to purge personal archives to reclaim network disk space.

Access to mailboxes of employees leaving the Department are normally deleted by RIM staff on the following business day. Employees leaving the Department are expected to check their mailboxes on their last day of work.

If requested, a Supervisor's office or manager will be given access to review the contents of a departing staff member's mailbox on the day following their departure. RIM staff will then delete the mailbox after the review has been completed. In the instance of a Supervisor leaving office, RIM staff will delete all mailboxes the day following the Supervisor's last day. These mailboxes will not be opened before deletion.

5.8 Security

You are responsible for the security of your electronic mail account and password and any E-Mail that is sent via your account. To protect your account against unauthorized use please log off your E-Mail account before leaving the office, and if your computer will be left unattended for a long period of time. Do not give out your password. Since passwords can be stolen, guessed or inadvertently made available, the Department of Telecommunication and Information Services has established a policy that requires that all users change their passwords annually.



kimo <kimo@webnetic.net>
 Sent by:
 kimocrossman@gmail.com

07/09/2008 09:39 PM

Please respond to kimo@webnetic.net
--

To "Erica Craven" <elc@lrolaw.com>, "Richard A. Knee" <rak0408@earthlink.net>, SOTF <soft@sfgov.org>, "Kimo Crossman" <kimo@webnetic.net>, "allen Grossman"
 cc
 bcc
 Subject Status of North Carolina email lawsuit, Recommend 5 years preservation

(Clerk - please include this in the CAC Agenda item for preservation of electronic records discussed today)

Pertaining to preservation of email electronically rather than print to paper:

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<http://ncpress.com/ebackgroundsite/backgroundemailindex.html>

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Benjamin Niolet
(Raleigh) News & Observer
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The motion, filed Tuesday in Wake County Superior Court, means that Easley might be headed to a courtroom confrontation with The News & Observer, The Charlotte Observer and nine other news organizations.

The newspapers want a judge to find that the state's policies and procedures for storing and deleting public records violates the public records law. It asks a judge to order state officials to comply with the law and do what they can to retrieve deleted e-mail messages.

Current policy allows state employees to delete e-mail messages and documents if employees decide documents have no lasting value.

Easley's attorneys wrote, however, that while the public records law allows someone who has been denied a public record to ask a court to order that he or she get the record, the newspapers are improperly asking a judge to make sweeping declarations about policies and behaviors. And the newspapers cannot ask a judge to decide that someone has broken the law; that's for the criminal courts to decide, the lawyers wrote.

Hugh Stevens, an attorney for the newspapers, said in a statement that the governor's motion

argues that the courts are virtually powerless to enforce the public records law.

"It appears that the governor is taking the position that if he has a public record and refuses to permit its inspection and copying, the courts can act; otherwise, he can ignore the public records law with impunity, even to the extent of destroying public records," Stevens wrote.

The filing Tuesday means that the case likely will have to be settled in a courtroom, Stevens said.

"We had hoped that we might be able to enter into meaningful settlement discussions with the attorney general and representatives of the governor. This motion would appear to foreclose this option," he said.

The newspapers sued in April after it became clear that people in the governor's press office had told other state officials to delete all e-mail messages to and from the Governor's Office.

At first the Governor's Office denied the charge, but the administration later produced notes from two other agency public information officers that showed they were told to delete e-mail messages.

Easley and others have said that regardless of what press officials said, it was not their intent to evade the law and that regardless of what public information officers were told, they did not delete public records, so no harm was done.

A story in the N&O last month revealed that at least three public information officers deleted e-mail exchanges with the Governor's Office.

Easley has convened a panel to review the state's policies on electronic public records. That panel is scheduled to meet Thursday to discuss and vote on expanded training for state employees and options for archiving e-mail messages.

http://www.charlotte.com/breaking_news/story/623268.html

E-mail panel proposes longer storage, better training

The Associated Press
RALEIGH, N.C.

A panel reviewing state government e-mail storage policies recommended Thursday that messages be stored for at least five years and state employees be better trained about how to comply with the public records law.

But the committee, created by Gov. Mike Easley following allegations his press office ordered the systematic deletion of government e-mails, didn't propose changing a policy that gives workers discretion on whether an e-mail constitutes a public record and therefore must be saved.

Several media outlets sued Easley last month in part over that 2002 policy, arguing it violates the public records law. An attorney helping the committee defended the policy as following the law, and the Easley administration has said no such e-mail purges occurred.

The panel's recommendations, which also include performing random record audits of state agencies, will make workers more inclined to follow the law, said Franklin Freeman, the committee chairman.

"We trust state employees to spend millions of dollars" and carry out programs, said Freeman, who is also Easley's top lobbyist. "We've got to trust them _ but we have for generations _ for them to comply with the public records law."

E-mails sent and received by state employees are public records if they contain information related to carrying out public business. State law orders the Department of Cultural Resources to set guidelines on when e-mails must be kept and for how long.

The media organizations argued the guidelines are unlawful because they let an employee delete a public record when the worker determines the message has short-term or no value to the sender or receiver.

Panelists, who included state officials, attorneys and former journalists, endorsed expanding the length of time in which e-mails from Executive Branch agencies backed up daily on computer servers are stored from the current 30 days to a minimum of five years.

Information technology workers can search the tapes if a citizen or media outlet makes a records request and certain messages can't be found on a worker's computer.

Members of the E-mail Records Review Panel rejected a proposal to expand the backup to at least 10 years. Some said it was too costly and would store too many things that were of little importance and discourage workers from using e-mail.

"It will make the situation in terms of transparency much worse," said Ned Cline, a former managing editor of the News & Record of Greensboro and panel member. "Ten years is unreasonable, impracticable."

Storing five years of e-mail will cost about \$375,000, plus any expenses related to searching the tapes. Going above five years could cost at least twice the amount.

The panel also endorsed the development of a searchable archive system in which employees store e-mail messages about state business that are of lasting or permanent value.

The recommendations are commendable and will help employees comply with the law, said Beth Grace, executive director of the North Carolina Press Association. But she said they still don't prevent an employee with questionable intentions from trashing e-mails that are never stored by clearing their "delete" file daily, she said.

Many changes don't appear to require changes to state law and can be carried out by the Easley administration, although the Legislature could be asked for additional dollars.

Cline told fellow members the panel, which first met in late March, has raised awareness about preserving public records.

"If there had been abuses, there are far fewer of them in the last 30 days than before," Cline said.



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07/09/2008 09:47 PM

To: "Erica Craven" <elc@lrolaw.com>, "Richard A. Knee"
<rak0408@earthlink.net>, "SOTF" <soft@sfgov.org>, "allen
Grossman" <grossman356@mac.com>, "Kristin Chu"
cc
bcc
Subject: RE: Status of North Carolina email lawsuit, Recommend 5
years preservation

(Clerk - please include this in the CAC Agenda item for preservation of electronic records discussed today)

This one covers issues of recovery of deleted emails, same day deletion of emails which are then not nightly backed up.

Michael Biesecker, Staff Writer [Comment on this story](#)

RALEIGH - A panel appointed by Gov. Mike Easley to review his administration's deletion of e-mail messages unanimously approved recommendations Thursday aimed at ensuring that state employees know the public records law and have the technology needed to comply.

But the panel's suggestions, if implemented, will do nothing to prevent employees from knowingly circumventing the law -- the very accusation that triggered the group's creation.

"They treated the symptoms, but the disease rages on," surmised Beth Grace, the executive director of the N.C. Press Association, after the panel's vote.

The panel recommended that Easley start a new training program that would require state employees who handle public records to complete a one-hour online tutorial about what the law requires. Similar training has been available previously, but was voluntary.

The panel also recommended extending the automatic back-up of e-mail on state servers from 30 days to five years.

Further, the panel called on the executive branch to work toward the consolidation of its 18 separate e-mail systems and install new hardware and software to archive e-mail in a searchable database.

However, the panel did not specify a deadline for the installation of such an archiving system and made no recommendation for a specific allocation to pay for it.

Also, the panel suggested the creation of an archiving system that would capture and store only the e-mail that employees choose to keep, though the state's chief information officer said it is technically feasible to buy a system that stores all e-mail not filtered out as spam.

The panel recommended no changes to a policy instituted under Easley that gives employees discretion to immediately delete e-mails they judge to be of no "enduring administrative value."

"We've always had the situation where you had to trust state employees to preserve paper records," said Franklin Freeman, Easley's senior assistant for governmental affairs and chairman

of the panel. "The same thing applies to e-mail. At some juncture you've got to trust."

The governor appointed the group after Debbie Crane, former chief public information officer for the state Department of Health and Human Services, alleged that she and others had been instructed to immediately delete e-mail sent or received by the governor's press office.

"The governor's office, press office, to bypass the public records laws, they ask the second you e-mail them anything, to kill it, then kill it again out of your trash so it doesn't exist," Crane said.

Following such instructions would exploit a key weakness in the state's computer system.

The system automatically backs up e-mail each night. But if employees delete e-mail before the nightly backup occurs, then the messages are gone.

Freeman ordered that Crane, a public information officer for 18 years, be fired in early March amid fallout from a News & Observer investigation of the state's mental-health system.

Easley's chief legal counsel, Reuben F. Young, and his deputy press secretary, Seth Effron, denied that any instructions to delete e-mail had been given. Effron painted Crane as a disgruntled former employee and liar.

But the newspaper later uncovered written notes taken by two other public information officers of a 2007 meeting at which they and others were told to destroy e-mail messages each day.

The News & Observer and nine other North Carolina news organizations sued Easley last month over his administration's "systematic deletion, destruction or concealment of e-mail messages sent from or received by the Governor's Office."

Easley filed a legal motion Tuesday asking a judge throw out the lawsuit because the newspapers haven't shown they've been denied records. The position effectively challenges the news organizations to prove the existence of e-mail that was destroyed before digital copies were made.

George Bakolia, the chief information officer for the executive branch, explained to fellow members of the panel Thursday how e-mail deleted before the nightly backup would be gone forever.

"They would be purged," Bakolia said.

He also said the cost of searching the backup tapes for specific groups of e-mail messages could be "prohibitive."

The administration's interpretation of state law allows it to charge members of the public for the cost of searching backup tapes for e-mail.

In at least two instances in which The N&O has inquired about searching the backup tapes for deleted e-mail, state officials estimated fulfilling such a request would cost the newspaper several thousand dollars.

Bakolia said the new archiving system, if implemented, would be much easier to search. But he said without a major infusion of cash and resources, his staff would be unable to install such a

system across all of the administration's agencies by the end of Easley's term in January .

Freeman said the administration is committed to installing the proposed archiving system before Easley leaves office.

"We will seek whatever we have to," Freeman said.

From: kimocrossman@gmail.com [mailto:kimocrossman@gmail.com] **On Behalf Of** kimo
Sent: Wednesday, July 09, 2008 9:39 PM
To: Erica Craven; Richard A. Knee; SOTF; Kimo Crossman; allen Grossman; Kristin Chu
Subject: Status of North Carolina email lawsuit, Recommend 5 years preservation

(Clerk - please include this in the CAC Agenda item for preservation of electronic records discussed today)

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07/09/2008 10:02 PM

To "Erica Craven" <elc@lrolaw.com>, "Richard A. Knee"
<rak0408@earthlink.net>, "SOTF" <sotf@sfgov.org>, "allen
Grossman" <grossman356@mac.com>, "Kristin Chu"
cc
bcc
Subject RE: Status of North Carolina email lawsuit, Recommend 5
years preservation

(Clerk - please include this in the CAC Agenda item for preservation of electronic records discussed today)

When people complain about cost of email archive:

This one is interesting because it includes a quote by the State Auditor – saying besides being useful for Public Records, emails serve as an audit trail

State Auditor Leslie Merritt wrote to Franklin Freeman, the chair of the panel, stating that e-mails aren't just important for the general public.

"They tend to confirm the occurrence of actual events and provide a unique window into the operation of state government," Merritt said in the letter.

"E-mails serve as information in the audit trail," he added.

Easley panel calls for longer e-mail storage **Critics say mass deleting occurs** **By: Devin Rooney, State & National Editor**

The panel assembled by Gov. Mike Easley to review public records law regarding e-mails made its recommendation to the governor Tuesday.

The panel recommended that Gov. Easley extend the storage period for e-mails from 30 days to 5 years, and that he require all state employees to complete public records training.

The panel proposed a system for data back-up that would also be archived to make the records searchable and more readily available to the public.

But critics say the plan falls short because it doesn't require employees to save all e-mail correspondence related to state business, and employees will still be able to delete e-mails that could be significant to the public.

Sue Wilson, president of the Sunshine Center at Elon University and the chief of the North Carolina and South Carolina Associated Press bureau, is among those critics.

"I'm disappointed that they did not recommend policy changes that would have better protected e-mails from the kind of deleting that some in the administration have told us has gone on rather routinely," Wilson said.

"They're not their documents, they're our documents and whether they're on e-mail or on paper they are documents that belong to the public."

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"They tend to confirm the occurrence of actual events and provide a unique window into the operation of state government," Merritt said in the letter.

"E-mails serve as information in the audit trail," he added.

The issue of saving e-mails has brought to light a fundamental disagreement about what constitutes a public record.

Gov. Easley has said that documents without lasting administrative value do not have to be saved.

This argument has been challenged by 10 N.C. news organizations who filed a lawsuit in April, alleging that Gov. Easley has willfully violated public records law.

Easley filed a motion on May 13 asking that the suit be thrown out because it fails to prove that the records exist, and that the demands of the suit are too far-reaching.

This motion means the suit could ultimately end up in court.

d.



"Kimo Crossman"
<kimo@webnetic.net>
07/09/2008 10:02 PM

To "Kristin Chu" <kristin@chu.com>, "Richard A. Knee"
<rak0408@earthlink.net>, "Erica Craven"
<elc@lrolaw.com>, "SOTF" <sotf@sfgov.org>, "Allen
cc
bcc
Subject San Jose Sunshine Reform - email preservation

(Clerk - please include this in the CAC Agenda item for preservation of electronic records discussed today)

San Jose Sunshine Reform - email preservation

6.3.1.020 Archiving Documents

A. Email Archive Recommendations

1. The SRTF recommends that the City immediately begin archiving the email of elected officials and non-clerical staff to elected officials that relates to the conduct of the City's business for 10 years.

2. The SRTF recommends that the City pursue a solution to archive, at a minimum, email of all City employees who file the Form 700 – Statement of Economic Interests that relates to the conduct of the City's business for 5 years.

B. The SRTF recommends that the City maintain a permanent electronic archive of documents related to Council Agenda items.

6.3.1.030 Retention Schedules

The SRTF recommends that the City publish an index to City records and associated retention schedules for those records. The SRTF also recommends that changes to any retention schedule be reviewed at an open and public meeting of both the Open Government Commission and the City Council.

From here:

<http://www.sanjoseca.gov/clerk/TaskForce/SRTF/20080619/Phase%20II%20Report%20060908%20%20FINAL%20VERSION.pdf>



kimo <kimo@webnetic.net>
 Sent by:
 kimocrossman@gmail.com

"Kristin Chu" <kristin@chu.com>, "Erica Craven"
 To <elc@lrolaw.com>, SOTF <soft@sfgov.org>, "Kimo
 Crossman" <kimo@webnetic.net>, "Richard A. Knee"

07/09/2008 10:15 PM

Please respond to
 kimo@webnetic.net

cc

bcc

Subject More on electronic communications retention

(Clerk - please include this in the CAC Agenda item for preservation of electronic records discussed today)

My first question is have you ever used gmail, hotmail or other web based email? It is now common practice (and encouraged by the vendors) for people to not delete any email nor spend any time to organize it – it has been judged by productivity experts that with fast search tools one can find relevant records quickly and save all the time needed organizing and deciding which records to keep or delete!

As you are probably aware, seven news organizations are now suing the NC Governor over the policy arguing that this is a violation of Public Records law that government staff can't make those determinations where there are minimal record retention requirements for public records in state law. Additionally it is now well recognized that the dumbing down by printing electronic records and deleting the original significantly reduces the ability to search/find the information later – almost the same as putting a book back on the wrong shelf in a library. And printed records cannot be used with electronic screen reader programs for the blind and other tools for the disabled and is not ecologically aware. And if someone needs to modify the information and wants to use it as a template it has to be recreated. And paper copies are more expensive and difficult to duplicate when one desires to make a copy of all files for disaster recovery.

I wanted to make you aware of the following information:

Extensive report released 4/16/2008 on email at a Federal level

<http://citizensforethics.org/recordchaos>

I was particularly struck by the comment in the survey that one person claimed that 90% of work is now done over email. I think it is certainly possible.

"Record keeping experts define the overriding goal for record keeping systems in similarly broad terms; according to one expert, "the best practice is to archive and store everything in a system that's searchable for e-mail and kept in an orderly and organized way."⁹¹

Also when someone answers the below bullets for electronic records, the reasons for destroying electronic records (and retention schedules) don't hold up since they basically don't take any physical space and are already much more searchable (I'm not saying there may be other good reason for destroying records, just this list from a reputable government source, doesn't identify it).

<http://www.archives.gov/records-mgmt/faqs/scheduling.html#whysched>

What are the benefits of using records schedules?

Using records schedules

1. Ensures that the important records are organized and maintained in such a way as to be easily retrieved and identifiable as evidence of the program's activities, especially in the event of an audit, a Freedom of Information Act (FOIA) request, or a discovery in a lawsuit
2. Conserves office space and equipment by using filing cabinets to store only active paper records and conserves server space by using tapes, disks, and other off-line storage media for electronic records
3. Saves money by moving inactive files to off-site storage areas until they are ready for final disposition
4. Helps preserve those records that are valuable for historical or other research purposes
5. Controls the growth of records in offices through the systematic disposition of unneeded records

Also Missouri this year, spent \$2 million on a seven year email archive system for state emails and governor is also being sued on allegations that he told staff to delete email.

It is certainly disconcerting to see someone potentially advocating for destruction of what could be 90% of the business of government today and additional training and organizing burdens on overworked staff. I certainly hope the motivation is not one of trying to avoid legal or other accountability like officials who advocate for double delete of email before nightly backup and other unsavory practices explained away by claiming disk space is expensive.

There is of course the example of the Anderson Consulting messages to employees to get current on their record retention practices which apparently was seen as a coded message to destroy large amounts of information in the Enron matter:

<http://www.bizjournals.com/houston/stories/2004/10/04/focus8.html?t=printable>

Friday, October 1, 2004

Don't let records retention policy be used against firm in litigation

Houston Business Journal - by Ken Alexander

Why have a records retention policy?

Why indeed, if the company's policy is going to be used against it, as it has in several recent notorious criminal prosecutions and civil lawsuits. A records retention policy is an effective tool, but only if it is followed. A records retention policy that is poorly understood by company employees or not followed can be worse than no policy at all, particularly now when "paper shredder" means "cover-up" to many people. Some of them are prosecutors, judges and jurors.

Legitimate purposes

A good records retention policy starts with an explicit statement of its purposes. Many policies, if they have any stated purpose at all, only say it is to save money on storing records -- not very persuasive with some electronic records. Other legitimate purposes include:

- Preserving the useful.
- Discarding the burdensome.
- Avoiding liability or expense of required or accidental disclosure of information that is unlikely to be of continuing business use.
- Limiting retention of confidential information.

Records retention policies never justify the destruction of records by persons who know that a government investigation into matters related to the documents has been launched or is likely to be launched in the future.

Bad practices

To understand the perils of bad records management, look no further than Arthur Andersen. In October, 2001, Arthur Andersen was one of the world's largest and most successful accounting firms and Enron Corp.'s auditor. Enron had begun restating some financial results, but it was not in bankruptcy, and no formal government investigation of Arthur Andersen or Enron had yet been initiated.

Some at Andersen working on the Enron audit had failed to follow Andersen's records retention policy. They sought to "catch up" once Enron came under internal scrutiny at Andersen, including destroying many documents the policy said should be discarded. Meanwhile, at least one person at Andersen believed that it was "highly probable" that a civil investigation by the Securities & Exchange Commission would be initiated, and she reminded others at Andersen, "Follow the document retention policy."

Independently, another Andersen professional e-mailed colleagues, "If it's destroyed in the course of normal policy and litigation is filed the next day, that's great ... We've followed our own policy and whatever there was that might have been of interest to somebody is gone and irretrievable."

Andersen employees discarded a large quantity of documents, most of which its records retention policy in fact called for to be eliminated, including many duplicates. When Andersen received the subpoena from the SEC, document destruction stopped. Many of the "destroyed" records were recovered by Andersen and given to the SEC or were duplicates of records that were retained. Nobody proved that Andersen destroyed any "smoking guns."

Andersen nevertheless was indicted and convicted for obstruction of justice -- not for "bad accounting" or fraud. The jury, the trial court and the appeals court found that all of the evidence mentioned here supported that criminal conviction, and Andersen died. It made little difference whether Andersen's Enron accounting was impeccable or not.

Where did Andersen go wrong? Three critical errors stand out:

- It fell behind in following its own records retention policy.
- It failed to stop all destruction, regardless of what the policy called for, once a government investigation appeared likely.
- It failed to communicate that a records policy can never be used to justify "catching up" on overdue destruction to race arrival of a subpoena.

Good policies

To avoid this kind of disaster, follow the "Ten Guidelines." Consult legal counsel for appropriate records retention periods to meet company employment, regulatory and industry requirements. Make certain employees understand that a document discarded or hidden when an investigation or dispute is forthcoming often is a much bigger problem than any reason for shredding it. Destruction will compound the problem.

Almost every business will destroy records, indeed, should destroy records, that may be later sought in a lawsuit, government investigation or audit.

"Our records retention policy called for its elimination" is the beginning, not the end, of a defense. If the company's records retention policy is not documented, justified, clear and followed, that response won't be very persuasive.

Finally, remember that a good "records retention" policy won't trump bad "records creation" practice. If employees are using inappropriate business communications, like "Destroy after reading" or "Let them twist slowly, slowly in the wind" in e-mails or Microsoft Word or their "personal" business diary, a records retention policy is unlikely to be much help in avoiding having to explain their meaning to a prosecutor or jury.

10 Guidelines for a Good Records Retention Policy

Your company's policy should be:

1. Documented - Put it where all employees with records retention or destruction responsibility can find it at their fingertips.
2. Tailored - There is no "one size fits all" for records retention. The legal and practical requirements vary significantly from business to business.
3. Justified - Write the reasons for having the policy in ways that fit your business. Don't stop at just "save money on storage."
4. Automatic - **Wherever practical, make records elimination an automated procedure, particularly with e-mail, voice-mail, and some other computer files.**
5. Triggered - Destruction should be tied either to a specific date schedule or specific triggering

events, such as the closing of the deal.

6. Neutral - Records should be eliminated on a schedule or triggering event based on category more than individual content.

7. Updated - Has your policy been revised since the advent of your latest computer system? Sarbanes-Oxley? Your new product line? E-mail? Voice-mail? The last time your company used typewriters or stone tablets?

8. Managed - Who really has responsibility for determining whether documents should be and are destroyed?

9. Stoppable - Do you have procedures in place, ready to go, to identify when document destruction should stop and how the "stop order" will be effectively communicated to every person concerned?

10. Monitored - Face it, many employees will find other tasks to do rather than archiving or trimming old files. How are you going to assure compliance?

KEN ALEXANDER, a litigation partner with Porter & Hedges LLP (www.porterhedges.com), has both challenged and defended document destruction by companies in litigation.

http://www.usatoday.com/tech/products/2008-01-23-2391102905_x.htm

Missouri governor funds e-mail archive

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By David A. Lieb, Associated Press Writer

JEFFERSON CITY, Mo. — Missouri Gov. Matt Blunt, working to mute criticism of the state's failure to save its employees' e-mails, has authorized spending \$2 million to plan and run an e-mail archive.

The request came after a former staff attorney alleged he had been fired from Blunt's office for questioning its e-mail deletion practices.

Blunt approved the use of reserve funds for the e-mail retention plan Jan. 15, according to public documents obtained by The Associated Press.

Chief information officer Dan Ross reported to the governor that it will cost more than \$1.6 million to set up the e-mail retention system and \$486,652 annually to run it.

"The governor's reserve exists for unexpected or emergency expenditures and fiscal responsibilities," Blunt spokeswoman Jessica Robinson said. "An e-mail retention system is essential for transparent and accountable government."

The state computer system, which handles about 1.5 million e-mails a day, includes executive branch agencies, except for the departments of Transportation, Conservation and Natural Resources and the Missouri State Highway Patrol, which operate their own e-mail systems.

Separate systems handle e-mail for the judiciary, Legislature and other statewide elected officials.

Ross recommended the state contract with Cupertino, Calif.-based Symantec Corp., whose archiving product was rated the best among four Missouri officials tested.

State employees' e-mails are considered public records just like paper documents. Former Blunt attorney Scott Eckersley sued the governor and some of his staff this month, alleging he was defamed and fired in retaliation for telling the governor's office it was violating the Sunshine Law by deleting e-mails. Blunt has defended the firing of Eckersley as performance-related.

When Blunt announced Wednesday that he will not seek reelection, the e-mail controversy was seen as a mark on his administration.

<http://medialab.semissourian.com/story/1303214.html>

MO Governor ducks questions about e-mail deletion lawsuit

Friday, January 11, 2008

By DAVID A. LIEB ~ The Associated Press

JEFFERSON CITY, Mo. -- Gov. Matt Blunt ducked questions Thursday about a lawsuit alleging his office intentionally deleted e-mails in violation of open-records laws but defended the firing of the former staff attorney who sued him.

A whistleblower and defamation lawsuit filed Wednesday by former gubernatorial attorney Scott Eckersley claims that top Blunt aides directed staff in his office and other agencies to destroy e-mails to avoid providing information sought under public-records requests.

Blunt refused to either confirm or deny whether those directives were given, whether he was aware of the orders at the time or whether he approved of the e-mail deletions.

"I'm not going to respond to accusations in lawsuits," Blunt told reporters at a Capitol news conference.

Earlier Thursday at the governor's annual prayer breakfast, Blunt declined to answer questions from The Associated Press about Eckersley's lawsuit, but pledged to discuss it at a later news conference on drunken driving laws.

At that news conference, however, Blunt devoted barely 2 minutes to questions about the lawsuit -- refusing to discuss it any detail -- and then turned his back on reporters and walked out of the room while ignoring continued questions.

Eckersley claims he was fired in late September in retaliation for pointing out that the e-mail deletions by Blunt's office violated Missouri's Sunshine Law and document retention policies. Blunt has consistently denied that.

"I'm confident that the decision to dismiss this young man was indeed lawful and that the case is without merit," Blunt said Thursday.

As Eckersley was about to go public with his allegations in late October, Blunt's administration sent The Associated Press and other media a thick packet of papers defending Eckersley's firing and questioning his character.

Included was a termination letter to Eckersley by Blunt's then-chief of staff, Ed Martin, claiming Eckersley had lied about using a "group sex Web site" and misused his state resources to do work on behalf of his father's private health care business.

A cover letter to the media from Blunt's deputy administration commissioner, Rich AuBuchon, also claimed Eckersley did a poor job as a legal adviser, was frequently tardy and had been questioned by Martin about drug use.

Eckersley denies all of those allegations and claims in his lawsuit that Blunt's administration intentionally released false information "designed to injure, defame and smear" him.

His lawsuit seeks unspecified monetary damages for defamation, wrongful firing and violations of Missouri's Sunshine Law and whistleblower protection act.

Eckersley's attorneys and Blunt's administration had been negotiating a potential settlement before the lawsuit was filed. Those efforts failed. But the amount of money was not the main sticking point.

Eckersley wants Blunt to issue an apologetic retraction of the accusations made against him, specifically clearing him of the drug and sexual allegations and the assertions he was a lazy, poor employee.

"I can't negotiate with my character," Eckersley said Thursday.

The lawsuit names as defendants Blunt, Martin, AuBuchon, Blunt communications director Rich Chrismer and Blunt's former general counsel, Henry Herschel. Martin and Herschel have been replaced on Blunt's staff, though the governor has praised their work.

Martin declined to comment about the lawsuit. AuBuchon, Herschel and Chrismer did not respond to requests for comment.

The lawsuit claims Herschel and Martin directed the e-mail deletions. It also alleges that one or more of the five defendants ordered the state's backup computer tapes for e-mails to be destroyed.

AuBuchon has previously denied that. So has the state's computer chief, Dan Ross, who has said the backup tapes have been preserved.

Several months ago, the AP submitted a Sunshine Law request to the Office of Administration and Blunt's office seeking backup file copies of e-mails sent or received by Blunt, Martin, Herschel, Chrismer and Eckersley.

Late Thursday, Blunt's legal counsel responded with a letter saying it would cost about \$23,625 to retrieve, review and produce those e-mails, plus additional copying fees of 10 cents per page.

After publicity about Eckersley's accusations, Blunt in November directed Ross to come up with a way of permanently retaining government e-mails. On that same day, Attorney General Jay Nixon, who is challenging Blunt in the 2008 gubernatorial election, appointed a three-person team to investigate whether Blunt's office was violating the Sunshine Law or document retention policies.

One of Nixon's investigators, St. Louis attorney Chet Pleban, said Thursday that the lawsuit would not deter that investigation. He said Blunt's office generally has declined to provide documents without a formal Sunshine Law request and declined to make staff available for interviews.

"We're requesting a variety of documents, and were hoping for more cooperation from the governor than there has been," Pleban said. "From our perspective, there is an easy way to do this and a hard way to do this."

Pleban said he does not have power to issue subpoenas, but could sue to get records from the governor's office.

Eckersley's lawsuit claims Blunt's administration has shown a pattern of firing people for political motivations. It says Eckersley was assigned by Martin to determine who was responsible for misinterpreting how Missouri's new minimum wage law applied to tipped employees.

The lawsuit says Eckersley identified the responsible person as the director of the Department of

Labor and Industrial Relations, who at the time was Rod Chapel. But the suit claims Martin was reluctant to fire the director "for political reasons." Instead, the lawsuit says Martin fired department general counsel Cynthia Quetsch because she had served under former Democratic Gov. Bob Holden and her husband worked for Nixon.

http://www.zwire.com/site/news.cfm?newsid=19447090&BRD=1817&PAG=461&dept_id=222087&rft=6

States fight to keep the e-mail of officials from public's view

By TOM HESTER JR., Associated Press Writer

April 02, 2008

Email to a friend

Voice your opinion

TRENTON, N.J. - In New Jersey, the governor's e-mails might shed light on whether he inappropriately conferred with a labor leader he once dated. In Detroit, the mayor's text messages revealed a sexually charged scandal. In California, a fight rages for access to e-mails sent by a city councilwoman about a controversial biological laboratory.

Even the White House has been under pressure from Democrats in Congress over its problem-plagued e-mail system.

While e-mail and text messaging has become a hugely popular way to communicate throughout society, governments at all levels are often unwilling to let the public see the e-mails of their elected officials.

Officially, e-mails in all but a handful of states are treated like paper documents and subject to Freedom of Information requests. But most of these states have rules allowing them to choose which e-mails to turn

over, and most decide on their own when e-mail records are deleted.

"There seems to be an attitude throughout government - at all levels - that somehow electronic communications are of its own kind and not subject to the laws in the way that print communications are," said Patrice McDermott, director of OpenTheGovernment.org.

"So we keep hearing reports of governors and mayors who decree that their e-mail records can be destroyed, in six weeks or six months, with no appraisal for permanent value and no review by an independent body," she said.

Open records advocates contend by keeping electronic communications private, states are giving their elected officials an avenue to operate in secret - they use taxpayer-funded computers to send and receive e-mail but with little or no obligation to make such communications public.

"The public needs to realize that is their possibility for accountability and historical review that is being put through the electronic shredder," McDermott said.

New Jersey Gov. Jon S. Corzine is fighting in court to keep secret his e-mails with ex-girlfriend Carla Katz, the leader of a powerful union representing thousands of state workers. State Republicans sued when Corzine refused to turn over his e-mails.

"He seems to think he's still running a private company where he gets to set the rules and ignore them when it serves his purpose," said Tom Wilson, the New Jersey Republican Party chief. "He isn't doing business. He's leading a government established by and for the people."

Corzine says he's protecting privileges afforded governors to keep communication private while also keeping his personal life shielded from public examination.

"I think in the American system, people believe that people have a right to a private life," Corzine said.

Corzine is among several governors who say they don't use e-mail. But without a system that grants access to e-mails, open records advocates wonder how the public would know if that's true.

An Associated Press survey - conducted in conjunction with Sunshine Week, a nationwide effort to draw attention to the public's right to know - found e-mails for governors in at least seven states are officially exempt from disclosure under the Freedom of Information Act.

But even in the other states, access to e-mail is limited, at best. Public records guardians decide which e-mails they'll turn over and which ones they won't.

"Now that e-mail has replaced faxes and standard mail as the preferred mode of communication, it is important that these e-mails fall under open public records acts," said Heather Taylor of the Citizens' Campaign, a New Jersey-based group fighting for open government.

Public access to elected officials' e-mail is largely an untested area of open records law, even as government e-mail use proliferates.

"This is becoming a pretty hot issue," said Karl Olson said, a San Francisco attorney representing a newspaper in a fight to get e-mails from a city council member.

State laws vary on how long e-mails must be retained, and some states charge exorbitant fees for providing copies of e-mail. There's also debate whether e-mail sent by a public official from private accounts should be subject to Freedom of Information requests.

"Some authorities purge old e-mails sooner than others," said Bill Lueders, president of the Wisconsin Freedom of Information Council. "And the Legislature, in its wisdom, exempted itself from the retention rule in place for other state officials so lawmakers can simply delete e-mails that may point to unethical or criminal conduct."

Across the country, denial to requests for e-mail access seems to be commonplace.

The Detroit Free Press sought access to text messages sent between Detroit Mayor Kwame Kilpatrick

and his chief of staff, Christine Beatty. The Free Press was unable to get access to the messages through a records request, but still got about 14,000 text messages on Beatty's city-issued pager from 2002 and 2003 through another source it hasn't named.

Those messages unleashed a sexually charged text-messaging scandal that has prompted calls for Kilpatrick's resignation.

The mayor's office contends the text messages don't fall under public information requirements because they were transmitted on a leased device, not on city-owned equipment.

When governments do release e-mails - voluntarily or not - these documents can prove revealing to the public. For example:

-- In 2005, several media outlets, including the AP, sought e-mails from the office of Jim Black, then the House speaker in North Carolina, about possible lobbying work performed by his political director, who was also working for a lottery company seeking to do business for the state.

Black eventually released documents sought by a federal grand jury and 300 additional pages of e-mails, some of which showed his political director was actively lobbying the speaker even though she wasn't registered to lobby.

-- E-mails obtained by AP in Iowa showed how the staff of Gov. Chet Culver formulated a public statement following August's bridge collapse in neighboring Minnesota. The e-mails show a staff eager to assure citizens of their safety, but at odds over what kind of guarantees the governor could offer that Iowa's bridges were safe.

* * *

The issue of e-mail retention is acute in Texas, where the governor's office deletes e-mails regularly - on a weekly basis for e-mails not deemed to be of public importance.

As in most states, the Texas governor's e-mails are considered open records unless they fall into exceptions, such as legal negotiations or state security. Otherwise, e-mails from a state agency can be requested and must be provided.

The Texas retention policy prompted a fight with a Wisconsin man who in November began asking Gov. Rick Perry's office for several days worth of government e-mails. The man, computer consultant John Washburn, launched twice-weekly computer-generated requests to Perry's office.

Perry's office initially hesitated to provide the e-mails, but then agreed providing Washburn paid for the cost of what it said was staff time spent sorting through which ones could be released. The bill came to \$568 for the first four days of requested messages.

Washburn said he wonders whether Perry's seven-day e-mail deletion policy is really about eliminating only "transitory" messages.

"I think the more obvious explanation is e-mails come back to bite you," he said.

In Missouri, e-mail retention policies drew attention last September after the Springfield News-Leader reported Gov. Matt Blunt's office had denied an open-records request for e-mails from his chief of staff, Ed Martin. The newspaper was seeking information about Martin's communications with anti-abortion activists about a Planned Parenthood lawsuit.

Martin, who has since resigned, told the newspaper that he didn't save the e-mails.

Blunt later acknowledged he and his staff routinely delete some e-mails, although Blunt denied that his office violates state law. Others in government, including staff for Attorney General Jay Nixon, also acknowledged deleting some e-mails but denied any legal violations.

Blunt has ordered work to begin on a \$2 million plan to archive government e-mails in response to concerns about deletions in his office and elsewhere.

That issue is also a concern in New Jersey, where the state attorney general's office said e-mails sent and received by top officials in former Gov. James E. McGreevey's administration were deleted from state

computers, despite regulations dictating electronic records must be reviewed and archived.

McGreevey was elected in 2001 and resigned in 2004 after announcing he was gay and had an affair with a male staffer.

* * *

Don Craven, a lawyer who represents the Illinois Press Association, said most court cases over electronic records involve fees, not access to the documents.

For instance, in Missouri, the AP requested copies e-mails for several people in the governor's office, prompting the governor's office to respond with a cost estimate of more than \$20,000.

"Some want us to pay for the systems to maintain the records, while we think we only need to pay the cost of reproduction," Craven said. "We usually win that one."

In California, the Tracy Press sued the city of Tracy to obtain e-mails between Councilwoman Suzanne Tucker and the Lawrence Livermore National Laboratory over the possible siting of a biological laboratory in 2006. A San Joaquin County Superior Court judge ruled in August that the e-mails are not public records because they were sent and received at Tucker's personal computer at her home.

"The big question at this stage is whether or not a public official can avoid the requirements of the law by simply going home at night and using a personal computer," said Tom Newton, general counsel for the California Newspaper Publishers Association.

That's the issue in San Francisco, where messages to Mayor Gavin Newsom about a fuel spill were sent to and from Newsom's personal iPhone, said Newsom spokesman Nathan Ballard, and were sought by a citizen not affiliated with the news media.

"We're not going to start handing over the personal messages of someone just because they work for the city," Ballard said.

The messages were between Newsom and his chief of staff and involved the city's spill response, Ballard said.

"We're not going to violate the person's privacy and hand over messages they receive on their personal cell."

McDermott questioned such reasoning, which she described as "willful delusion."

Utah's open-records law was enacted in 1991 before e-mail became an established form of communication. but Utah Attorney General Mark Shurtleff advises state officials and agencies to treat e-mail like other government records subject to disclosure, his spokesman Paul Murphy said.

State officials can delete only junk mail, personal notes, calendar items and draft memorandums on state policy, which means they save most of their e-mails; Murphy said he had 7,772 items in his inbox in early January.



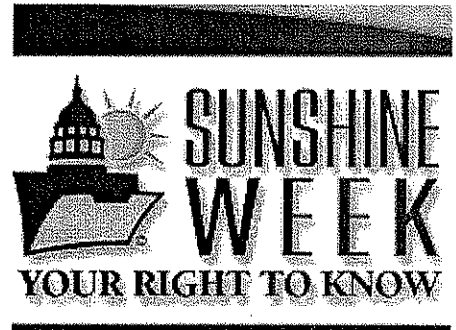
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 Subject Summary of Public Records/email nationwide from March
 2008

(Clerk - please include this in the CAC Agenda item for preservation of electronic records discussed today)

States fight to keep officials' e-mail from public inspection

By The Associated Press
 03.19.08



TRENTON, N.J. — In New Jersey, the governor’s e-mails might shed light on whether he inappropriately conferred with a labor leader he once dated. In Detroit, the mayor’s text messages revealed a sexually charged scandal. In California, a fight rages for access to e-mails sent by a city councilwoman about a controversial biological laboratory.

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Untested area of sunshine law

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Released messages can prove revealing

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E-mail retention spotty

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In Missouri, e-mail retention policies drew attention last September after the *Springfield News-Leader* reported Gov. Matt Blunt’s office had denied an open-records request for e-mails from his chief of staff, Ed Martin. The newspaper was seeking information about Martin’s communications with anti-abortion activists about a Planned Parenthood lawsuit.

Martin, who has since resigned, told the newspaper that he didn’t save the e-mails.

Blunt later acknowledged he and his staff routinely delete some e-mails, although Blunt denied that his office violates state law. Others in government, including staff for Attorney General Jay Nixon, also acknowledged deleting some e-mails but denied any legal violations.

Blunt has ordered work to begin on a \$2 million plan to archive government e-mails in response to concerns about deletions in his office and elsewhere.

That issue is also a concern in New Jersey, where the state attorney general’s office said e-mails sent and received by top officials in former Gov. James E. McGreevey’s administration were deleted from state computers, despite regulations dictating electronic records must be reviewed and archived.

McGreevey was elected in 2001 and resigned in 2004 after announcing he was gay and had an affair with a male staffer.

Fees, personal computers raise questions

Don Craven, a lawyer who represents the Illinois Press Association, said most court cases over electronic records involve fees, not access to the documents.

For instance, in Missouri, the AP requested copies of e-mails for several people in the governor’s office, prompting the governor’s office to respond with a cost estimate of more than \$20,000.

“Some want us to pay for the systems to maintain the records, while we think we only need to pay the cost of reproduction,” Craven said. “We usually win that one.”

In California, the *Tracy Press* sued the city of Tracy to obtain e-mails between Councilwoman Suzanne Tucker and the Lawrence Livermore National Laboratory over the possible siting of a biological laboratory in 2006. A San Joaquin County Superior Court judge ruled in August that the e-mails are not public records because they were sent and received at Tucker’s personal computer at her home.

“The big question at this stage is whether or not a public official can avoid the requirements of the law by simply going home at night and using a personal computer,” said Tom Newton, general counsel for the California Newspaper Publishers Association.

That’s the issue in San Francisco, where messages to Mayor Gavin Newsom about a fuel spill were sent to and from Newsom’s personal iPhone, said Newsom spokesman Nathan Ballard, and were sought by a citizen not affiliated with the news media.

“We’re not going to start handing over the personal messages of someone just because they work for the city,” Ballard said.

The messages were between Newsom and his chief of staff and involved the city's spill response, Ballard said.

"We're not going to violate the person's privacy and hand over messages they receive on their personal cell."

McDermott questioned such reasoning, which she described as "willful delusion."

'No records exist'

Utah's open-records law was enacted in 1991 before e-mail became an established form of communication. But Utah Attorney General Mark Shurtleff advises state officials and agencies to treat e-mail like other government records subject to disclosure, his spokesman Paul Murphy said.

State officials can delete only junk mail, personal notes, calendar items and draft memorandums on state policy, which means they save most of their e-mails; Murphy said he had 7,772 items in his inbox in early January.

Washington, D.C.'s Freedom of Information law states that the public has a general right to inspect or copy "any public record of a public body," but community activist Dorothy Brizill, of the group DCWatch, said requests for e-mail correspondence often are met with the response "no records exist."

Last year, Mayor Adrian M. Fenty issued an order that would have purged most city e-mails after six months. Brizill raised alarm and, faced with pressure from the city council, the mayor withdrew the order in November.

"We have an administration that functions with e-mails," Brizill said. "They don't write memos. If you want to know how a decision was made and why, it's critical to have access to the electronic correspondence."

On Capitol Hill and in federal court, a congressional committee and two private groups are pushing for information on how the White House has handled its e-mail for the past six years.

McDermott, of OpenTheGovernment.org, said federal policy calls for treating all e-mail the same, regardless of the level of office, and printing it out before destroying the electronic version.

"This would be bad enough, but it is very uncertain that all record mail is even being printed," McDermott said. "Most federal agencies do not have an electronic record-management for their electronic records and this is especially a problem for e-mail records because of the enormous volume."



kimo <kimo@webnetic.net>
Sent by:
kimocrossman@gmail.com

07/09/2008 10:37 PM

Please respond to
kimo@webnetic.net

SOTF <sof@sfgov.org>, "Erica Craven" <elc@irolaw.com>,
To "Richard A. Knee" <rak0408@earthlink.net>, "Kimo
Crossman" <kimo@webnetic.net>, "Ernest Llorente"

cc

bcc

Subject SF City Atty Opinions on preservation of constituent
communications and email in general - Ballard comes up
again!!

SOTF Clerk please include this attached PDF and email in the CAC discussion about email retention

----- Forwarded message -----

From: **Alexis Thompson** <Alexis.Thompson@sfgov.org>

Date: Tue, Dec 18, 2007 at 4:14 PM

Subject: Re: Immediate Disclosure Request - SF City Atty Opinions on preservation of constituent communications and email in general - Ballard comes up again!!

To: kimo@webnetic.net

Hi Kimo:

Here is the memo that responds to the first part of your public records request below. I think that the date may have been transposed in the story, so please let me know if this is not the document that you have requested. Additionally, pursuant to Section 6253 (c) of the Public Records Act and Section 67.25 (b) of the Sunshine Ordinance, we are invoking an extension of time to respond to the second part of your public records request in order to further review our records for responsive documents.

Happy Holidays!

Best,
ALEXIS THOMPSON
Deputy Press Secretary

OFFICE OF CITY ATTORNEY DENNIS HERRERA
San Francisco City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682

(415) 554-4653 Direct
(415) 554-4700 Reception
(415) 554-4715 Facsimile
(415) 554-6770 TTY

<http://www.sfgov.org/cityattorney/>

"Kimo Crossman" <kimo@webnetic.net>
>

12/17/2007 09:45
PM

To "Cityattorney" <CityAttorney@sfgov.org>, "Matt Dorsey" <Matt.Dorsey@sfgov.org>, "Alexis Thompson" <Alexis.Thompson@sfgov.org>

cc "Allen Grossman" <grossman356@mac.com>, <home@prosf.org>, <rak0408@earthlink.net>, <Dougcoms@aol.com>, "SOTF" <sof@sfgov.org>, "Bruce Wolfe, MSW" <sof@brucewolfe.net>, <Pmonette-shaw@earthlink.net>, "Islais Wharf" <islaiswharf@gmail.com>, "Peter Warfield" <

libraryusers2004@yahoo.com>, "James Chaffee" <chaffeej@pacbell.net>, "Nathan Ballard" <Nathan.Ballard@sfgov.org>, "Charles Marsteller" <cm_marsteller@hotmail.com>, "David Waggoner" <dpwaggoner@gmail.com>, <oliverlear@yahoo.com>, <home@prosf.org>, "eileen hansen" <eileenhansensf@yahoo.com>, "Francisco Da Costa" <frandacosta@sbcglobal.net>, "Espanola Jackson" <espanolajackson@sbcglobal.net>, "ahimsa sumchai" <asumchai@hotmail.com>, "Erica Craven" <elc@lrolaw.com>, "Amanda Witherell" <amanda@sfbg.com>, <bruce@sfbg.com>, "Steve Jones" <Steve@sfbg.com>, <tim_redmond@sfbg.com>, <paul@beyondchron.org>, "Kristin Murphy Chu" <kristin@chu.com>, <w_lanier@pacbell.net>, "marc" <marc@cybre.net>, <martin.macintyre@juno.com>

Subject Immediate Disclosure Request - SF City Atty Opinions on preservation of constituent communications and email in general - Ballard comes up again!!

Immediate Disclosure Request

City Attorney:

- 1) Please provide the July 12th 2000 opinion referenced below and any other documents on constituent communications related to privacy or public records.
- 2) Please provide any documents that relate to the retention of e-mail.

Please provide information on a daily incremental basis per Sunshine, please key with footnotes all redactions. Please justify with a specific permissive exemption with specific fact and applicable balancing tests any redactions or withholdings. Please provide suggestions of other relevant records and other people who may have such.

In a July 12, 2000, opinion Renne told the board that letters from constituents are not "records" and therefore don't need to be preserved. But the above section of the ordinance clearly states that documents of this nature must be retained. And section 67.29-1 states that when officials leave, the records they retained throughout their tenure must be kept.

When we asked the city attorney for other documents on constituent communications, Ballard faxed us a copy of an e-mail that confirmed Renne's prior advice.

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The Sunshine Ordinance Task Force addressed this problem last year. Nick Pasquariello, a community activist, complained that an e-mail sent from the Mayor's office of Neighborhood Services to the Planning Department should have been retained as a public record (see "Dead Letters," 9/30/00).

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But because the e-mail is gone, it is impossible to know whether anybody broke the law. Terry Francke, general counsel for the California First Amendment Coalition and an expert on public records law, told us at the time, "The general rule is that destruction of records is to be a periodic, fully public event, approved at the highest level. Destroying a record to avoid submitting it to this due process is tantamount to the destruction of evidence, in my view."

Wed, 21 Mar 2001 15:48:13 -0800

<http://www.sfbg.com/News/35/25/25foisun.html>

Partly cloudy

S.F.'s landmark Sunshine Initiative has helped open up city hall - but some serious problems remain.

By Cassi Feldman

TWO YEARS AGO San Francisco was up to its civic neck in secrecy and sleaze. Mayor Willie Brown was making backroom deals at will, operating without a paper trail, feeding documents into his shredding machine, and keeping the city safe for big companies such as PG&E, Catellus, SKS Investments, and Bloomingdale's.

But his arrogance came back to haunt him. In November 1999 voters passed Proposition G, the nation's most extensive local sunshine ordinance - and a year later an independent district-elected Board of Supervisors swept into office with a clear mandate for change.

By law, and by the will of the voters, San Francisco ought to be the sunniest city in America, a national model for open and accountable government. And indeed, since the passage of Prop. G some dramatic changes have come to city hall. Department heads keep detailed calendars that are available for public inspection, and more information than ever is being posted online. Big businesses that get tax breaks are required to make the finances of their projects public. Closed-session committee meetings are being taped as required. One of the worst loopholes in public records law - the so-called deliberative process privilege - has, for all practical purposes, been closed.

A Bay Guardian survey of 12 major city departments shows that in many cases Prop. G is working. Three-quarters of the departments we contacted responded

to our public record requests promptly and answered our questions completely within the appropriate 10-day window. Nearly half had implemented new steps to improve public access through the Internet, and 25 percent had not withheld any documents requested by citizens in 2000.

But it's not time to declare victory over secrecy in San Francisco - not even close. Our survey, and a review of sunshine-related battles over the past year, shows that while Prop. G has few visible loopholes, enforcement remains a serious problem.

In fact, there's still very much a climate of secrecy in the office of the city attorney, who more than any other public official is responsible for overseeing the day-to-day implementation of the sunshine law.

Among other things, we've found:

€ City Attorney Louise Renne effectively authorized outgoing members of the Board of Supervisors this year to destroy what could be hundreds of pages of documents that by law are public records that must be preserved.

€ City staffers may be deleting e-mail that the law states should be preserved and made public.

€ Only 18 of the city's 58 departments have made public a legally required list of sole-source contracts (contracts awarded without competitive bidding). Agencies like the Public Utilities Commission (PUC) and the Department of Parking and Traffic (DPT), which have major sole-source contracts, didn't bother.

€ The District Attorney's Office routinely denies record requests that in any way relate to ongoing investigations, although at least some of that material almost certainly should be made public.

€ The City Attorney's Office still has no clear policy ensuring that the attorney who represents the Sunshine Ordinance Task Force - which monitors the enforcement of the law - isn't also advising city departments on how to keep information secret.

Paper trails

Section 67.21(a): Every person having custody of any public record or public information, as defined herein, shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person.

San Francisco Sunshine Ordinance

Is the city releasing information properly? Not always. The first step in our public access survey was to ask each of the 12 departments for the name of the person who should receive our requests. Once we had our contacts, we

sent in immediate-disclosure requests, which should legally be answered by the end of the next business day. Most departments responded quickly, but others dragged their feet for a week or more (see chart).

We weren't the only ones to have trouble getting information from the city this year. Attorney Christine Linnenbach, who helped her neighbors fight the expansion of Sutro Tower, told us that whenever she tries to get simple documents from the Planning Department, she's bounced around from person to person. "One of the problems with implementing the Sunshine Ordinance is that there's no system by which documents coming in and out of the department are tracked," she said. (Mike Berkowitz, spokesperson for the Planning Department, could not be reached by press time.)

Neighborhood activist Emeric Kalman told us he had problems retrieving documents regarding the Marina Yacht Harbor from Sup. Chris Daly's office. He said he tried to get an appointment with Daly in order to access information before a committee meeting scheduled for March 13, but Bill Barnes, Daly's legislative aide, asked him to put his request in writing first - a clear violation of the law.

"You give me five staff people, and I'll comply [with the Sunshine Ordinance]," Daly told us. "I don't think sunshine is as important as some of the bread-and-butter issues of my district."

Fortunately there is recourse for those with complaints. Kalman appealed to the Sunshine Ordinance Task Force, the appointed body that monitors violations of the law. So did Kevin Williams, a whistle-blower employee of the Human Rights Commission who testified before the federal grand jury in 1999. Williams has spent more than a year trying to extract employment and accounting records from the HRC. Similarly, Dawn Clements, a former HRC advisory committee member, waited for months to get public records from the city's employee retirement system. Clements has a lawsuit pending against the city in which she contends that the retirement system is still withholding public information regarding bank accounts and city contracts. "It should be much more expeditious," she told us. "If you can't get documents, how in the heck are you gonna find out the truth about the way the city government's working?"

In many cases in which departments withhold documents, the city attorney invokes attorney-client privilege; in other words, Renne's office claims that the documents are part of confidential legal proceedings. But the law says that privilege can't just be used to keep secret anything a lawyer is involved in; there has to be actual litigation going on, or a real threat of litigation, or there has to be another very good reason for the documents not to be released.

"I definitely respect the attorney-client privilege," said Adam Arms, staff attorney for the Coalition on Homelessness, who was denied correspondence on the city's planned homeless sweep of United Nations Plaza on this basis. "But I think that it can be used to hide certain documents. It puts this enormous burden on the requester."

Helping and hindering

Section 67.21(c): A custodian of a public record shall assist a requester in identifying the existence, form, and nature of any records or information maintained by, available to, or in the custody of the custodian....

This is a fairly subjective requirement, but it's important to the average citizen, who may not know exactly what documents he or she is looking for. We called and visited several department offices and asked them for specific pieces of information, and some were extremely helpful. Greg Hobson, assistant clerk of the Board of Supervisors, for example, offered to show us how to use a database to search for our request.

Others were much more reluctant to help. We asked Nathan Ballard, spokesperson for the City Attorney's Office, for a simple list of his department's personnel. First he said that he had already sent such a list to the Bay Guardian; later he said he simply didn't have one. (Renne herself routinely declines Bay Guardian interviews, referring calls to Ballard. Buck Delventhal, Renne's chief deputy, refuses to talk with Bay Guardian reporters at all.)

The city attorney's support of secrecy prevents citizens from accessing information on important issues, such as the current efforts to create a new, publicly managed electric power system in San Francisco. While a citizens' group gathered more than 24,000 signatures last summer to form a municipal utility district, Renne has quietly lobbied the Board of Supervisors to oppose the initiative and has been promoting an alternative charter amendment to create a city power authority (see "Sneak Attack," 2/7/01). We asked Ballard for any documents that explain the city attorney's advice or opinion on the matter. "The response is: there's nothing that I'll be able to provide you," he said. "I don't think there's anything that's not [attorney-client] privileged."

Section 67.29-7(a): The Mayor and all Department Heads shall maintain and preserve all documents and correspondence, including but not limited to letters, e-mails, drafts, memorandum, invoices, reports and proposals and shall disclose all such records in accordance with this ordinance.

Public records have immense historic value, and public officials have historically ignored that fact. When the past two mayors, Art Agnos and Frank Jordan, left office, they took virtually everything in their files with them (despite Bay Guardian objections at the time). That's why the new law makes it very clear that documents received by elected officials and department heads belong to the public and must be left behind when those people leave office.

But if outgoing supervisors followed the city attorney's advice this year, a huge number of documents may have been destroyed or removed from the city's possession. Frank Darby, records and information manager for the board, told us that he had 12 boxes from the former supervisors, an average of fewer

than two boxes each. Former supervisor Mabel Teng turned in nothing at all.

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Police secrets

Section 67.24(d): The District Attorney, Chief of Police, and Sheriff are encouraged to cooperate with the press and other members of the public in allowing access to local records pertaining to investigations, arrests, and other law enforcement activity.

In March, Bay Guardian senior editor Gabriel Roth requested correspondence between the District Attorney's Office and another city agency. In response, assistant district attorney Thomas A. Bogott said that he could not provide any information because the documents might (or might not) be part of an open investigation.

That means almost anything the D.A. has is officially a secret. And that's not far from the truth. We called Fred Gardner, the D.A.'s public information officer, who admitted that the D.A.'s Office routinely denies record requests about open investigations. Some of those could be covered by the sunshine law. According to Gardner, "The danger is maligning someone who is being investigated." He said he understood our position as journalists but faced "tremendous pressure from the other side" (including his own coworkers) "to just let things run their course" in secret.

Low-tech city

Section 67.21(b): Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail.

E-mail is usually quick - and sometimes reliable. And not all of the 12 departments we examined were able to handle requests via e-mail, as the law requires. Beverly Hennessey, spokesperson for the PUC, told us, "We really prefer that you fax us something in writing. I don't encourage [e-mail] because, for one, I don't always have a chance to check them." Hennessey did eventually let us e-mail our requests and responded promptly.

That wasn't the case with Mike Berkowitz, spokesperson for the Planning Department. Although our e-mail was clearly marked an "immediate disclosure request," Berkowitz did not respond to it for more than a week. When we called him, he initially said he hadn't received the e-mail. When he checked, he found it in his in-box - but assured us that it had been delayed.

Section 67.21-1(a): It is the policy of the City and County of San Francisco to utilize computer technology in order to reduce the cost of public records management....

Cityspan, the city's main Web site (www.ci.sf.ca.us), has come a long way since its creation more than five years ago. But the departments' individual sites range from great to, well, lousy.

We asked our 12 departments what efforts they had made since Prop. G was enacted to "improve public records access through the Internet." The HRC, the San Francisco International Airport, the Port of San Francisco, the PUC, and the Department of Public Works (DPW) reported no new policies or procedures. That's unfortunate, considering that two of those sites - the airport and HRC - are among the city's worst. Not all of the airport's links work with Netscape software, and the HRC's agendas are limited, its minutes out of date.

The other half of our sample seems to be making small steps in the right direction. The Office of the Controller, for example, reported that it was improving its Web site and plans to post all future audits. The Board of Supervisors has clear photos of each member with detailed contact

information. Other than the Building Code, all city laws seem to be available online. The City Attorney's Office is working with the City Administrator's Office to create a legally required "index of public records" on Cityspan. Although the site is still in its infancy - only Animal Care and Control, the Ethics Commission, and Administrative Services have posted their records - it looks promising.

Open and closed meetings

Section 67.4(a): All gatherings of passive meeting bodies [committees that advise city departments or officials] shall be accessible to individuals upon inquiry and to the extent possible consistent with the facilities in which they occur. Such gatherings need not be formally noticed, except on the city's Web site whenever possible.

This part of the initiative was designed to address the growing privatization of policy making - the fact that unofficial "advisory" groups and special interests have so much influence over the making of public policy.

We checked on three passive-meeting bodies that have wielded significant influence in the past: Friends of Recreation and Park, the Municipal Fiscal Advisory Committee of the Mayor, and Friends and Foundation of the San Francisco Public Library. All three have Web sites that can be accessed (very indirectly) through Cityspan, and Friends of the Library posts its board meetings online. Friends of Rec and Park posts notices of its meetings on the door of its office at McClaren Lodge. Although the City Attorney's Office ran a special sunshine training for MFAC, we couldn't find its meetings posted anywhere. When we finally got a hold of MFAC's executive director, Donna Ficarotta, she told us that the meetings are only open "upon request." Although P.J. Johnston, spokesperson for the mayor, said that MFAC's activities were "beyond his purview," the group has historically included city officials and meets with Brown regularly.

Contract compliance

Section 67.24(e)(1): Immediately after any review of evaluation or rating of responses to a Request for Proposal ("RFP") has been completed, evaluation forms and score sheets and any other documents used by persons in the RFP evaluation or contractor selection process shall be available to the public.

This change in the law was prompted by the fact that the PUC hired a consultant with ties to PG&E to do a study on whether it made sense for the city to take over PG&E's system. Judging by the contract, it looked as if the bids were rigged - but since the key documents remained secret, there was no way to know for sure.

To some extent things have improved. The DPW now lists all RFPs, along with their status, on its Web site. But other departments are lagging. Arms of the Coalition on Homelessness told us that last November he was unable to retrieve documents from the Mayor's Office on Homelessness regarding an RFP

for the redesign of the city's shelter system. The office's director, George Smith, said that he'd gotten written input from homeless people and service providers, according to Arms. Yet when Arms put in an immediate-disclosure request for those documents, Smith didn't respond. Arms said that once the city attorney prodded Smith, he did reply to the request - but no longer acknowledged having the documents. Smith did not respond to Bay Guardian calls by press time.

Section 67.24(e)(3): At the end of each fiscal year, each City department shall provide to the Board of Supervisors a list of all sole source contracts entered into during the past fiscal year.

Sole-source contracts have led to some of the worst, and most costly, scandals in modern San Francisco political history. The city's 1988 contracts giving PG&E the right to wheel power to the Modesto and Turlock Irrigation Districts - which could cost up to \$80 million next fiscal year - are one obvious example. Prop. G mandated that all sole-source contracts be listed so the public can see if there's a pattern of favoritism. But most departments are ignoring the rule.

Out of approximately 58 city departments, only 18 turned in their lists for fiscal year 1999-2000. Of the 12 departments we checked, the Mayor's Office, the Board of Supervisors, the Controller's Office, and the Planning Department all complied. That means that either none of the others have sole-source contracts or some of the biggest past offenders, including the PUC, are still violating the law. Although the PUC entered into at least seven sole-source contracts last year, spokesperson Hennessey seemed surprised to hear that the list should have been filed with the clerk of the Board of Supervisors. So did DPW director's assistant Olga Arias, who said, "The guys in contracting said they didn't know about that. Is it in the Administrative Code?" According to California First Amendment Coalition's Francke, the missing lists indicate a breakdown in staff training. "When there is a mandate to file something with another department of the city," he said, "the focus of training has to be the individual employee who is given the task of making the filing."

Section 67.29-7(c): In any contract, agreement, or permit between the City and any outside entity that authorizes that entity to demand any funds or fees from citizens, the City shall ensure that accurate records of each transaction are maintained in a professional and businesslike manner and are available to the public as public records under the provisions of this ordinance.

In 1999 the Bay Guardian found that city officials had virtually no idea how much revenue should be coming in from its sole-source towing contractor, City Tow (see "Car Carrion" 4/14/99). The paper filed a lawsuit to get copies of the performance audits the city conducted to monitor City Tow, but a judge ruled that those documents contained proprietary business information and so could remain secret.

A records request filed this month revealed that there was no City Tow

performance audit last year, and while 11,780 abandoned cars were sold by the company, DPT has no record of the sales. Thomas Burke, of Davis, Wright, Tremaine, who represented the Bay Guardian for the City Tow case and who helped write Prop. G, told us he was appalled to hear that DPT was not demanding more from the company. "When that article was published, it looked like the city was getting hosed [by City Tow]," he said. "At a time when the dot-com economy has crashed, it would be great to know if the city's earning a little more than they were in the past."

Where's the mayor?

Section 67.29-5: The Mayor, the City Attorney, and every Department Head shall keep or cause to be kept a daily calendar wherein is recorded the time and place of each meeting or event attended by that official...

Last year we found that Brown, king of the paperless office, was routinely destroying calendars after only two weeks (see "Docu Drama," 3/22/00). That has changed for the better: Brown's calendars, and those of all of the city's department heads, are now readily available. The week after our story was published, the mayor's daily calendars started being posted on his Web site every day (although his calendar still doesn't list meetings that take place, say, over lunch with powerful interests of big contributors).

Conflicts and interests

Section 67.30(a): The Sunshine Ordinance Task Force shall, at its request, have assigned to [it] an attorney [who] shall serve solely as a legal advisor and advocate to the Task Force and an ethical wall will be maintained between the work of this attorney on behalf of the Task Force and any person or Office that the Task Force determines may have a conflict of interest with regard to the matters being handled by the attorney.

This is still a major lingering problem. A complaint filed against the HRC last fall revealed that deputy city attorney Jackie Minor had been assigned to advise both the Sunshine Ordinance Task Force and the HRC. Minor was placed in the unacceptable (and illegal) position of conferring with the HRC when it was accused of withholding records and then advising the task force on how to best pry open the HRC's illegal grip on public records.

After a series of Bay Guardian stories on the problem - in which we asked whether it was possible for a single attorney, or even a single attorney's office, to provide unbiased advice to two different city agencies in conflict over the same matter - the city attorney appeared to cave on the question. In December, Renne announced that Minor would no longer work for both agencies.

But Renne never stated publicly that the staff change had anything to do with those conflict-of-interest questions, and two months later spokesperson Nathan Ballard reasserted Renne's right to assign Minor to additional projects at her discretion (see "Broken Record," 1/31/01).

This month, as we have done several times before, we asked Renne to produce any records that explain how she's created an "ethical wall" around Minor in her role as task force adviser, and we asked for documentation on how Renne has dealt with conflicts of interest in her representation to the task force. Bay Guardian editor and publisher Bruce B. Brugmann has requested, in his capacity as a member of the Sunshine Ordinance Task Force, that the task force ask the city attorney to prepare such documents. The task force will discuss the item at its next meeting on March 27.

Additional reporting by Rachel Brahinsky. Research assistance by Cari Bower.



07212007.pdf



"Kimo Crossman"
<kimo@webnetic.net>
07/16/2008 11:03 AM

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Subject 2008 Review of electronic records retention - federal level

(SOTF Admin please include this email and attachment in the CAC packet item for email and electronic record retention)

<http://citizensforethics.org/recordchaos>

EW CREW REPORT FINDS FEDERAL GOVERNMENT ELECTRONIC RECORD KEEPING PRACTICES ABYSMAL

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16 Apr 2008 // **CREW Releases: *Record Chaos: The Deplorable State of Electronic Record Keeping in the Federal Government***

Washington, DC – Based on months of research and the results of an on-line survey, Citizens for Responsibility and Ethics in Washington (CREW) has released a report today, ***Record Chaos:***

The Deplorable State of Electronic Record Keeping in the Federal Government, concluding that the federal government is severely mismanaging its electronic records. The report and its findings and recommendations are available at www.citizensforethics.org.

Despite the ready availability of off-the-shelf products that would allow federal agencies to manage their records electronically, agencies continue to cling to outdated, inefficient and ineffective paper record keeping systems. The federal government has fallen woefully behind its private sector counterparts and the National Archives and Records Administration (NARA) has failed to affirmatively assist agencies in developing and implementing records management policies as the Federal Records Act requires.

Record Chaos is based on Freedom of Information Act (FOIA) requests to a variety of agencies for their record keeping guidance, follow-up FOIA requests to test agencies' ability to locate and produce email, and an on-line survey CREW, with the assistance of OpenTheGovernment.org, submitted to 400 agency records managers.

Melanie Sloan, executive director of CREW, said today, "The law requires the government to preserve federal records, which ultimately belong not to any single administration, but to the American people. These records, which often document serious policy matters, are being lost to future generations who might learn from them." Sloan continued, "In addition, those like CREW, who seek records from the government under the Freedom of Information Act or other statutes clearly are being deprived of those records, not necessarily due to malice, but rather incompetence."

Today, the House Committee on Oversight and Government Reform will release proposed legislation amending federal record keeping laws to require agencies and the president to address this government-wide problem. Read more about the legislation at: <http://oversight.house.gov/story.asp?ID=1875>. Unfortunately, the proposal is anemic and fails to make the substantial changes necessary to bring the federal government into the 21st century. CREW has prepared a comprehensive analysis of the legislation.

Record Chaos: The Deplorable State of Electronic Record Keeping in the Federal Government and CREW's analysis of the proposed legislation are available at www.citizensforethics.org.

Citizens for Responsibility and Ethics in Washington (CREW) is a non-profit legal watchdog group dedicated to holding public officials accountable for their actions.

For more information, please visit www.citizensforethics.org or contact Naomi Seligman Steiner at 202.408.5565/nseligman@citizensforethics.org

E-mail management a mighty struggle for US agencies

Source:

Staff // Network World

23 Apr 2008 // To put it politely, the burgeoning use of e-mail is resulting in disruptive records management challenges for federal agencies.

A report issued today the Government Accountability Office said that while of the four agencies it reviewed e-mail policies generally contained required elements, but about half of the senior officials were not following these policies and were instead maintaining their e-mail messages within their e-mail accounts, where records cannot be efficiently searched, are not accessible to others who might need the information in the records, and are at increased risk of loss.

Instead, e-mail messages, including records, were generally being retained in e-mail systems that lacked recordkeeping capabilities, which is contrary to regulation.

The GAO examined the Department of Homeland Security (DHS), the Environmental Protection Agency (EPA), the Federal Trade Commission (FTC), and the Department of Housing and Urban Development (HUD). For each agency, the GAO reviewed the e-mail management practices of four senior officials (including the agency head), using responses to a series of data collection instruments, interviews with agency officials, and inspection of a limited number of sample e-mail records identified by the agencies to corroborate their statements. Several agencies are considering developing electronic recordkeeping systems, but until such systems are implemented, agencies may have reduced assurance that information that is essential to protecting the rights of individuals and the federal government is being adequately identified and preserved, the GAO said.

Federal agencies are increasingly using e-mail for essential communication. In doing so, they are potentially creating messages that have the status of federal records, which must be managed and preserved in accordance with the Federal Records Act. To carry out the records management responsibilities established in the act, agencies are to follow implementing regulations that include specific requirements for e-mail records, the GAO said. Unless they have recordkeeping features, e-mail systems may not permit easy and timely retrieval of both groupings of related records as well as individual records.

Further, keeping large numbers of record and non-record messages in e-mail systems potentially increases the time and effort needed to search for information in response to a business need or an outside inquiry, such as a Freedom of Information Act request. Factors contributing to this practice were the lack of adequate staff support and the volume of e-mail received. In addition, officials and their responsible staff had not always received training in the recordkeeping requirements for e-mail records.

Unless they have recordkeeping capabilities, e-mail systems may not permit easy and timely retrieval of groupings of related records or individual records, the GAO report stated.

Still, it may come as little surprise that government agencies are a little shoddy when it comes to email record keeping since even the White House has an ongoing problem in tracking its own emails. In November the White House was told by a US judge that it must preserve e-mail and maintain copies of millions of backup e-mail messages that were allegedly deleted improperly from servers.

The order from Judge Henry Kennedy in the U.S. District Court for the District of Columbia was a victory for the Citizens for Responsibility and Ethics in Washington (CREW), a watchdog group that filed suit against the Executive Office of the President and the National Archives and Record Administration last Fall. The group contended that the White House has not been accountable about the deleted e-mail messages and has a deficient e-mail archival system in place.

The lawsuit also alleged that the defendants knowingly failed to recover, restore and preserve millions of electronic communications records in the White House. CREW alleged that the e-mail messages were improperly deleted from the servers.

For its part, the GAO acknowledges e-mail can present particular challenges to records management. First, the information contained in e-mail records is not uniform: it may concern any subject or function and document various types of transactions. As a result, in many cases, decisions on which e-mail messages are records must be made individually, the GAO said.

Second, the transmission data associated with an e-mail record—including information about the senders and receivers of messages, the date and time the message was sent, and any attachments to the messages—may be crucial to understanding the context of the record.

Third, a given message may be part of an exchange of messages between two or more people within or outside an agency, or even of a string (sometimes branching) of many messages sent and received on a given topic. In such cases, agency staff needs to decide which message or messages should be considered records and who is responsible for storing them in a recordkeeping system.

Finally, the large number of federal e-mail users and high volume of e-mails increase the management challenge. According to National Archives and Records Administration (NARA), the use of e-mail results in more records being created than in the past, as it often replaces phone conversations and face-to-face meetings that might not have been otherwise recorded.

Awareness of federal records requirements is also an ongoing concern, the GAO said. At one department, training for senior officials on their records management responsibilities took place only at the beginning of the current administration. Officials who joined the department subsequently were not trained on records management. Similarly, several administrative staff responsible for managing the e-mail of senior officials told the GAO that they had not been trained to recognize a record, the GAO stated.

A draft bill, the Electronic Communications Preservation Act, would mandate agencies to transition to electronic records management by requiring the Archivist of the United States to promulgate regulations governing agency preservation of electronic communications that are federal records. Among other things, the regulations would:

- require the electronic capture, management, and preservation of these records;
- require that such electronic records are readily accessible for retrieval through electronic searches; and
- require the Archivist to develop mandatory minimum functional requirements for electronic records management applications to meet the first two requirements.

The legislation would also require agencies to comply with the new regulations within 4 years of enactment. Requiring a governmentwide transition to electronic recordkeeping systems could help federal agencies improve e-mail management. The 4-year deadline in the draft bill could help expedite this transition, the GAO said.



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and ethics in washington

Record Chaos:

The Deplorable State of Electronic Record
Keeping in the Federal Government



www.citizensforethics.org

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INTRODUCTION

The importance of maintaining electronic records in this era of government secrecy has never been greater. Email in particular, that most ubiquitous form of communication, plays an increasingly important role in explaining what our government has done and why. Yet even though information technology is advancing by leaps and bounds, the federal government has fallen woefully behind in managing its electronic records. Citizens for Responsibility and Ethics in Washington (CREW), with the assistance of OpenTheGovernment.org, has studied the issue of electronic record keeping in the federal government and prepared this report to identify the most serious government failings and how they can be addressed to bring the federal government into the 21st century.

We looked at the issue from two different perspectives. First, we examined the legal frameworks that guide federal agencies and the private sector in managing their electronic record keeping systems. Analyzing trends in civil litigation, we were able to identify vulnerabilities and potential liabilities that non-complying agencies are likely to face. Second, we looked at specific agency policies and practices to ascertain just how far off course the federal government is. The results confirmed our everyday experience, that the vast majority of federal agencies have made little or no progress in effectively managing their electronic records.

CREW's report is by no means comprehensive, as we had limited means to monitor actual agency practices. Yet across the board our results were consistent and sounded a loud and clear alarm: the federal government is not effectively managing one of its most valuable resources, information. As a result, the public is being deprived of access to government records that shine a public light on what the government is doing and ensure accountability for our government's actions.

The situation is all the more disturbing given the ready availability of off-the-shelf and easily customized software and technology tools and the wealth of guidance that groups such as the Sedona Conference have offered. In this arena there is an ever widening gap between the practices in the private sector -- where companies have embraced technology -- and the practices in the federal government -- where agencies have repudiated or ignored technology in favor of outdated paper record keeping systems and practices.

It is our hope that by highlighting where the federal government has gone wrong in its mismanagement of electronic records, federal agencies and Congress will be spurred to act to give agency record keeping the priority it deserves.

METHODOLOGY

To determine federal agency compliance with electronic record keeping obligations, CREW submitted Freedom of Information Act (FOIA) requests to a variety of cabinet-level agencies seeking their written guidance and policies on electronic record keeping within their agencies. CREW also submitted FOIA requests to a handful of agencies on discrete topics to test the agencies' ability to locate and produce responsive email records. To ascertain actual agency practices, CREW, with the assistance of OpenTheGovernment.org, prepared an on-line survey

on email record keeping practices and policies that it submitted to over 400 agency records managers. CREW received 87 partial or complete responses over a three-week period. On another front, CREW collected legal authorities that guide and compel electronic record keeping in both the federal government and the private sector. We looked at trends in civil litigation as the best indicator of practices that fall outside the norm and are most likely to result in sanctions for inadequate record keeping practices.

SUMMARY OF FINDINGS

The research for this report and most especially our survey make clear that the federal government is not managing its electronic records effectively, despite the fact that the National Archives and Records Administration (NARA) has been issuing guidance and standards for the past decade. Agencies are not taking advantage of a growing body of commercially available products and lag far behind their private-sector counterparts. Responsibility for this state of affairs is shared by both the agencies and NARA. The federal government simply cannot afford to continue ignoring its electronic record keeping obligations.

Our research exposed four overarching problems:

1. Lack Of Progress

Survey responses and agency written record keeping policies reveal that the vast majority of federal agencies treat electronic records like paper records by following a print-and-save policy. We have not found a single federal agency policy that mandates an electronic record keeping system agency-wide.¹ At best discrete agency components appear to use electronic record keeping for only some of their agency records.

2. Widespread Confusion And Lack of Understanding Of Record Keeping Obligations

Survey responses confirm that even knowledgeable agency employees lack a basic understanding of their record keeping obligations and how they can be satisfied. Written policies and guidelines within individual agencies are often inconsistent, confusing or outright misleading. This lack of understanding correlates directly to a lack of compliance with record keeping obligations.

3. Systemic Lack Of Meaningful Oversight

Agencies are not held accountable for complying with mandatory record keeping obligations. The blame falls most squarely on NARA, which has the statutory obligation to not only promulgate standards and guidelines for federal agency records management, but also to

¹ Six respondents to our survey, discussed *infra*, said their agencies preserved emails on an electronic record keeping or electronic records management system, but we do not know if this practice is agency-wide or just within an agency subcomponent or office.

assist agencies in applying the standards to records in their custody.² NARA is not fulfilling this statutory mandate, electing instead a passive role limited to providing guidance only with no agency follow-through. NARA has abandoned its previous practice of conducting annual audits of agency compliance and proclaimed publicly that the responsibility rests first and last with individual federal agencies.

4. Exposure To Liability In Other Legal Contexts

The failure of the federal government to adequately meet its electronic record keeping obligations has exposed it to potential liability in a host of other contexts. Inadequate electronic record keeping also means inadequate compliance with the FOIA and other information access statutes. Agencies' ability to meet their litigation obligations is seriously hampered by their inability to deal effectively with electronic records. At best it is a disaster waiting to happen; at worst, the disaster has already occurred.

² 44 U.S.C. §§ 2904(c)(1) and 2905(a).

GLOSSARY OF TERMS

Agencies are big and complex and produce a variety of records in a variety of different formats. For example, the IRS alone runs 630 different computer systems.³ These complexities and differing systems present major hurdles to agencies seeking a records management system that can accommodate all these formats. To better understand the record keeping obligations and challenges that agencies face, we offer the following glossary of terms:

Records

The Federal Records Act (FRA) defines records to include “all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the Government or because of the informational value of the data in them.”⁴

Records Disposition

Records disposition refers to what an agency does with its records once it no longer needs them, and encompasses both temporary and permanent records. Permanent records are those that have “significant value,” which the federal government must preserve indefinitely.⁵ Temporary records do not have long-term value and are scheduled for disposal (i.e. destruction) either immediately or after a set period of time or a certain event.⁶ General Records Schedules (GRS) published by NARA determine the schedule for disposition of specific categories of records common to several agencies. If an agency-specific record is not covered by a GRS its disposition is governed by an agency record schedule.⁷

Electronic Records

“Electronic records include numeric, graphic, and text information, which may be recorded on any medium capable of being read by a computer and which satisfies the definition of a record. This includes, but is not limited to, magnetic media, such as tapes and disks, and optical disks.

³ Joab Jackson, *Records Managers see value of Enterprise Architecture*, Federal Computer Week, March 7, 2008 (Exhibit 1).

⁴ 44 U.S.C. § 3301

⁵ *Frequently Asked Questions about Records Scheduling and Disposition*, available at <http://www.archives.gov/records-mgmt/faqs/scheduling.html> (Exhibit 2).

⁶ *Id.*

⁷ *Id.*

Unless otherwise noted, these [electronic records] requirements apply to all electronic information systems, whether on microcomputers, minicomputers, or main-frame computers, regardless of storage media, in network or stand-alone configurations. Electronic records include federal records created by individuals using electronic mail applications.⁸

Backup Tapes and Recycling

Backup tapes, often referred to as disaster recovery tapes, are “[p]ortable media used to store data that is not presently in use by an organization to free up space but still allow for disaster recovery.”⁹ Backups are commonly used as a last backstop for retention of email messages. As backup tapes become full they are “recycled,” which the Sedona Conference defines as

a process whereby an organization’s backup tapes are overwritten with new backup data, usually on a fixed schedule (e.g., the use of nightly backup tapes for each day of the week with the daily backup tape for a particular day being overwritten on the same day the following week; weekly and monthly backups being stored offsite for a specified period of time before being placed back in the rotation).¹⁰

Traditional Records Management

Traditionally records management is defined as the “systematic control of the creation, maintenance, use and disposition of records.”¹¹ For federal agencies, this usually means organizing physical files that fit the definition of a federal record together in what is known as a record series. A series is a group of records that all relate to the same subject, function or activity of an agency.¹²

Electronic Records Management

⁸ 36 C.F.R. § 1234

⁹ See *Best Practices Recommendations & Principles for Addressing Electronic Document Production* (July 2005), available at http://www.thesedonaconference.org/content/miscFiles/7_05TSP.pdf (hereinafter “Sedona Best Practices”) (Exhibit 3).

¹⁰ *Id.*

¹¹ *Context for Electronic Records Management*, available at <http://www.archives.gov/records-mgmt/initiatives/context-for-erm.html> (hereinafter “Context for Electronic Records Management”) (Exhibit 4).

¹² *Frequently Asked Questions about Federal Records Management*, available at <http://www.archives.gov/records-mgmt/faqs/federal.html#series> (Exhibit 5).

NARA defines electronic records management (ERM) as “using automated techniques to manage records regardless of format. Electronic records management is the broadest term that refers to electronically managing records on varied formats, be they electronic, paper, microform, etc.”¹³ When referring specifically to the electronic management of electronic records NARA uses the term electronic record keeping or ERK.¹⁴

Email Records and Metadata

Email records include a variety of information, known as metadata, that must be preserved along with the body of an email.¹⁵ Metadata includes the names of the sender and addressee(s) and date the message was sent. Nicknames, codes and distribution lists are not adequate for this purpose. Agencies are required to make sure email records have this data “in order for the context of the message to be understood.”¹⁶

DOD 5015.2-STD

Department of Defense 5015.2-STD, Design Criteria Standard for Electronic Records Management Software Applications, is a criteria by which record management applications (RMAs) are tested by the Joint Interoperability Test Command of the Department of Defense. DOD 5012.2-STD provides a baseline standard that RMAs must meet to be used by DOD components.¹⁷ Since it was endorsed by NARA the standard is also now the baseline for RMAs across the federal government.¹⁸

There are currently 48 products certified as compliant with DOD 5015.2,¹⁹ but NARA warns that these products are not “out-of-the-box” solutions. NARA does not “endorse specific commercial

¹³ *Context for Electronic Records Management* (emphasis added) (see Exhibit 4).

¹⁴ *Id.*

¹⁵ *Armstrong v. Executive Off. of the President*, 1 F.3d 1274 (D.C. Cir. 1993).

¹⁶ 36 C.F.R. § 1234.24(a)(1).

¹⁷ U.S. Dept. of Defense, Electronic Records Management Software Applications Design Criteria Standard, Assistant Secretary of Defense for Networks and Information Integration/Department of Defense Chief Information Officer, DOD 5015.2-STD, April 25, 2007 (Exhibit 6).

¹⁸ National Archives and Records Administration, NARA Bulletin 2003-03, Endorsement of DoD Electronic Records Management (RMA) Design Criteria Standard, version 2 (2003) (Exhibit 7).

¹⁹ *DoD 5015.2-STD Compliant Product Registers*, available at <http://jitc.fhu.disa.mil/recmgt/register.html> (hereinafter “DOD Compliant Product Register”) (Exhibit 8).

products²⁰ and agencies will need to integrate RMAs into existing systems and retrain employees.²¹ DOD 5015.2-STD is not a catch all solution to records management, but a very good tool for agencies and commercial suppliers.

²⁰ Memorandum from Michael L. Miller, Director, Modern Records Programs, NWM 04.2001 (Nov. 27, 2000) (hereinafter "Miller Memo 2000") (Exhibit 9).

²¹ Memorandum from Michael L. Miller, Director, Modern Records Programs, NWM 03.99, (Nov. 19, 1998) (hereinafter "Miller Memo 1998") (Exhibit 10).

LEGAL FRAMEWORK FOR FEDERAL AGENCIES²²

1. The Federal Records Act

Federal agency record keeping obligations stem from the Federal Records Act, a collection of statutes that governs the creation, management and disposal of federal records.²³ Among other things, the FRA ensures “[a]ccurate and complete documentation of the policies and transactions of the Federal Government,” as well as “judicious preservation and disposal of records.”²⁴

To fulfill this purpose, the FRA requires the head of each agency to “make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency.”²⁵ Under the FRA, each agency must also “establish and maintain an active, continuing program for the economical and efficient management of the records of the agency,”²⁶ and must “establish safeguards against the removal or loss of records” the agency head determines are necessary and required by regulations of the archivist.²⁷

Penalties for noncompliance under the FRA are limited to the unlawful removal or destruction of federal records. Violations can result in fines, up to three years in prison, or both.²⁸ While rare, instances of enforcement of this provision (section 2071) are not without precedent.²⁹

Overall responsibility for federal government records management rests with NARA.³⁰

²² This section is not intended to be comprehensive, but rather identifies some of the most pertinent authorities governing federal agency record keeping.

²³ See generally 44 U.S.C. §§ 2101 et seq., 2901 et seq., 3010 et seq., and 3301 et seq.

²⁴ 44 U.S.C. § 2902.

²⁵ Id. at § 3101.

²⁶ Id. at § 3102.

²⁷ Id. at § 3105.

²⁸ 18 U.S.C. § 2071(a).

²⁹ See, e.g., United States v Salazar, 455 F.3d 1022 (9th Cir. 2006) (affirming defendant’s conviction for destroying documents filed and deposited with the Immigration and Naturalization Service).

³⁰ 44 U.S.C. § 3303a.

Created in 1984, NARA is headed by the national archivist,³¹ who administers the provisions of the FRA and may authorize an agency to dispose of records that the agency no longer needs and that do not have “sufficient administrative, legal, research, or other value to warrant their continued preservation by the Government.”³²

The archivist also has an affirmative duty to guide and assist federal agencies to ensure the adequate and proper documentation of their policies and transactions.³³ Toward that end, the archivist must establish standards and guidelines for federal agency records management, standards for an agency to selectively retain records of value and must assist agencies in applying those standards to records in their custody.³⁴

2. NARA Regulations and Policies

NARA specifies that the agency bears the responsibility to “[d]evelop and implement an agency wide program for the management of all records . . .”³⁵ According to NARA, agencies must also provide record management training for employees.³⁶ These responsibilities are rooted in the FRA, which requires each agency head to maintain an active records management program that provides for effective controls over the creation and use of federal records and that ensures the application of the archivist’s standards and procedures for the preservation of federal records.³⁷

For those agencies that use paper files for record keeping, NARA requires that the agencies “print their electronic mail records and the related transmission and receipt data.”³⁸ For those agencies using electronic record keeping systems, NARA requires that records be easy to retrieve and be accessible to individuals who have a business need for them.³⁹ Our research shows that the “print and file” practice dominates the federal government, even though it is a

³¹ 36 C.F.R. § 1220.2.

³² *Id.* at § 3303a(a).

³³ *Id.* at § 2904(a).

³⁴ *Id.* at §§ 2904(b), (c)(1), 2905(a).

³⁵ 36 C.F.R. § 1234.10(a).

³⁶ 36 C.F.R. § 1234.10(e).

³⁷ 44 U.S.C. § 3102.

³⁸ 36 C.F.R. § 1234

³⁹ *Examples of System Functions for Electronic Recordkeeping (ERK) and Electronic Records Management (ERM)*, available at <http://www.archives.gov/records-mgmt/policy/prod6b.html> (Exhibit 11).

demonstrably flawed electronic record keeping method in the modern federal work place. Given the volume of e-mail records that a typical agency creates and receives, “[i]t’s generally a disaster waiting to happen” in the words of one expert.⁴⁰

NARA has taken some steps to try and move agencies away from antiquated paper records system. In 1998, NARA endorsed DOD 5015.2- STD as an acceptable standard for records management software.⁴¹ In addition, NARA has identified nine reasons, separate and apart from formal record keeping regulations and statutes, why agencies should adopt electronic record keeping (ERK) practices.⁴² Specifically, ERK has the following benefits:

1. It allows agencies to “manage information as an asset, rather than a liability”;
2. Records in legacy systems will be accessible in the future;
3. ERK reduces the costs of complying with the Freedom of Information Act (FOIA) and discovery;
4. ERK facilitates resolution of contract disputes;
5. By reducing the need for both a paper and electronic record keeping system ERK results in long-term cost savings;
6. ERK improves productivity;
7. ERK ensures integrity and security of critical records;
8. Agencies that implement ERK now will minimize the future impact on their IT infrastructures; and
9. “ERK increases the likelihood of success of any records migration/preservation strategy.”⁴³

In addition, from 2003 to 2006, NARA published a series of six guidance documents, based on the experience of the Environmental Protection Agency, to aid agencies in selecting an electronic records management system. The guidance addresses: (1) capital planning and

⁴⁰ Aliya Sternstein, *Probes Highlight Problems with Agencies’ E-mail Storage*, Government Executive, May 3, 2007 (Exhibit 12).

⁴¹ See Miller Memo 1998.

⁴² See *Why Federal Agencies Need to Move Towards Electronic Recordkeeping*, available at <http://www.archives.gov/records-mgmt/policy/prod1afn.html> (Exhibit 13).

⁴³ *Id.*

investment control; (2) determining agency-unique requirements; (3) evaluating commercial applications; (4) governance structure; (5) developing a pilot program; and (6) a summary of lessons learned.⁴⁴ Essentially, NARA has provided a step-by-step guide for agencies committed to implementing agency-wide electronic records management.

In sum, NARA has provided a wealth of resources for federal agencies outlining the reasons for improving records management and, in some cases, providing step-by-step guides to implementing new technologies. Notwithstanding this guidance, agencies are not taking advantage of available technologies and lag far behind the private sector in the area of electronic record keeping. In addition, NARA has done little, if anything, to follow through with agencies. In order to move record keeping in the federal government into the 21st century, NARA needs to assume a much more active role to fulfill its statutory responsibilities.

3. Other Statutes That Bear On Agency Record Keeping Practices

A series of other statutes and legal authority bear on the record keeping obligations of federal agencies. These include amendments to the FOIA, enacted in 1996, that require agencies to provide electronic access to certain agency records, essentially creating “electronic reading rooms.” 5 U.S.C. § 552(a)(2)(D). The amendments also require that upon request agencies must provide records to a FOIA requester electronically as long as “the record is readily reproducible by the agency in that form or format.” *Id.* at § 552(a)(3)(B). The U.S. Department of Justice, in its bi-annual Freedom of Information Act Guide, has stated that

[g]iven ‘that computer-stored records, whether stored in the central processing unit, on magnetic tape, or in some other form, are records for the purposes of the FOIA,’ agencies should endeavor to use advanced technology to satisfy existing or potential FOIA demands most efficiently – including through ‘affirmative’ electronic disclosures.

(citations omitted).⁴⁵

A presidential decision directive on “Critical Infrastructure Assurance”⁴⁶ highlights the significance of electronic systems and the need to make them secure as part of the nation’s critical infrastructure. The directive, issued in 1998, requires each agency to reduce its exposure to new threats and ensure it can protect its information systems from intentional acts by 2003. As NARA has explained, “[a]ny attack on a networked information system also affects the

⁴⁴ *Enterprise-Wide ERM*, available at <http://www.archives.gov/records-mgmt/initiatives/enterprise-erm.html> (Exhibit 14).

⁴⁵ U. S. Department of Justice, *Freedom of Information Act Guide*, p. 126 (March 2007 Edition) (Exhibit 15).

⁴⁶ See Presidential Decision Directive 63 (PDD-63).

agency's infrastructure. For this reason, security of electronic records . . . must be considered when establishing an ERK."⁴⁷

The Government Paperwork Elimination Act, signed into law in 1998, requires federal agencies by October 21, 2003, to accept information electronically from individuals and entities that interact with the federal government, and "to maintain records electronically, when practicable."⁴⁸ The Act also affirms the legal effect of electronic signatures. The Office of Management and Budget issued implementing guidance intended to "foster[] a successful transition to electronic government . . ."⁴⁹ That guidance also addresses explicitly NARA's role in the area of electronic records management by mandating that NARA "develop, in consultation with the agencies and OMB, policies and guidance on the management, preservation, and disposal of Federal records associated with electronic government transactions . . ."⁵⁰

The courts also have weighed in on some of the responsibilities agencies bear when dealing with electronic records. For example, in *Armstrong v. Executive Off. of the President*, 1 F.3d 1274 (D.C. Cir. 1993), the U.S. Court of Appeals for the D.C. Circuit affirmed the status of the electronic version of a paper record, including the metadata in the electronic version, as a record. Under the court's ruling, each agency that does not have an electronic record keeping system must print out the entire electronic record, with all of its imbedded text of substantive information (the metadata) and file the paper copy in the agency's paper record keeping system. Although the courts have never mandated that agencies adopt electronic record keeping systems, at least one court expressed the view in 1999 that "[i]t may well be time" for agencies to take "the next step of establishing electronic recordkeeping systems."⁵¹

4. OMB Guidance

On March 31, 2008, the Office of Management and Budget (OMB) circulated a memorandum to agency chief information officers highlighting tools available to move agencies towards electronic records management.⁵² In an effort to encourage agencies to improve their information management, the memorandum explains the benefits of "strategic management of

⁴⁷ *Why Federal Agencies Need to Move Towards Electronic Recordkeeping* at p. 1 (see Exhibit 13).

⁴⁸ OMB, *Implementation of the Government Paperwork Elimination Act*, p. 2, available at <http://www.whitehouse.gov/omb/fedreg/gpea2html> (last visited April 4, 2008) (Exhibit 16).

⁴⁹ *Id.* at p. 2.

⁵⁰ *Id.* at p. 7.

⁵¹ *Public Citizen v. Carlin*, 184 F.3d 900, 910 (D.C. Cir. 1999).

⁵² Memorandum from Karen S. Evans, Administrator, Office of Electronic Government and Information technology, Executive Office of the President, Office of Management and Budget, M-08-15 (March 31, 2008) (Exhibit 17).

government information resources.” These include “ensur[ing] public accountability,” “guard[ing] the legal and financial rights of the government and public” and “promot[ing] public access to information.”⁵³ The memorandum also highlights several available guidance documents;⁵⁴ missing is any time-line for compliance or suggested penalties for agency non-compliance.

Moreover, as some records management experts have pointed out, there is only one available records management product for the SmartBuy program that OMB advocates, and that program does not have archiving capabilities.⁵⁵

THE SEDONA CONFERENCE

The Sedona Conference is an organization created to bring together “in conferences and mini-think tanks (Working Groups)” “leading jurists, lawyers, experts, academics and others, at the cutting edge of issues in the area of antitrust law, complex litigation, and intellectual property rights.” Its stated purpose is to “engage in true dialogue, not debate, all in an effort to move the law forward in a reasoned and just way.”⁵⁶ The Conference seeks to produce “output that is balanced, authoritative, and of immediate benefit to the Bench, Bar and general public” by the Conference’s working groups, peer review process and its open Working Group Membership Program.⁵⁷

Over time, the Sedona Conference has grown in stature and been accorded increased acceptance in the legal arena. Its guidance on electronic information serves the public and private sectors alike, and in particular should serve as a paradigm for agency heads, chief information officers and NARA staff when making records management decisions for the federal government.

The Sedona Conference has generated a number of guidance documents; below we highlight two of particular interest and usefulness.

1. The Sedona Guidelines On Managing Information and Records in The Electronic Age

⁵³ Id.

⁵⁴ Id.

⁵⁵ Joab Jackson, *OMB Issues Records Management Guidance*, Tech Blog, Government Computer Week, April 11, 2008, available at <http://www.gcn.com/blogs/tech/46123.html#trackback> (Exhibit 18).

⁵⁶ *TSC Mission*, available at http://www.thesedonaconference.org/content/tsc_mission/show_page_html (Exhibit 19).

⁵⁷ Id.

The Sedona Guidelines on Managing Information and Records in The Electronic Age⁵⁸ approach electronic information from a legal, records management and information technology perspective. The authors acknowledge that what they have written will not harmonize perfectly the varied aspects of electronic information, nor are the guidelines rigid standards for effectively handling electronic records. The guidelines also take a nuanced approach to electronic information management rather than the technology “silver bullet” that some in government advocate,⁵⁹ which is probably warranted given the size and varied functions of the federal government.

More specifically, the Sedona Conference has identified five over-arching “guidelines” that should govern management of electronic information.⁶⁰

First, an organization should have “reasonable policies and procedures for managing its information and records.”⁶¹ This requires a significant investment of human and financial capital, what the Sedona Conference has called “an intelligent blend of people, processes and technology,”⁶² particularly because there is not one simple solution.

While the Sedona guidelines focus on the private sector, they are directly analogous to the federal government, which must also deal with oversight requirements, information requests and legal discovery requirements. Yet unlike the trend in the private sector to elevate the importance of information, federal agencies are pushing information-related issues farther down the agency management ladder.⁶³

Second, an organization’s records management policies and procedures “should be realistic, practical and tailored to the circumstances of the organization.”⁶⁴ The Sedona Conference encourages organizations to adopt a flexible approach in creating an information

⁵⁸ Charles R. Ragan et al., ed., The Sedona Guidelines: Best Practice Guidelines & Commentary for Managing Information & Records in the Electronic Age, (2005), available at http://www.thesedonaconference.org/content/miscFiles/TSG9_05.pdf (“Sedona Guidelines”) (Exhibit 20).

⁵⁹ J. Timothy Sprehe, *Sprehe: E-Mail Records Problems*, Federal Computer Week, May 14, 2007. (hereinafter “Sprehe, *E-Mail Records Problems*”) (Exhibit 21).

⁶⁰ Sedona Guidelines at pp. vi, vii, 1 (see Exhibit 20).

⁶¹ *Id.* at p. 13.

⁶² *Id.* at pp. 13-15.

⁶³ Jason Miller, *Survey Shows CIOs Losing a Seat at the Table*, Federal Computer Week, February 27, 2008 (hereinafter Miller, *Survey Shows CIOs Losing a Seat at the Table*) (Exhibit 22).

⁶⁴ Sedona Guidelines at p. 16 (see Exhibit 20).

policy, given that many factors will influence an organization's plans and no two organizations are exactly alike.⁶⁵

In addition, an understanding of the organization's legal obligations should guide its policies and procedures and the organization should not confuse "disaster recovery" with records management.⁶⁶ Federal agencies are subject to many of the same legal and regulatory requirements, but this should not result in one electronic information solution, as NARA to date has recognized.⁶⁷

Third, organizations need not retain "all electronic information ever generated or received."⁶⁸ Retaining infinite amounts of electronic data results in costs beyond securing enough storage space. For example, retaining too much data makes searching for relevant documents considerably more difficult.⁶⁹ As the Sedona Conference cautions, however, document destruction (or "disposition" as NARA terms it) is most safely accomplished only when implemented pursuant to an established retention schedule.⁷⁰

In the federal government, records are managed either as temporary or permanent records and the category in which they fall governs their method and timing of disposition. Like the private sector, it is equally impractical for the federal government to retain the potentially billions of emails it sends or receives.⁷¹ Proper scheduling of agency records through NARA, coupled with effective employee training on records management responsibilities will help ensure retention of appropriate records for the appropriate length of time.

Fourth, and closely related to the third guideline, agencies should develop procedures that address "the creation, identification, retention, retrieval and ultimate disposition or

⁶⁵ *Id.* at pp. 15, 16.

⁶⁶ *Id.* at pp. 16-18.

⁶⁷ National Archives and Records Administration, Electronic Records Management (ERM) E-Government Initiative, Enterprise-Wide Electronic Records Management Issue Area; Electronic Records Management Guidance on Methodology for Determining Agency-Unique Requirements (2004) (Exhibit 23).

⁶⁸ Sedona Guidelines at p. 24 (see Exhibit 20).

⁶⁹ *Id.* at pp. 24, 31.

⁷⁰ *Id.* at p. 26.

⁷¹ Jason R. Baron, *E-Mail Metadata In A Post Armstrong World*, IEEE, 1999 (hereinafter "Baron, *E-Mail Metadata*"), available at <http://www.archives.gov/era/pdf/baron-email/-metadata.pdf> (Exhibit 24).

destruction of information and records.”⁷² The Sedona Conference has stressed that just as important as having a policy is actually acting on that policy once it is conceived: “[a] policy in name only may be worse than no policy at all.”⁷³

Information and records management procedures should clearly spell out individual responsibilities and document information practices.⁷⁴ The Sedona Conference also advocates for an effective training program to help employees understand their responsibilities and make them better able to identify records and fully grasp the importance of records management.⁷⁵ To ensure that employees are following records policies organizations should conduct “compliance reviews” and “have appropriate sanctions for failure to comply.”⁷⁶

Fifth, the Sedona Conference recommends that an organization’s policies and procedures mandate “the suspension of ordinary destruction practices and procedures” in order to comply with preservation obligations imposed by actual or anticipated litigation, government investigations, or audits.⁷⁷ Specifically, organizations need to have a plan in place to deal with the changes in policy that litigation obligations will require.⁷⁸

2. The Sedona Conference Commentary On Email Management: Guidelines For The Selection Of Retention Policy

Similarly, the Sedona Conference has also offered specific guidance on the selection of an email management policy in a public or private organization.⁷⁹ The four guidelines follow:

Guideline 1: Email retention policies should reflect the input of functional and business units through a team approach and should include the entire organization including any operations outside the United States.

⁷² Sedona Guidelines at p. 31 (see Exhibit 20).

⁷³ Id.

⁷⁴ Id.

⁷⁵ Sedona Guidelines at pp. 31-38 (see Exhibit 20).

⁷⁶ Id. at p. 38.

⁷⁷ Id. at p. 42.

⁷⁸ Id. at pp. 42-46.

⁷⁹ Thomas Y. Allman, ed., The Sedona Conference Commentary on Email Management: Guidelines for the Selection of a Retention Policy, p. 239 (2007), available at http://www.thesedonaconference.org/content/miscFiles/Commentary_on_Email_Management_revised_cover.pdf (hereinafter “Sedona Conference Commentary on Email”) (Exhibit 25).

Guideline 2: The team should develop a current understanding of email retention policies and practices actually in use within the entity.

Guideline 3: An entity should select features for updates and revisions of email retention policy with the understanding that a variety of possible approaches reflecting size, complexity and policy priorities are possible.

Guideline 4: Any technical solutions should meet the functional requirements identified as part of policy development and should be carefully integrated into existing systems.⁸⁰

According to the Sedona Conference, the overall “key is to develop and enforce, in good faith those reasonable policies which best fit the entity.”⁸¹ In the federal government part of determining the best fit for an e-mail records program will be determined by statutory records requirements, but agencies should also consider the guidance from the Sedona Conference.

LEGAL FRAMEWORK FOR PRIVATE ENTITIES

Notwithstanding the clear benefits of electronic record keeping, agencies almost across the board have been resistant to moving away from paper record keeping systems. By contrast, commercial entities in the private sector have adopted electronic record keeping software systems and practices, a move resulting in “increase[s in] productivity and efficiency” and “seamless management of all record types.”⁸² Unlike their government counterparts, private companies must contend with market forces that steeply penalize those companies slow to adapt to sweeping changes in the reliability and availability of electronic record keeping software and systems.

In both the government and private sectors, there is no one-size-fits-all approach that will work for all entities. Instead, the optimal record keeping system for both will vary depending on unique organizational needs and practices. Record keeping experts stress that notwithstanding individual differences between electronic record keeping systems, the overriding goal and “best practice is to archive and store everything in a system that’s searchable for e-mail and kept in an orderly and organized way.”⁸³ In the federal government many, if not most, agencies fail to clear

⁸⁰ *Id.* at pp. 239-240.

⁸¹ *Id.* at p. 239.

⁸² *DataSheet, Interwoven RecordsManager*, available at http://www.interwoven.com/media/collateral/datasheet/ds_recordsmanager_20080215_WEB.pdf (Exhibit 26).

⁸³ See Pete Yost, *Waxman Says New E-Mail Comments Conflict*, Associated Press, January 17, 2008 (quoting Rurik Bradbury, vice president of strategy for Intermedia, a company

even this relatively low bar.

A host of statutes and federal regulations inform the issue of whether, and how, a private company is required to retain its electronic records. Broadly speaking, only selected industries, along with all publicly-traded companies, are subject to such statutes and regulations. The most strictly regulated industries include the health care and financial services industries. Absent federal statute or regulation to the contrary, private entities generally are free to store records in any fashion and for any time period that they see fit.

As outlined below, private sector companies face potential civil fines for noncompliance with the record keeping obligations imposed on them by federal statutes. By contrast, the FRA lacks penalty provisions that apply to agencies on a wholesale basis; for the vast majority of its provisions there simply are no legal consequences for agency noncompliance.

1. Sarbanes-Oxley

The Sarbanes-Oxley Act requires publicly traded companies to “prepare and maintain for a period of not less than 7 years, audit work papers and other information related to any audit report [including emails], in sufficient detail to support the conclusions reached in such report.”⁸⁴ Penalties for noncompliance range from civil fines to criminal sanctions for knowing “alter[ation], dest[ru]ction, [or] mutilat[ion]” of any document with the intent to impede an investigation.⁸⁵

2. The Gramm-Leach-Bliley Act and Related SEC Regulations

The Gramm-Leach-Bliley Act, passed in 1999, requires financial institutions to store emails for a period of six years. Similar strictures apply to broker-dealers pursuant to SEC Rule 17a-4. Under Rule 17a-4, employers of securities broker-dealers must store any email sent or received by employees for three to six years, to the extent that the email pertains to the employer’s business as a broker-dealer. Rule 17a-4 contains significant penalties for noncompliance, including substantial monetary fines. Under this rule the SEC fined Morgan Stanley \$15 million for the company’s inability to manage email in compliance with SEC orders.⁸⁶

3. Health Insurance Portability and Accountability Act

that runs e-mail systems for a quarter of a million companies) (Exhibit 27).

⁸⁴ Pub. L. No. 107-204, 116 Stat. 745, § 103 (“Sarbanes-Oxley Act of 2002”).

⁸⁵ *Id.* at § 802.

⁸⁶ See Jo Maitland, *Morgan Stanley feels e-mail archiving pain*, SearchStorage.com (Feb. 15, 2006), available at http://searchstorage.techtarget.com/news/article/0,289142,sid5_gcil166670,00.html (Exhibit 28).

Regulations implementing the Health Insurance Portability and Accountability Act of 1996 (HIPAA) require health care providers to store health care patient records in an environment that is confidential, secure and searchable for a period of six years from the date of the records' creation.⁸⁷ Noncompliance with HIPPA can result in severe penalties; fines ranging from \$100 to \$250,000 per person, per violation.⁸⁸

4. The "Best Practices" Misnomer

CREW has been unable to identify a single set of industry "best practices" for electronic record keeping; at most entities such as the Sedona Conference have identified "best practice guidelines"⁸⁹ in recognition of the varied electronic records management needs of both governmental and private entities. As the Sedona Conference has observed,

entities of comparable size with similar legal risk and regulatory profiles can and do successfully adopt different retention strategies . . . that . . . can vary over time, depending upon the phase of development, the size and complexity of the organization, and the particular issues most significant to the entity as any particular time . . .⁹⁰

Record keeping experts define the overriding goal for record keeping systems in similarly broad terms; according to one expert, "the best practice is to archive and store everything in a system that's searchable for e-mail and kept in an orderly and organized way."⁹¹

Even in the more technical aspects of electronic record keeping, such as recycling of backup tapes, we have found no single consensus on a "best practice." The White House recently described its practice of recycling its backup tapes as consistent with "industry best practices relating to tape media management for disaster recovery back-up systems . . ."⁹² The

⁸⁷ 45 C.F.R. § 164.530(j)(2).

⁸⁸ 42 U.S.C. § 1320d-6.

⁸⁹ See Sedona Best Practices at p. 1 (see Exhibit 3).

⁹⁰ Sedona Conference Commentary on Email (see Exhibit 25).

⁹¹ See Yost, Associated Press (Jan. 17, 2008) (quoting Rurik Bradbury, vice president of strategy for Intermedia, a company that runs e-mail systems for a quarter of a million companies).

⁹² Declaration of Theresa Payton, Chief Information Officer, Office of Administration, ¶ 12c, filed in CREW v. Executive Office of the President, Civil No. 07-1707 (HKK/JMF) (D.D.C.) (Exhibit 29). The Clinton Administration recycled backup tapes of White House emails every three weeks. See *Electronic Records: Clinton Administration's Management of Executive Office of the President's E-Mail System*, GAO Report (Apr. 2001), at 8, 10-11.

White House did not, however, specify how often it “recycled” (or overwrote) its backup tapes, nor did the White House identify exactly what constitutes “industry best practices.” The Sedona Conference guidelines contain no single “best practice” for how often backup tapes should be recycled or how long emails should be retained generally.⁹³

LESSONS FROM LITIGATION

In the absence of defined standards that govern electronic record keeping in the private sector, private party litigation is probably the best indicator of practices that fall outside the norm and are likely to result in sanctions. The Federal Rules of Civil Procedure provide the ground rules for federal civil litigation. Amended substantially in December 2006, the rules now clarify that documents consisting of “electronically stored information (ESI)” are subject to civil discovery. The rules define ESI as including “writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained.”⁹⁴

Electronic discovery is a rapidly evolving area of the law. New cases have addressed a range of discrete issues such as the standards that should govern the authentication of emails (for admissibility purposes);⁹⁵ standards for determining when, and whether, attorney-client privilege should be deemed waived when emails directed from an attorney to his or her client are then forwarded by the client to other parties;⁹⁶ and the extent to which a party producing electronic documents is required to organize them for the benefit of the requesting party.⁹⁷ More generally litigation reveals four areas to which record managers, both federal and private, should pay close attention: (1) requirements concerning backup tapes; (2) deletion of data from computer hard drives; (3) discovery violations involving electronic documents; and (4) metadata.

⁹³ Real-world examples from the case law document practices ranging from 7 to 10 days (see Connor v. Sun Trust Bank, 2008 U.S. Dist. LEXIS 16917, at *9-*10 (N.D. Ga. Mar. 5, 2008)); to 90 days (see Keir v. Unumprovident, 2003 U.S. Dist. LEXIS 14522, at *4 (S.D.N.Y. 2003)); to 15 weeks (see Quinby v. WestLB AG, 04cv7406, at 20 (S.D.N.Y. 2005)); and as long as nine months (see In re NTL, Inc. Securities Litigation, 02cv3013, at 10-11 (S.D.N.Y. Jan. 30, 2007)).

⁹⁴ Fed. R. Civ. P. 34(a). See also Cmte. Note to Fed. R. Civ. P. 26(a)(1) (ESI under amended Rule 26 has “same broad meaning . . . as in Rule 34(a).”).

⁹⁵ Lorraine v. Markel American Ins. Co., PWG-06-1893, at *9 (D. Md. May 4, 2007) (noting that the “Federal Rules of Evidence . . . do not separately address the admissibility of electronic data.”).

⁹⁶ Moro v. Target Corp., 2007 U.S. Dist. LEXIS 41442, *11; see also Jennifer M. Moore & Gregory S. Kaufman, *Discovery Can Get Tangled Up in 'Strings': It's Not Yet Clear How Privileges Should Apply to E-Mail Exchanges*, 29 Nat'l L.J. 17 (Dec. 4, 2006).

⁹⁷ MGP Ingredients, Inc. v. Mars, Inc., 2007 U.S. Dist. LEXIS 76853 (D. Kan. Oct. 15, 2007).

1. Obligations Concerning Backup Tapes

Amended Rule 26(b)(2) of the Federal Rules of Civil Procedure establishes a new standard for determining when a party must produce electronic documents requested in civil discovery. Under the new rule, a responding party need not produce electronically stored information from sources that it identifies as not “reasonably accessible because of undue burden or cost.”

In the area of backup tapes, courts have construed the term “reasonably accessible” as including backup tapes “actively used for information retrieval” by the producing organization in the ordinary course of its business. By contrast, courts do not consider disaster recovery backup tapes to be “accessible.”⁹⁸

Backup tapes are subject to other litigation obligations including “litigation holds.” Where an entity reasonably anticipates litigation, it must “suspend its routine document retention/destruction policy and put in place a litigation hold to ensure the preservation of relevant documents.”⁹⁹ In the electronic document era, litigation holds extend to all electronic documents known to exist on computer hard drives and servers.¹⁰⁰ Although this obligation does not ordinarily extend to recycling of disaster recovery tapes,¹⁰¹ a court may require a party to stop its recycling where the backup tapes contain the only available copies of particular electronic documents and the party is aware of this circumstance.¹⁰² Courts may also compel parties, both private and governmental, to produce backup tapes in response to discovery requests at their own expense. At least one court so ordered when the producing party failed to

⁹⁸ Zubulake v. UBS Warburg LLC, 220 F.R.D. 212, 218 (S.D.N.Y. 2003); see also In re Kmart Corp., 371 B.R. 823, 353 n.15 (Bankr. N.D. Ill. 2007); Consol. Aluminum Corp. v. Alcoa, Inc., 244 F.R.D. 335 (M.D. La. 2006); Semsroth v. City of Wichita, 2004 U.S. Dist. LEXIS 30726, at *7 (D. Kan. 2004); Zubulake v. UBS Warburg LLC, 229 F.R.D. 422, 431-432 (S.D.N.Y. 2004); Thompson v. United States HUD, 219 F.R.D. 93, 100 (D.Md. 2003); but see Toussie v. County of Suffolk, 2007 U.S. Dist. LEXIS 93988, at *24 (S.D.N.Y. 2007) (holding that disaster recovery tapes are to be considered accessible).

⁹⁹ Zubulake, 220 F.R.D. at 218. The obligation to stop document destruction also extends to anticipated government investigations or audits. See Sedona Guidelines at p. 42.

¹⁰⁰ Zubulake, 220 F.R.D. at 218.

¹⁰¹ Id.

¹⁰² See, e.g., Oxford House, Inc. v. City of Topeka, Kansas, 2007 WL 1246200 at *4 (D.Kan. April 27, 2007). See also United States v. Phillip Morris, 327 F. Supp. 2d 21, 23 (D.D.C. 2004) (court imposed \$2.75 million in monetary sanctions against Philip Morris for e-discovery violations including loss or destruction of relevant emails).

preserve emails at a time when they had not yet been copied onto backup tapes.¹⁰³

The Sedona Conference has emphasized the need to “have a plan in place to deal with the changes in policy that will be mandated by a legal hold.”¹⁰⁴ Recommended techniques include anticipating circumstances that will trigger the suspension of normal destruction procedures; identifying those persons with authority to suspend such procedures; creating a stand-alone document that describes processes for suspending normal records destruction; effectively communicating litigation holds once imposed; and documenting the steps taken to implement any litigation hold.¹⁰⁵

Frequently, public and private sector entities contract with third parties to create and maintain backup tapes. For discovery purposes, producing parties are deemed to have control over the backup tape recycling procedures of their outside vendors.¹⁰⁶

2. Deletion Of Data From Computer Hard Drives

The Sedona Conference defines “deleted data” as

data that, in the past, existed on the computer as live data and which has been deleted by the computer system or end-user activity. Deleted data remains on storage media in whole or in part until it is overwritten or “wiped” with a software program specifically designed to remove deleted data. Even after the data itself has been wiped, directory entries, pointers, or other metadata relating to the deleted data may remain on the computer.¹⁰⁷

Data is purposefully deleted in both the private and federal sectors for a variety of reasons, some legitimate and some less so. For example, two agency heads of the Environmental Protection Agency requested that their computers be re-formatted prior to administration

¹⁰³ Disability Rights Council of Greater Washington v. Washington Metropolitan Transit Authority, 2007 U.S. Dist. LEXIS 39605 (D.D.C. June 1, 2007).

¹⁰⁴ Sedona Guidelines at p. 42 (see Exhibit 20).

¹⁰⁵ Id. at pp. 42-48.

¹⁰⁶ See, e.g., Keir v. Unumprovident Corp., 2003 U.S. Dist. LEXIS 14522, at *11 (S.D.N.Y. 2003). The Keir court held that a company had violated a preservation order by not instructing its third-party data vendor to temporarily suspend the default policy of recycling email backup tapes every 90 days. The district court reasoned that the company had “ultimate control over the [third party vendor’s] email retention policy” and was also able to “specify a retention policy other than the default policy.” Id.

¹⁰⁷ Sedona Best Practices at p. 92 (see Exhibit 3).

transitions to prevent data accumulated during their tenure from becoming accessible to future users of the same computer.¹⁰⁸ More recently, the White House has admitted it has a policy of “wiping” the hard drives of outgoing employees shortly after their departure, purportedly to cut down on the cost of purchasing new computers.¹⁰⁹ The White House also replaces up to one-third of all EOP hard drives annually and destroys the hard drives of the replaced units.¹¹⁰

Implementing a policy of wiping hard drives of departing employees, whether undertaken by a public or private sector entity, may constitute spoliation (or destruction) of evidence and lead to civil litigation damages when a “reasonable person should have foreseen that the [data on the wiped computer] was material to a potential civil action.”¹¹¹ Currently the Court in CREW v. Executive Office of the President is considering whether, in light of evidence that the White House failed to properly archive emails or capture them on backup tapes, the White House should be ordered to create and preserve forensic copies of all data on employee workstations.

3. Discovery Violations Involving Electronic Documents

A party in civil litigation that willfully destroys presumptively relevant documents, including emails, during the course of civil discovery can be held liable for sanctions.¹¹² Similarly, failure to conduct a diligent search for electronic records may also lead to sanctions.¹¹³

¹⁰⁸ Landmark Legal Found. v. EPA, 272 F.Supp.2d 70, 83-84 (D.D.C. 2003) (“[outgoing EPA Administrator Carol] Browner requested sometime before noon [on January 19, 2001] that her computer be reformatted and/or that all her files be erased that day in preparation for the next administrator . . . Acting Administrator Michael McCabe left EPA on February 2, 2001 . . . At the end of his tenure, he asked that his computer be reformatted as part of his transition out of office.”).

¹⁰⁹ Electronic Records Preservation at the White House: Hearing Before the H. Comm. on Oversight and Gov’t Reform, 110th Cong. 98 (Feb. 26, 2008), available at <http://oversight.house.gov/documents/20080228105823.pdf> (testimony of Office of Administration Chief Information Officer Theresa Payton that “as employees depart, if we want to be able to reuse their equipment, we actually take the files and store them on a shared drive. And then if we want to reuse their equipment, we would need to wipe their drives so that we’re not buying a new PC . . .”) (Exhibit 30).

¹¹⁰ See Second Declaration of Theresa Payton, (March 21, 2008), submitted in CREW v. Executive Office of the President (Exhibit 31).

¹¹¹ Forsythe v. Black Hills Corp., 2008 U.S. Dist. LEXIS 10430, at *10 (N.D. Ill. Feb. 8, 2008); see also APC Filtration, Inc. v. Becker, 2007 U.S. Dist. LEXIS 76221 (N.D. Ill. Oct. 12, 2007).

¹¹² Zubulake v. UBS Warburg LLC, 229 F.R.D. at 439.

¹¹³ Qualcomm, Inc. v. Broadcom Corp., 2008 U.S. Dist. LEXIS 911 (S.D. Cal. Jan. 7, 2008).

For example, one court held that a party responding to a discovery request failed to conduct a diligent search for potentially responsive documents where the party failed to search the email archives of witnesses expected to testify at trial using search terms deemed “relevant” to the case.¹¹⁴ The responding party represented repeatedly throughout discovery and the trial that it possessed no responsive documents that would have been dispositive of the patent dispute between the parties. The district court had harsh criticism for the in-house attorneys:

Qualcomm’s in-house lawyers were in the unique position of (a) having unlimited access to all Qualcomm employees . . . (b) knowing or being able to determine all of the computers and databases that were searched and the search terms that were utilized, and (c) having the ability to review all the pleadings filed on Qualcomm’s behalf which did (or should have) alerted them to the fact that either the document search was inadequate or they were knowingly not producing tens of thousands of requested documents.¹¹⁵

4. Metadata

“Metadata” is defined as “information about a particular data set which may describe, for example, how, when, and by whom it was received, created, accessed, and/or modified and how it is formatted.”¹¹⁶ That metadata comprises a component of any federal “record” for Federal Records Act purposes was established in Armstrong v. Executive Office of the President, 810 F.Supp. 335, 341 (D.D.C. 1993), aff’d, 1 F.3d 1274 (D.C. Cir. 1993). In ruling that metadata must be preserved, the Armstrong court reasoned that “[t]his information . . . in combination with the substantive information contained in the electronic material . . . will convey information about who knew what information and when they knew it.”¹¹⁷

In response to this ruling, NARA adopted regulations requiring agencies to track transmission and receipt-of-data elements of email messages.¹¹⁸ These regulations recognize the “unique aspects” of electronic mail and mandate that email records residing on a “live” system be placed in some form of agency record keeping system (paper or electronic),¹¹⁹ “as the best

¹¹⁴ Id. at *11, *23.

¹¹⁵ Id. at 38-39.

¹¹⁶ See Sedona Best Practices at 94 (see Exhibit 3).

¹¹⁷ Armstrong, 810 F.Supp. at 342.

¹¹⁸ 36 C.F.R. § 1234.24.

¹¹⁹ 36 C.F.R. § 1234.24(b).

means to preserve the[ir] content, structure, and context . . .”¹²⁰

In the civil discovery context, the amended Federal Rules of Civil Procedure permit a party to request electronic documents “in [the] form or forms in which [such documents are] ordinarily maintained.”¹²¹ At least one court has construed this rule as requiring the production of electronic documents in their native, electronic format, to reveal pertinent metadata.¹²² If, however, a party normally keeps a certain type of document in paper format, the party requesting documents typically cannot compel the production of such documents in electronic format.¹²³

SPECIFIC FEDERAL AGENCY RECORD KEEPING POLICIES

While this report examines electronic record keeping as a whole, we focus on email records due to their ubiquitous nature in the federal government and in the modern office. A 1999 report authored by a Department of Justice lawyer speculated that, in aggregate, federal agencies create at least 36.5 billion messages per year,¹²⁴ a number that most certainly has increased exponentially. More recently, a respondent to our online survey posited that about 90% of the business of the federal government was conducted by email.¹²⁵ And while electronic records include a variety of records (e.g., spreadsheets, maps, pictures), the widespread usage of email records makes them a top priority for agency record keeping policies.

Using a combination of FOIA requests and internet-based research from federal agency websites, CREW compiled the policies of the majority of larger, cabinet-level agencies in order to assess the sufficiency of current electronic record keeping policies. Generally speaking, agencies’ electronic record keeping policies fall into four main groupings: (1) those that acknowledge DOD 5015.2, the current NARA-approved standard for electronic records management, and reflect this option; (2) those that recognize electronic record keeping as an option at all; (3) those that employ only a “print and save” or “print and file” technique; and (4) those that include pilot programs with the goal of implementing electronic record keeping in the

¹²⁰ 63 Fed. Reg. at 44,639.

¹²¹ See Fed. R. Civ. P. 34(b)(ii).

¹²² In re Payment Card Interchange Fee & Merchant Discount Antitrust Litigation, 2007 U.S. Dist. LEXIS 2650 (E.D.N.Y. Jan. 12, 2007); but see Kentucky Speedway, LLC v. National Association of Stock Car Auto Racing, Inc., 2006 U.S. Dist. LEXIS 92028 (Dec. 18, 2006) (Rule 34(b) does not require production of metadata absent a showing of a particularized need).

¹²³ Michigan First Credit Union v. Cumis Insurance Society, Inc., 2007 U.S. Dist. LEXIS 84842 (E. D. Mich. Nov. 16, 2007).

¹²⁴ See Baron, *E-Mail Metadata*.

¹²⁵ Citizens for Responsibility and Ethics in Washington and OpenTheGovernment.org Federal Records Officer Information Survey -- E-mail Records (responses collected March 4, 2008 to March 19, 2008 (unpublished survey) (hereinafter “Survey”), p. 39 (Exhibit 32).

future. Moreover, not all agencies have adopted agency-wide policies; in some agencies individual offices and components employ widely differing policies.

More generally, our research shows that government policies vary widely, not only among agencies but also within them, at least in the justifications and explanations they offer for their policies. Some variation is expected given the leeway that agencies need to provide guidance on agency-specific documents and to work with varied computer systems. The amount of confusion within agencies and within the government as a whole, however, should not be accepted. For example, when an agency that does not currently use an electronic system nevertheless provides guidance on its use, employees may be misled into thinking that Outlook or another email program is adequate for record keeping purposes, when it is not. This, coupled with the fact that some of the records policies apparently still in effect are quite dated, raises serious concerns about the level of importance and attention that federal agencies are giving to electronic records management.

Based on CREW's research it appears that overall, the print and save policy dominates the federal government. While some agencies have taken steps in the direction of managing records electronically, no agency from which we received responses has a well developed plan to move to full, agency-wide electronic records management. The technology for electronic records management exists and there is no justification for outdated and ineffective management of electronic records.

Reliance on employees in the first instance to determine what qualifies as record material will always leave room for mistakes, even with the most technologically sophisticated records management system. According to information management consultant J. Timothy Sprehe, there are few if any "quality assurance programs" set up to make sure employees are capturing proper records.¹²⁶ When coupled with the lack of records management training at agencies this leads to serious gaps in the net set up to capture federal records. Sprehe suggests automating many records functions to begin to solve this problem,¹²⁷ but others question whether full automation is even possible.¹²⁸ One thing is certain: as long as individual employees with little training and even less interest in records management serve as the determining point for what is and is not record material, records will be lost.

In order to properly focus employees on their record keeping obligations and to implement needed technology improvements senior agency management must be involved. Current trends show, however, that senior management is becoming less -- not more -- interested in records management. Research by the Information Technology Association of America found that 23% of senior technology managers at federal agencies now report to the chief financial

¹²⁶ Sprehe, *E-Mail Recovery Problems*.

¹²⁷ Id.

¹²⁸ Ben Bain, *Are We on the E-Record?*, Federal Computer Week, July 30, 2007 (Exhibit 33).

officer of their agency and not the agency head or secretary.¹²⁹ Many respondents to CREW's survey agreed that senior management lack the will and knowledge to improve records management

Finally and perhaps most notably, no agency we looked at used an agency-wide electronic record keeping system. Previously published reports document that most agencies do not use electronic systems for any records management.¹³⁰

1. Policies That Acknowledge DOD 5015.2

Department of Energy

The Department of Energy created a standard in 2000, based on DOD 5015.2 STD, "as a recommended method for meeting the requirements and laws pertaining to records management."¹³¹ The standard was called DOE-STD-4001-2000. There are no substantial differences between the DOD standard and the DOE standard.¹³² When NARA officially endorsed version 2 of the Department of Defense's Electronic Records Management Software Application Design Criteria Standard, DOE cancelled DOE-STD-4001-2000 in favor of DOD 5015.2 STD.¹³³

The Department of Energy requires that electronic records be "maintained in an approved electronic records management application meeting the requirements of DOE-STD-4001-2000."¹³⁴ It seems, however, that DOE had yet to implement an electronic records management policy as of 2006, because DOE Order 243.1 states that, "until an electronic records management system is available and implemented, electronic records will be printed and retained as paper files."¹³⁵

Department of Education

¹²⁹ Miller, *Survey Shows CIOs Losing a Seat at the Table*.

¹³⁰ See, e.g., *E-Government; Probes Highlight Problems with E-Mail Storage*, Technology Daily, May 3, 2007, PM Edition (Exhibit 34).

¹³¹ U.S. Dep't. of Energy, DOE-STD-4001-2000 (2000) (Exhibit 35).

¹³² *Id.*

¹³³ Memorandum from Sharon A. Evelin, Director, Records Management Division, IM-23 (Feb. 26, 2007) (Exhibit 36).

¹³⁴ U.S. Dep't. of Energy, DOE Order O 243.1, Records Management Program (2006) (Exhibit 37).

¹³⁵ *Id.*

By 2002, the Department of Education had acknowledged that email was the “ubiquitous” form of agency communications.¹³⁶

In January 2007, in a departmental directive the Department of Education endorsed the use of “electronic recordkeeping systems meeting the requirements of DOD-5015.2-STD.”¹³⁷ But documents released to CREW did not indicate that any such system was in use. Moreover, the same directive offers as an alternative policy that all electronic records, including email, “be printed and retained as paper files.”¹³⁸

Department of Commerce

The Department of Commerce (DOC) Record Management Policy encourages program offices to “convert to and rely on electronic records whenever feasible.” The policy also states that “an electronic records management product used by a Federal agency must, at a minimum, meet the Department of Defense (DOD) 5015.2 Standard.”¹³⁹ Nevertheless, a PowerPoint training program from DOC states that “electronic records may be stored in computer memory or on storage media,”¹⁴⁰ even though merely saving a record on a computer hard drive does not meet the DOD 5015.2 Standard.

2. Policies That Acknowledge Electronic Record Keeping

Department of Homeland Security

The Department of Homeland Security Records Management Handbook requires that email records be maintained by “printing the email message (with attachment) and filing, when paper files are used as the record keeping system.” The handbook also allows for “filing email electronically, when an electronic recordkeeping system is used as the recordkeeping system.”¹⁴¹ Documents released to CREW did not indicate that any such electronic system is in use.

¹³⁶ U.S. Dep’t. of Education, Departmental Directive OCIO:1-103, Departmental Records and Information Management Program (2002) (Exhibit 38).

¹³⁷ U.S. Dep’t. of Education, Departmental Directive OM:6-103, Records and Information Management Program (2007) (Exhibit 39).

¹³⁸ *Id.*

¹³⁹ U.S. Dep’t. of Commerce, Records Management Policy (2005) (Exhibit 40).

¹⁴⁰ *Department of Commerce Records Management Training*, U.S. Dep’t of Commerce (undated), available at http://ocio.os.doc.gov/ITPolicyandPrograms/Records_Management/PROD01_002018 (Exhibit 41).

¹⁴¹ U.S. Dep’t. of Homeland Security, Records Management Handbook, 0550 Publication (2005) (Exhibit 42).

Department of Justice

The Department of Justice policy “governing the Department-wide Records Management Program . . .” states that “e-mail information that is record information must be retained in a record keeping system that meets ORMP [Office of Records Management Policy] criteria. If the e-mail system in use does not meet ORMP criteria for electronic recordkeeping, or has not been appraised as an electronic record keeping system by NARA . . . then employees and contractors must print the e-mail to paper, along with all contextual information, and file it in a paper recordkeeping system.”¹⁴²

The same policy also notes that “backup tapes are NOT recordkeeping systems of the Department of Justice.”¹⁴³

A Department of Justice memo dated November 26, 2003 refers to a system called “Enterprise Vault from KVS,” which appears to be the most current reference.¹⁴⁴ Enterprise Vault appears to be only an e-mail archiving system¹⁴⁵ and it is not currently on the list of programs that have DOD 5015.2 certification.¹⁴⁶

Department of Justice - Bureau of Alcohol, Tobacco and Firearms (ATF)

ATF policy states that “[b]ecause ATF does not have an electronic recordkeeping system, e-mail messages to be retained as Federal records must be printed and filed as part of each office’s paper recordkeeping system . . .”¹⁴⁷

Department of Justice - Tax Division

A Tax Division directive from 1996 states that “[t]o our knowledge, there is no commercially available computer software that provides a system of indexing electronic records that meets those [NARA’s] proposed standards. Accordingly, until further notice, all e-mail

¹⁴² U.S. Dep’t. of Justice, Records Management, DOJ 2710.11 (2006) (Exhibit 43).

¹⁴³ *Id.* (emphasis in original).

¹⁴⁴ Memorandum from Paul R. Corts, Assistant Attorney General for Administration, (Nov. 26, 2003) (Exhibit 44).

¹⁴⁵ *Symantec Enterprise Vault Placed in Leaders Quadrant in Latest Magic Quadrant for E-mail Archiving*, available at http://www.symantec.com/about/news/release/article.jsp?prid=20070601_01 (Exhibit 45).

¹⁴⁶ See DOD Compliant Product Register.

¹⁴⁷ U.S. Dep’t. of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, Electronic Mail (E-Mail) Records, AFT O 1342.1 (2004) (Exhibit 46).

messages that constitute federal records must be printed on paper, annotated, and stored in an existing system of records . . .”¹⁴⁸ Given that the Tax Division has never released any updated policy or directive, we assume the 1996 directive is still in force.

Department of Justice - Criminal Division

A document from 2002 mentions that new “automatic purge” software for emails “does not free the user of his responsibility to save (Print or Archive) e-mail records designated as ‘official records.’”¹⁴⁹ There is no further explanation of what “Print or Archive” actually means in practice. The policy also states that the only “viable solution” for avoiding the loss of official email messages and documents is that be “printed out and retained in hard copy.”¹⁵⁰ The document goes on to speculate that one day there might be a requirement to save official records in electronic format, but there is no indication that the Criminal Division has yet implemented such a requirement.

Department of Health and Human Services (HHS)

HHS policy clearly states in HHS-2007-0004 that within each HHS office, electronic records -- including email -- should be maintained in an “enterprise-wide electronic content management system with record keeping functionality . . .” If such a system is not available electronics records should be printed and filed in a paper record keeping system.¹⁵¹

HHS - Health Resources and Services Administration (HRSA)

HRSA follows the same guidelines for record keeping as HHS.¹⁵²

HHS - Food and Drug Administration (FDA)

The FDA provided CREW with a copy of an HHS record keeping policy that has since been made obsolete by HHS-2007-0004, cited above.

HHS - Administration for Children and Families (ACF)

¹⁴⁸ U.S. Dep’t. of Justice, Tax Division, Tax Division Directive No. 106, Retention of E-Mail Messages That Constitute Federal Records (1996) (Exhibit 47).

¹⁴⁹ U.S. Dep’t. of Justice, Criminal Division, E-Mail Retention Guide, Attachment to 80-4 (2002) (Exhibit 48).

¹⁵⁰ *Id.*

¹⁵¹ U.S. Dep’t. of Health and Human Services, HHS Policy for Records Management, HHS-2007-0004 (2008) (Exhibit 49).

¹⁵² Letter from Mona Finch, Freedom of Information Officer, to Anne Weismann, Citizens for Responsibility and Ethics in Washington (July 24, 2007) (Exhibit 50).

In its Standard Operating Procedure for Records Management, the Administration for Children and Families states that “[a]ll ACF staff must be able to identify those electronic mail messages that are Federal records and must be aware of the record keeping requirements that apply to electronic mail.”¹⁵³ The policy does not, however, explain what an employee is to do with an email that is a federal record once it has been identified.

HHS - Agency for Healthcare Research and Quality (AHRQ)

The AHRQ provided CREW with a copy of an HHS record keeping policy that has since been made obsolete by HHS-2007-0004, cited above.

HHS - National Institute of Health (NIH)

Section 1743 of the NIH National Library of Medicine Manual requires that when emails are federal records “the e-mail must be printed out and filed with related records in the official files of the employee’s organization.”¹⁵⁴

In contrast, section 1742 of the NIH Policy Manual regarding the “Transfer, Withdrawal and Destruction of Records at the Washington National Records Center” states that “[p]ermanent electronic records must be either on open-reel magnetic tape or tape cartridges.”¹⁵⁵ It is unclear whether email, which is an electronic record, is covered by this policy given the agency-wide practice of printing out emails, thereby converting them to paper records.

Department of Labor (DOL)

Under a 1996 DOL memo, email messages that were federal records were to be printed and filed in an appropriate record keeping system.¹⁵⁶

A 2004 memo from the Solicitor of Labor reiterates the policy that “once an e-mail is determined to be a federal record . . . it must be printed out and filed in an appropriate file system.” The memo also notes that the email program Outlook “does not allow records to be

¹⁵³ U.S. Dep’t. of Health and Human Services, Administration for Children and Families, Standard Operating Procedure for Records Management (2005) (Exhibit 51).

¹⁵⁴ U.S. Dep’t. of Health and Human Services, National Institute of Health, National Library of Medicine, NLM Manual, 1743 Keeping and Destroying Records (2006) (Exhibit 52).

¹⁵⁵ U.S. Dep’t. of Health and Human Services, National Institute of Health, NIH Manual, 1742 Transfer, Withdrawal and Destruction of Records at the Washington National Records Center (2004) (Exhibit 53).

¹⁵⁶ Memorandum from Shirley A. Malia, Director, Information Technology Center (March 28, 1996) (Exhibit 54).

managed in a way that meets the requirements of the FRA.”¹⁵⁷

A Frequently Asked Questions (FAQs) document, attached to a 2006 DOL memo, complicates the policy further. This document explains that there are “two ways to save Federal Records: (1) Print and save the email message and corresponding attachment(s) into a manual filing system or; (2) Click and save the email message and corresponding attachment(s) into your Agency’s electronic record keeping system.” The document encourages the reader to ask the Agency’s records manager for guidance on identifying the system. It is unclear from the document if any such system exists at DOL.¹⁵⁸

DOL requires that permanent electronic records be on “open reel magnetic tapes, tape cartridge or CDROM’s,”¹⁵⁹ but does not address specifically the status of email as either a paper or electronic record.

DOL - Occupational Safety and Health Administration (OSHA)

According to an OSHA FAQ document from 2006, there is no current DOL-wide record keeping system and employees should therefore either “print and save” or “click and save.” Again, no electronic records keeping system is identified, although the document does say that “DOL is in the beginning stages of developing a Document Management/Records Management application.”¹⁶⁰ No documents about this program were released to CREW.

Department of Housing and Urban Development (HUD)

Documents released by HUD did not outline how federal e-mail records should be maintained. On its website, HUD provides a link to General Records Schedule 20 on electronic records (created by NARA). Under GRS 20, “e-mail must be saved to an electronic record keeping system, paper, or microform for record keeping purposes”¹⁶¹

In a Strategic Plan released by HUD’s chief information officer, the agency set a goal to

¹⁵⁷ Memorandum from Howard M. Radzely, Solicitor of Labor, (July 8, 1004) (Exhibit 55).

¹⁵⁸ Memorandum from Patrick Pizzella, Assistant Secretary for Administration and Management, Chief Information Officer (December 1, 2006) (Exhibit 56).

¹⁵⁹ U.S. Dep’t. of Labor, Manual Series, DLMS 1 - Records Management, Departmental, Chapter 400 - Records Management Program (2005) (Exhibit 57).

¹⁶⁰ “OSHA Records Management Briefing” (Presentation Handout) (Nov. 15, 2006) (Exhibit 58).

¹⁶¹ *GRS Transmittal No. 20. National Archives and Records Administration, General Records Schedules*, (Feb. 27, 2008), available at <http://www.archives.gov/records-mgmt/ardor/grs20.html> (Exhibit 59).

“Define E-Government strategies and focus in support of Vision 2010 to include Enterprise Records Management (ERM) and other appropriate initiatives” by FY 2007.¹⁶² HUD’s Strategic Portfolio Review FY2008 also mentions records management, and states that “[t]he Electronic Document and Records Management Enterprise Service enables HUD to effectively manage all of its documents and records in a consistent, legal, and logical manner, from creation to disposition, using a common set of tools, standards and policies.”¹⁶³ No other documents released by HUD in response to CREW’s FOIA requests or available on HUD’s website mention an “Electronic Document and Records Management Enterprise Service.”

HUD has posted an “Exhibit 300 Business Case” on its website that also relates to records management. This document describes a “HUD Electronic Records System (HERS),”¹⁶⁴ but it is unclear how or if this relates to records management.

Department of Agriculture

Department of Agriculture policy dictates that the print and file approach be taken when an email and its attachments are determined to be federal records if a paper system is used.¹⁶⁵ The policy also provides that employees must use an electronic system if one is available and specifies that backup tapes are not adequate for this purpose.¹⁶⁶ The agency’s records management policy available on its website makes no mention of any electronic record keeping system currently in use.¹⁶⁷

3. Policies That Include Only “Print And File”

Department of Interior

¹⁶² U.S. Dep’t. of Housing and Urban Development, Strategic Plan, Vision 2010, The Office of the Chief Information Officer (2007) (Exhibit 60).

¹⁶³ U.S. Dep’t. of Housing and Urban Development, Strategic Portfolio Review FY2008 (2007) (Exhibit 61).

¹⁶⁴ U.S. Dep’t. of Housing and Urban Development, HUD Electronic Records System, Exhibit 300: Capital Asset Plan and Business Case Summary, (2007) (Exhibit 62).

¹⁶⁵ U.S. Dep’t of Agriculture, Office of the Chief Information Officer, *Records Management, DR 3080-001*, available at <http://www.ocio.usda.gov/records/doc/DR3080-001.html> (Exhibit 63).

¹⁶⁶ *Id.* According to a source at the Department of Agriculture that we spoke with, who requested anonymity, the agency is experimenting with two different DOD 5015.2-certified electronic records programs, one of which may be implemented throughout the agency. We have not yet seen any documentation of either program.

¹⁶⁷ *Id.*

The Department of Interior (DOI) presents a unique case in records management mainly because of the long running Cobell civil suit against DOI.¹⁶⁸ Court orders in that case have mandated a variety of record policies at DOI, including that all records related to the case be preserved in paper format. This policy has proved costly and burdensome to the agency.¹⁶⁹ In addition, in 2001 as a sanction for its failure to live up to its e-discovery obligations, the Cobell court ordered that DOI be disconnected from the internet. This left some DOI programs without email accounts through at least December 2007.¹⁷⁰

The Department of Interior published a pamphlet entitled “Managing Electronic Mail” with guidance on identifying email records, managing email and employee responsibilities. The pamphlet states that when an email is determined to be a record, the employee is required to “print a hard copy of the record, including attachments and transition information, and file it in the official filing system.”¹⁷¹

4. Pilot Programs

Environmental Protection Agency - Office of Environmental Information

In 2003, the Environmental Protection Agency (EPA) announced the results of a pilot program to select an enterprise-wide Electronic Records and Document Management System (ERDMS). The agency’s effort was headed by the Office of Environmental Information and resulted in the selection of a commercial off-the-shelf (COTS) solution.¹⁷² EPA’s process was chronicled in a series of “Recommended Practice” documents later produced by NARA to show other agencies how to select a system.¹⁷³ It is unclear, however, if EPA ever implemented the program because current records management policy at the agency provides for printing and

¹⁶⁸ See Cobell v. Kempthorne, 96-1285 (D.D.C.).

¹⁶⁹ E-mail from Brian McCauley, Bureau Records Officer, Capital Planning and Information Policy Branch Minerals Management Service/Department of Interior, to Ginny Morgan, MMS FOIA/Privacy Officer (Jan. 25, 2008 12:53 PM) (hereinafter “McCauley Email”) (Exhibit 64).

¹⁷⁰ Ben Bain, *Hot or Not: Congress Failed to Make a Mark*, Federal Computer Week, December 17, 2007. (Exhibit 65).

¹⁷¹ *Managing Electronic Mail*, On the Record with the Department of Interior Records management Program (undated), available at <http://www.doi.gov/ocio/records/brochure.html> (Exhibit 66).

¹⁷² Memorandum from Mark Luttner, Office of Information Collection (OIC), and Mark Day, Office of Technology Operations and Planning (OTOP) (August 15, 2003) (Exhibit 67).

¹⁷³ National Archives and Records Administration, E-Gov Electronic Records Management Initiative, Recommended Practice: Evaluating Commercial Off-the-Shelf (COTS) Electronic Records Management (ERM) Applications (2005) (Exhibit 68).

saving e-mail records when an electronic system is not available.¹⁷⁴

HHS - Centers for Disease Control - Office of Health and Safety

The Centers for Disease Control (CDC) called the need for electronic record keeping systems in the federal government “imperative” and said that “printing and storage of [electronic] documents is no longer a viable option.” To that end the CDC states that it is testing (as of 2005) an electronic system in its Office of Health and Safety.¹⁷⁵

DOI - Mineral Management Service - Mineral Revenue Management

According to a records officer at the Mineral Management Service, the agency’s Mineral Revenue Management program has undertaken a pilot program to find an electronic solution to its records management issues. To that end, the program is testing a software program that is compliant with DOD 5015.2 standard.¹⁷⁶

TESTING AGENCY ELECTRONIC RECORDS PRACTICES

Agency electronic record keeping policies tell only half of the story; still missing are the actual agency practices in managing email records. To test the efficacy of agency email policies, CREW submitted a series of FOIA requests to seven agencies for specific email records pertaining to discrete, agency-specific policies, programs or actions. We selected the subjects for the requests based on press releases on agency websites within the last three years, paying careful attention to subjects of limited scope so as not to unnecessarily overwhelm FOIA offices. At the same time, we sought subjects that were sufficiently large and important that it was likely the subject agency created at least some emails that could be considered federal records. CREW requested the records in either paper or electronic form. Although the test sample is very limited, the results were consistent with CREW’s experience as a frequent FOIA requester of email and other electronic records. Agencies responding to the hundreds of FOIA requests CREW has filed since its inception have provided copies of emails almost exclusively in paper form and many agencies consistently have produced no emails whatsoever.

To date five of the seven agencies have responded.¹⁷⁷ All responding agencies provided records only in paper form. A summary of their responses follows.

¹⁷⁴ Environmental Protection Agency, Records Management Policy, Records Management (2006) (Exhibit 69).

¹⁷⁵ U.S. Dep’t of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, General Administration, Records Management, CDC-GA-2005-07 (2005) (Exhibit 70).

¹⁷⁶ See McCauley Email.

¹⁷⁷ The Department of Justice and HHS have not yet responded.

1. Department of Labor

CREW originally sought emails related to the Department of Labor's October 19, 2005 award of \$125 million to 70 community colleges competing for the President's Community-Based Job Training Grants. Specifically, CREW sought copies of email records related to the disbursement of Community-Based Job Training grant monies to selected community colleges.¹⁷⁸ After discussions with a DOL FOIA officer, CREW agreed to limit the request to 12 specific community colleges.

DOL responded within 30 days with 28 responsive documents, including emails and attachments from November 2005 to January 2007 dealing with the disbursement of grant money.

All emails provided were branded with the date and time they were sent, attachments were enclosed and the full names of senders and recipients (excluding redactions) were clear on each e-mail.

2. Department of Agriculture (USDA)

Through its FOIA of the Department of Agriculture, CREW requested emails dating from May 1, 2006 to October 1, 2006, related to USDA's transition to "ongoing bovine spongiform encephalopathy (BSE) surveillance" as announced on July 20, 2006.¹⁷⁹ This program was administered by the Animal and Plant Health Inspection Service (APHIS) and followed standards and guidelines established by APHIS with Veterinary Services (VS) and the National Surveillance Unit (NSU).¹⁸⁰ Organizationally, NSU is a unit of VS,¹⁸¹ which in turn is an operational program unit of APHIS under the jurisdiction of the Office of the Undersecretary for Marketing and Regulatory Programs (MRP).

As of publication date, CREW had received responses from two departments of USDA. The Office of the Undersecretary for Marketing and Regulatory Programs (MRP), which has jurisdiction over all sub-units related to the creation of the BSE plan, did not locate any

¹⁷⁸ *2005 Highlights*, available at <http://www.dol.gov/dol/highlights/highlights-2005.htm> (Exhibit 71).

¹⁷⁹ *USDA Announces New BSE Surveillance Program*, available at <http://www.usda.gov/wps/portal/usdahome?contentidonly=true&contentid=2006/07/0255.xml> (Exhibit 72).

¹⁸⁰ *Bovine Spongiform Encephalopathy (BSE) Ongoing Surveillance Plan*, available at http://www.aphis.usda.gov/newsroom/hot_issues/bse/downloads/BSE_ongoing_surv_plan_final_71406%20.pdf (Exhibit 73).

¹⁸¹ *About the National Surveillance Unit*, available at <http://www.aphis.usda.gov/vs/ceah/ncahs/nsu/about.htm> (Exhibit 74).

responsive records.¹⁸² It is unclear whether APHIS, VS, NSU and MRP did not create any email records or whether the FOIA officer was simply unable to locate email records.

The other responding department, the Office of General Counsel, released 20 pages of documents, including four pages of heavily redacted emails. One of the emails originated in APHIS,¹⁸³ raising the question why USDA's Office of General Counsel considered the document to be a record worthy of preservation, while another department either did not regard the email as record material or was unable to locate it. The Office of General Counsel also released several other non-email documents related to the program.

3. Department of Interior

From the Department of Interior CREW sought emails pertaining to the agency's November 10, 2005 announcement that it would not recognize the St. Francis/Sokoki Band of Abenaki located in and around Swanton, Vermont as an Indian Tribe.¹⁸⁴ CREW limited the time-frame of the request to between August 1, 2005 and December 1, 2005. As of our publication date Interior had produced two releases, both from the Office of the Secretary. The first contained five documents totaling 26 pages and included memos but no emails. The second consisted of 12 pages, all of which are either emails or attachments.

In light of the Cobell court orders it is impossible to know if the volume of emails the Department of Interior produced in response to our FOIA request is limited because the relevant offices did not have email access during the relevant time period, or because the agency lacks the ability to perform an effective and comprehensive search for email records.

4. Department of Commerce

From the Department of Commerce CREW requested emails sent or received by agency employees or officials from July 1, 2006 to December 1, 2006, related to DOC's stated "efforts to strengthen U.S. competitiveness in the world travel and tourism market."¹⁸⁵ The agency publicized this plan in a press release dated September 5, 2006.

¹⁸² Letter from Rita Morgan, USDA Freedom of Information Officer, Administration to William C. Holmes, CREW (March 13, 2008) (Exhibit 75).

¹⁸³ Email from Laird Draves, APHIS, to Mark Garrett (office unknown) (Aug. 1, 2006) (Exhibit 76).

¹⁸⁴ *Associate Deputy Secretary Declines to Acknowledge St. Francis/Sokoki Band of Abenaki as an Indian Tribe*, available at http://www.doi.gov/news/05_News_Releases/051115a.htm (Exhibit 77).

¹⁸⁵ *U.S. Travel and Tourism Advisory Board Recommends New National Strategy to Attract International Visitors*, available at http://www.commerce.gov/NewsRoom/PressReleases_FactSheets/DEV01_005353 (Exhibit 78).

In response, DOC released dozens of emails and related attachments. The documents were well laid out and contained all relevant transmission data. Attachments were stapled to the corresponding email, which aided in the usefulness of the FOIA release.

5. Department of Education

Originally, CREW sought emails and attachments related to the Department of Education's June 2006 Gulf Coast Reading Initiative. Education, however, denied CREW's request for a fee waiver -- the same waiver that CREW had requested and received for all other FOIA requests used in this report. In the absence of a fee waiver, Education estimated that searching for responsive documents would involve 40 hours of labor spread out over workers at three different pay grades at a total of at least \$2,111.83.¹⁸⁶

Regardless of Education's reasons for denying the waiver, this response is a firm indictment of the agency's email record keeping practices. If Education were using a modern electronic record keeping program, the agency would be able to conduct a thorough search on this topic in much less time and at a significantly reduced cost.¹⁸⁷

CREW SURVEY RESULTS

To gain a more complete understanding of current email record keeping practices in the federal government CREW, along with OpenTheGovernment.org, created and submitted a survey to over 400 records managers from 230 agencies and agency components. We selected records managers rather than other agency officials on the assumption they would have the best working knowledge of records practices in their agencies and because we had access to their email addresses. The survey was not designed to generate statistically valid results or to single out any particular agency or records manager, but instead to serve as an anecdotal framework for understanding how federal agencies actually handle their email records.

We received 87 complete or partial responses over a three-week period. Unless otherwise noted, there are at least 50 responses to any particular question discussed here.¹⁸⁸ The survey confirms what our research into agency policy had shown, namely that the most popular method of email records management is to print email records and file them with paper records. Results also confirm what agency policies submitted in response to CREW's FOIA requests hinted at -- some agencies have multiple policies governing email records or no policy at all. As

¹⁸⁶ Letter from Delores J. Barber, FOIA Public Liaison, OM/RIMS, Dep't of Education, to William C. Holmes, Citizens for Responsibility and Ethics in Washington, (Feb. 29, 2008) (Exhibit 79).

¹⁸⁷ CREW has had numerous other problems with Education and its failure properly maintain email records as the Federal Records Act requires.

¹⁸⁸ The entire survey is available as Exhibit 32 minus redactions to protect the anonymity of respondents.

one records manager stated in response to the question of how emails are preserved at their agency, "we have not gotten to that phase of records management."¹⁸⁹

Only six survey respondents said that their agency exclusively used some type of electronic system to manage its email records. Of those six respondents, four identified specific product names -- all different -- and four responded that their agencies used products that were purchased off-the-shelf, demonstrating that some agencies are taking advantage of products already available to the government.¹⁹⁰

Only two respondents claimed the email records management system used by their agencies was DOD 5015.2 compliant, while three respondents were completely unfamiliar with this standard. From this it appears that since endorsing the DOD standard in 2003, NARA has not made agencies sufficiently aware of this technology and the products that meet DOD specifications and are available to solve the agencies' record management issues.

The Survey responses also confirm that agencies are far more able to search for emails in electronic systems than for emails stored in paper systems. Five individuals, representing 83% of respondents who use an electronic system to manage their emails, said their systems were searchable for email records. By contrast, of those using paper or some other system, 61% (or 35 of the 57 respondents in this category) found it difficult to impossible to search for and find specific email records.¹⁹¹

Survey respondents most often identified lack of training as the biggest impediment to preserving agency email records; 52% of respondents found it to be among the biggest problems with records management in their agencies. Contributing to this problem is both a lack of employee interest in training and a lack of time for training.¹⁹² A common theme, reflected in the third most popular answer choice, is that "training is not an agency priority."¹⁹³ Some agencies do not have, or the records managers do not know if they have, training policies in place.

For those agencies that have training policies, the most common method is an individual training session with an employee.¹⁹⁴ Other methods include handing out materials to employees, classes for groups of employees, or online or computer training.¹⁹⁵

¹⁸⁹ See Survey at p. 18.

¹⁹⁰ Id. at pp. 17, 24, 25, 26.

¹⁹¹ Id. at pp. 22, 29.

¹⁹² Id. at pp. 16, 29, 30.

¹⁹³ Survey at p. 30.

¹⁹⁴ Id. at p. 31.

¹⁹⁵ Id.

Training issues extend beyond teaching employees how particular record keeping systems work. Federal employees appear to lack an understanding of the most basic concepts such as the definition of records and employee responsibilities for agency records. “[D]efinitions of what constitutes a record differs among employees,” reports one respondent. “Sometimes co-workers may make a wrong judgement call regarding whether or not a particular email is a record that should be retained.”¹⁹⁶ Another responded that “determining which e-mails are official records” is the biggest problem with their agency email records management.¹⁹⁷

The survey exposes a potential legal pitfall in the lack of concern for metadata. As the Armstrong case made clear,¹⁹⁸ metadata -- which includes the name of senders and recipients including those carbon copied (cced), date of email transmission, and, if requested, time and date of receipt acknowledgment -- must be retained with its associated email records. Yet in CREW’s survey only 74% of respondents said that the most basic information, the time and date of the e-mail and full names of the sender and recipients, is saved. “No guarantees,” wrote one respondent.¹⁹⁹ Other potentially important metadata fared even worse. Only 68% of respondents retain attachments to emails, while only 56% retain the names of those cced on emails.²⁰⁰

Survey responses reveal that lack of compliance and lack of penalties for non-compliance are also major problems. “I do know that less than 80% of the agency complies,” commented one respondent.²⁰¹ Overall, 30% of respondents do not think their co-workers comply with email record policies while 26% do not know if co-workers comply. 34% of respondents are not aware of any monitoring of employee record keeping practices, and 56% said there was no penalty for non-compliance (at least on the agency level).²⁰²

Respondents also identified lack of support from upper management as a key problem. As one record manager wrote, “management verbalizes about how important recordkeeping is but does nothing to implement or fund.”²⁰³ “Until managers understand why records management is important it will never get attention,” stated another respondent.²⁰⁴ “Management

¹⁹⁶ Id. at p. 33.

¹⁹⁷ Survey at p. 16.

¹⁹⁸ Armstrong v. Executive Office of the President, 810 F.Supp. at 341.

¹⁹⁹ Survey at p. 20.

²⁰⁰ Id.

²⁰¹ Id. at p. 32.

²⁰² Id. at p. 35.

²⁰³ Survey at p. 37.

²⁰⁴ Id. at p. 39.

does not even realize that there is a problem or appear to care,” wrote yet another.²⁰⁵ One records manager wrote, “no monitoring, no training, no penalties, no requirements for training. Agency records experts are ignored if they raise issues, it’s a mess.”²⁰⁶

Our admittedly unscientific survey reveals a number of major problems. First, agencies have inconsistent policies, as evidenced by the fact that so many respondents use multiple techniques to preserve email records at their agencies. Second, agencies have been slow to move towards electronic record systems. Third, agencies are not complying with their legal obligation to preserve metadata. Fourth, agencies lack training and compliance monitoring, two problems that would be easily cured by reforming agency policy and increased NARA involvement. Fifth, senior agency officials do not recognize the serious problems with their agencies’ electronic records management and have yet to take steps to correct those problems. This concern is magnified by the fact that, as one record manager noted, “nearly 90% of the business within a federal agency is accomplished through e-mail. If these records are not properly managed, that means 90% of the records are not properly managed.”²⁰⁷

RECOMMENDATIONS

Effective solutions to the government-wide breakdown in electronic record keeping compliance will require legislative changes, a more active role by NARA and a larger percentage of agency budgets dedicated to technology improvements. More specifically, based on our findings we recommend the following:

1. Amend the Federal Records Act

Congress should amend the FRA to require that all agencies within the federal government implement electronic record keeping by a date certain that recognizes the readily available technology. Only through a statutory directive is there hope of reversing the technology backslide that has occurred within the federal government.

Congress should also amend the FRA to require NARA to conduct annual audits based on bench marks NARA establishes that address such issues as training, education and compliance. Each agency should be required to submit annual audits to NARA certified by the agency head. Only by requiring agency heads to play a direct and specific role will agencies give electronic record keeping the priority it deserves. Recognizing that NARA does not have the resources to audit every agency, Congress should require NARA to conduct yearly audits of select agencies based on their audit submissions.

The FRA should also be amended to add additional penalties for noncompliance directed

²⁰⁵ *Id.* at p. 30.

²⁰⁶ *Id.* at p. 34.

²⁰⁷ Survey at p. 39.

at both the agency and individual agency employees. As outlined in our report, the private sector is subject to rigorous penalties for noncompliance with record keeping obligations, which may account for its greater degree of compliance in comparison to the federal government.

2. NARA Must Take A More Active Role

The FRA mandates that NARA assist agencies in implementing record keeping standards. NARA, however, has interpreted its responsibilities very narrowly as limited to providing guidance. While we believe the current statute clearly mandates more, to the extent there is any lack of clarity the FRA should be amended to compel NARA to take an active role in ensuring government-wide compliance with record keeping obligations.

Specifically, NARA must conduct meaningful oversight that includes monitoring of agency compliance and working more directly with agencies to ensure the implementation of effective electronic record keeping. NARA should set bench marks that each agency must meet, including for the full implementation of electronic record keeping and continued compliance with record keeping requirements.

3. Each Agency Must Take A More Active Role

Agencies must, of course, share in the responsibility for complying with their record keeping obligations. Toward that end, each agency should designate an individual responsible for electronic records management within the agency. This designee should serve as the contact point both internally, within the government and externally with Congress and the public. Establishing effective training and employee education should be included within this individual's responsibilities together with monitoring internally the agency's compliance with electronic record keeping requirements.

4. Adequately Fund Agency Electronic Record Keeping

The long-term benefits that agencies will realize once they implement agency-wide electronic record keeping will more than offset the short-term costs attendant to a conversion from a paper to an electronic system. FOIA compliance alone will be exponentially easier and more cost-effective if agencies can use the superior search capabilities of electronically-stored records and produce records in electronic formats. Litigation costs will also be reduced, along with agencies' potential exposure to costly litigation sanctions for failing to meet discovery obligations. As the private-sector experience makes clear, electronic record keeping is the most efficient and effective way for a large organization to manage its records.

Congress must make electronic record keeping a priority when appropriating agency funds. Agencies must make electronic record keeping a priority by requesting the full funding that they need to make the conversion from a paper to an electronic system. And NARA must add its voice to the need for more agency funding.

EXHIBITS

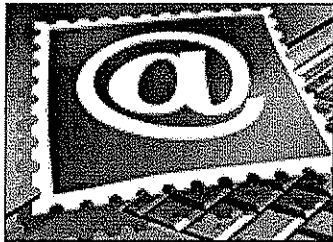
To view all the exhibits cited in this report, please visit www.citizensforethics.org



"Kimo Crossman"
<kimo@webnetic.net>
07/20/2008 11:15 PM

To "Richard Knee" <rak0408@earthlink.net>,
<elc@lrolaw.com>, "SOTF" <sotf@sfgov.org>
cc <grossman356@mac.com>
bcc
Subject E-mail Public Documents Get Erased, Disappear

E-mail Public Documents Get Erased, Disappear



By Sudhin Thanawala

July 15, 2008 7:10AM

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Experts say e-mail archiving systems and better training for state employees will help ensure e-mail is not lost. "We're not saying states are trying to do something bad," said Kevin Joerling, a records manager with the Association of Records Managers and Administrators. "But they don't understand how important e-mail records can be."

»Laws in all but a handful of states give the public access to government e-mail. But what if that e-mail was intentionally deleted or routinely purged?

In Hawaii, Gov. Linda Lingle's office allowed e-mails of her top aide to be purged. In North Carolina, Gov. Mike Easley's administration allegedly ordered state workers to delete their e-mail correspondence with his office. And in Missouri, lawsuits claim Gov. Matt Blunt's office deleted e-mails and ordered the destruction of backup e-mail tapes.

These and other cases raise concerns that millions of public records in the form of e-mails may be disappearing before anyone outside government can read them.

Experts say e-mail archiving systems and better training for state employees will help ensure e-mail is not lost.

"We're not saying states are trying to do something bad," said Kevin Joerling, a certified records manager with the Association of Records Managers and Administrators, International, a trade group. "But they don't understand how important e-mail records can be, and they have to be protected."

A 50-state survey by the Associated Press of government e-mail retention earlier this year found a wide variety of laws and practices, with the vast majority of states officially treating e-mail like printed documents. But most of the states with e-mail laws allow officials to choose which ones to turn over in Freedom of Information requests and to decide on their own when e-mail records are deleted.

In Hawaii, a recently settled blackmail case that involved undisclosed allegations against Lingle's former chief of staff, Bob Awana, hinged on e-mails.

The blackmailer, Indian national Rajdatta Patkar, was sentenced last October to a year in prison for demanding \$35,000 by e-mail from Awana. According to Patkar's lawyer, Pamela Byrne, her client discovered e-mails that showed two women served as escorts for Awana and a Hawaii businessman on an official state trip by Lingle to the Philippines.

Awana resigned after Patkar's arrest, saying nothing about the case, but Lingle has denied that he did anything wrong on a state time.

The Associated Press requested calendars and e-mails from Awana's government e-mail account in February to determine whether they could provide evidence of misconduct on state trips to the Philippines in 2005 and 2006. But the governor's office said the e-mail had been routinely purged.

Russell Pang, chief of media relations for the Lingle administration, said in May that government e-mail records are deleted every two months. He said Awana did not save e-mails to his hard drive or print them out and that Awana's computer was cleared for use by someone else after Awana resigned last June. (continued...)

Only a handful of e-mails related to Philippine trips were disclosed to the media, none of them providing evidence of any wrongdoing.

William Tolson, director of legal solutions for Mimosa Systems, Inc., a California-based company that sells e-mail archiving software, said there is no reason states can't retain e-mails longer.

Tolson said corporations have archiving systems that store hundreds of millions of e-mails for years.

"If companies do it, why can't the government?" he asked.

A state panel in North Carolina recommended in May that e-mail messages be stored for at least five years. It also endorsed the development of an archive system for e-mails that need to be retained even longer.

As governor, Easley created the group to study the state's e-mail storage policies after his administration was accused of ordering state employees to delete their e-mail correspondence with the governor's office.

Easley has said there is no evidence such a systematic destruction took place.

But some state officials and records managers say not all e-mails could or even should be retained.

Guidelines issued by the state comptroller in Hawaii allow e-mail that state officials say is not a record, such as informal messages about grabbing lunch or a notice about a holiday party, to be deleted from the e-mail system when "no longer needed for operational purposes."

Joerling said if state agencies retain all e-mails without sorting out government records from more mundane correspondence, they may have trouble retrieving information in response to an official request.

"It's like trying to find a needle in a haystack," he said.

Laurence Brewer, director of the life cycle management division at the federal National Archives and Records Administration, said an agency's records may be used against it in a lawsuit. So keeping records longer than guidelines recommend could also be a liability, he said.

Hawaii State Archivist Susan Shaner said there is simply too much e-mail to save it all.

But open government activists say it's better to err on the side of retaining too much information than risk losing records. Some argue that all e-mails sent and received on government e-mail accounts amount to a public record.

Hawaii state Sen. Les Ihara said technology has made storage space for e-mails and other computer files inexpensive.

"You can store virtually everything," Ihara said. "The rationale that we need to purge in order to save space is moot."

Harris calls for open records safeguards
BY CHRIS RIZO

Jeff
Harris



Margaret
Donnelly



Chris
Koster

COLUMBIA, Mo. (Legal Newline)-Democratic attorney general hopeful Jeff Harris is calling for an overhaul of Missouri's open government laws.

The Columbia Democrat said if elected he would, among other things, **bar state officials from having private email accounts** and would establish a legal presumption that documents are open records.

He said the attorney general's office should have the authority to determine whether or not records are subject to the Sunshine Law.

Harris also said he wants to increase the maximum fine for Sunshine Law violators from \$1,000 to \$5,000, and wants to establish a Sunshine Law Enforcement Unit to investigate complaints of public records violations.

"Whether they are on a town council or they are the governor of the state, public officials must understand that government records belong to the people, and not to them," Harris said in a statement.

Harris released his plan months after he and the governor's office tussled over state e-mail records.

After Harris said he praised state employees for blowing the whistle when Gov. Matt Blunt's office tried to erase e-mail records, Blunt's office challenged Harris to release every e-mail his office had sent or received.

The Republican governor's chief of staff, Trish Vincent, later narrowed the request to one day's worth of e-mails, which Harris provided.

Harris and fellow Democratic state Reps. Margaret Donnelly and Chris Koster are vying for the chance to go up against Republican AG candidate Senate President Pro Tem Michael Gibbons, R-Kirkwood, in November.

For her part, Donnelly, D-Richmond Heights, has called for stricter penalties for Sunshine Law scofflaws.

Koster, D-Harrisonville, too has called for increased penalties. **He also said he would seek penalties for destruction of public records as well as safeguards to prevent record**

destruction.



"Kimo Crossman"
<kimo@webnetic.net>
08/05/2008 02:42 AM

To <elc@lrolaw.com>, "SOTF" <sotf@sfgov.org>, "Richard
Knee" <rak0408@earthlink.net>, "Allen Grossman"
<grossman356@mac.com>, "Kristin Murphy Chu"
<home@prosf.org>, "Christian Holmer" <mail@csrsf.com>,
cc "Wayne Lanier" <w_lanier@pacbell.net>,
<libraryusers2004@yahoo.com>, "James Chaffee"
bcc
Subject Recommendation to CAC SOTF re email and digital
document preservation

SOTF Admin – please make this part of the meeting packet for the continued item from last CAC about electronic record retention for SOTF.

Dear CAC SOTF

I would strongly recommend the taskforce immediately adopt a long overdue policy of online transparency and efficiency as envisioned in 67.21-1 (online efficient access) and 67.29-2 (make as many records online as possible).

I propose a policy similar to the Palo Alto and pending San Jose one and which I extended in my recent cover story *More sunshine -- easily and at no cost*
Technology can allow the city to take a huge step forward in public access -- right now 3/12/08
San Francisco Bay Guardian http://www.sfbg.com/entry.php?entry_id=5872

I recommend an online archive which allows contemporaneous monitoring of SOTF Communications by subscribers and full search engine features.

A copy of any email received to the SOTF@sfgov.org email box should automatically be forwarded to a free Google email group (<http://groups.google.com/>) set up as an online archive of the task force communications. These groups are fully text searchable and can handle email attachments. Lotus Notes used by the city allows one to set a rule on an email box to do this automatic forwarding – much like an Out of Office or On Vacation message many are accustomed to seeing today. Additionally the SOTF Administrator should be instructed in writing to Carbon Copy any emails sent from the SOTF@sfgov.org email box to this same Google group.

These groups are reliable, a well tested system used by millions today and have no capacity limits. Additionally, they support RSS feeds (pull model) and email subscriptions (push model) which would allow any interested member of the public, non profits or news media to receive an instant copy of any new activity – or a digest mode can be set to receive activity for the day in one email.

Lastly, there should be an encouragement on the SOTF website that all submissions be submitted in email with born digital documents. (Word, Email, PowerPoint etc.)

“PDF/A-1a” is now the strong standard for long term preservation of digital documents.
<http://www.pdfa.org/doku.php?id=pdfa:en>

The SOTF shall adopt a policy that all digital documents received shall be converted to at least “PDF/A-1a” or the most recently adopted ISO standard for such preservation. All documents

created by the SOTF shall be born digitally and posted/mailed with their native format with metadata and their PDF equivalent. Scan/OCR processing for Faxes and other Paper documents received should also result in a PDF/A-1a version with OCR text. In either scenario, Born digital or not, the resulting PDF with text and born digital document with PDF shall be mailed to the Google group.

The Fax machine used by SOTF shall be one which can receive faxes digitally rather than printing to paper – this will save a scanning step, be more reliable, waste no toner or paper and best of all it results in a higher quality fax and OCR conversion rate.

All documents and emails created related to SOTF by other city staff including legal counsel, and SOTF member discussions should Forwarded/Carbon Copied to the above described Google Group.

It shall be the policy of SOTF that all born digital documents used for meeting packets be assembled to preserve their utility as text searchable ADA compliant pages with SCAN/OCR processing for other documents . Of course these packets will be mailed to the Google group for preservation.

The SOTF shall have a retention policy of at least 100 years for all digital documents – likely by that time storage will be so cheap there will no longer be any need for a retention policy.

The SOTF shall have two full printed meeting packets binders and one set of communications received/sent since the last two full SOTF meetings at every SOTF Committee or Full meeting.

The SOTF shall digitally record every meeting with two different model/makes of digital recorders and post the digital content online at the city or other central website by 10am the following day.

The SOTF shall provide sufficient extension cords and electricity for observer laptops and broadband internet access (preferably Wi-Fi) at a capacity to allow high quality video streaming at every meeting.