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GENERAL LETTER 2009-2

[Formerly General Letter 98-1 (revised 06/1998)]

DATE: June 30, 2009

TO: Administrative Heads of State Agencies and Municipalities; Public Officials; and State and Municipal Employees

FROM: Eunice G. DiBella, CRM
Public Records Administrator

A handwritten signature in cursive script that reads "Eunice G. DiBella".

SUBJECT: Management and Retention of E-mail and other Electronic Messages

The Office of the Public Records Administrator issues this statement under authority granted it by Connecticut General Statutes §11-8, §11-8a and §7-109. This letter provides guidance for managing and retaining electronic messages, including e-mail, fax, instant messaging, text messaging, and voice mail. General Letter 2009-2 replaces General Letter 98-1 (revised 06/1998).

A. ELECTRONIC MESSAGES

Electronic messages include e-mail, fax, instant messaging (IM), text messaging (SMS), voice mail, and Web-based messaging services.

Electronic messages may be transmitted by a variety of mediums, including computers and mobile computing devices (e.g., laptops, netbooks, notebooks, palmtops, tablets, PDAs, and cellular phones with Internet browsing capabilities, such as BlackBerrys® and iPhones®).

In addition to the body of the message, messaging systems also contain metadata, such as transactional information (e.g., date and time sent, sender/receiver) and may contain attached files (e.g., PDF or JPEG).

B. ELECTRONIC MESSAGES ARE PUBLIC RECORDS

Pursuant to CGS §1-200, "public records or files" means any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method."

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

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

C. RETENTION OF ELECTRONIC MESSAGES

Electronic messages do not comprise a unique records series. Retention is based on the **content** of the message, not the media type. Most electronic messages have limited value and can be deleted immediately upon receipt. However, electronic messages that document agency functions and provide evidence of agency business must be retained according to the equivalent records series. Electronic messages are similar to traditional postal mail – the message must be evaluated for action and subsequent retention.

State and local government officials/supervisors and Records Management Liaison Officers (RMLOs) are responsible for instructing their employees in using retention schedules and in securing approval for final disposition. Depending upon the function of electronic messages, agencies and municipalities may take steps to institute procedures for routinely printing electronic messages, including the metadata, and filing hard copy printouts in the normal course of business.

Steps to determine the retention period of electronic messages:

Step 1: Determine whether the message is a public record or a non-record.

Step 2: If the message is a non-record, destroy at will (e.g., spam and unsolicited advertisements).

Step 3: If the message is a record, determine which records series the message belongs to, for example:

- If the message is Transitory Correspondence (S1-060), delete at will.
- If the message is Routine Correspondence (S1-070), retain for 2 years.
- If the message is All Other Correspondence (S1-080), retain for the equivalent records series. For example, if an e-mail is related to a fiscal transaction like Accounts Receivable and Payable (S3-010), retain 3 years, or until audited, whichever is later.

Step 4: Maintain the messages for the required retention period under the equivalent records series. Once the retention period has been satisfied, submit a *Records Disposal Authorization* (Form RC-075 for municipalities / Form RC-108 for state agencies).

D. MANAGEMENT OF ELECTRONIC MESSAGES

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

- **Record Copy:** The record copy is the original or official copy of a record.
- **Record Custodian:** The record custodian is responsible for retaining the record copy. In most cases, the sender is the person responsible for retaining the messages sent within an organization. If the sender is from outside an organization (e.g., the public), the recipient is the record custodian.

- **Copies/Duplicates:** Many electronic messages are disseminated to groups of personnel, which results in the proliferation of multiple copies of the same communication (a key indicator is the use of 'CC' or 'BC' in e-mail). Because the sender of the message is usually responsible for the record copy, the recipient(s) may destroy their copy at will.
- **Threads:** Similar to conversations, a thread is a string of electronic messages. After a thread is completed, the record custodian may retain only the last message (as long as it includes the prior messages) as the official record copy.
- **Metadata:** Metadata (data about data) is used to ensure authenticity, reliability, and integrity of electronic records. An example of metadata is the transmission information describing an e-mail (date and time the message was sent, sender/recipient). Please note, if electronic messages are printed to hard copy for permanent retention, the associated metadata should be included with the hard copy.
- **Attachments:** If the electronic message is a record and contains attachments, the attachments should be retained as part of the record. In these cases, the retention period should be the retention requirements of the message, or the retention requirements of the attachment, whichever is longer.
- **Deletion vs. Destruction:** In most computer operating systems, the deletion of a record does not physically erase the record. Likewise, simply emptying the trash or recycle folder does not permanently remove the record. In addition, other copies of the message may reside on backup storage tapes after the record should have been destroyed (the media upon which the record resides should be destroyed or overwritten).
- **Backups:** Backup systems or tapes are not acceptable for the retention of electronic messages. Backups should only be used to protect vital records in the event of a disaster or to retrieve a record due to loss of data.

E. LEGAL CONSIDERATIONS OF ELECTRONIC MESSAGES

Disclosure of electronic messages: Public officials and employees should keep in mind that electronic messages sent as part of their workdays are not "private" but are discoverable communications and may be subject to Freedom of Information Act (FOIA) requests and are admissible as evidence. Since messages may be retained at different locations or levels of the system, users must remember that their message can be retrieved during formal discovery processes. Therefore, discretion is an important consideration when using electronic messages to send, record and/or retain communications.

Confidentiality of electronic messages: Agencies and municipalities are advised of the risk involved in using electronic messages to deal with confidential issues and should be aware of all applicable statutory or regulatory requirements that would prohibit the disclosure of certain information in any format. Of special concern is the confidentiality of protected health information pursuant to the Health Insurance Portability and Accountability Act (HIPAA, 45 CFR §1).

Legal signatures and electronic messages: Some records may require original signatures. Agencies and municipalities must be aware of any state or federal laws that would affect the way a document is signed. Pursuant to CUETA, parties may conduct transactions with electronic signatures under certain circumstances. However, there are still documents that require original signatures (see CGS §1-268).

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

F. NOTE ABOUT VOICE MAIL

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

However, pursuant to CGS §1-213(b), “nothing in the Freedom of Information Act shall be deemed in any manner to: (3) require any public agency to transcribe the content of any voice mail message and retain such record for any period of time.” As such, voice mail is transitory in nature, and may be deleted at will.

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

G. RELATED POLICIES

State of Connecticut Acceptable Use of State Systems Policy (DOIT), 11/2006

<http://www.ct.gov/doit/cwp/view.asp?a=1245&Q=314686>

State of Connecticut Electronic Monitoring Notice (DAS), 10/1998

http://www.das.state.ct.us/HR/Regs/State_Electronic_Monitoring_Notice_11.00.pdf

State of Connecticut Policy on Security for Mobile Computing and Storage Devices (DOIT), 09/2007

<http://www.ct.gov/doit/cwp/view.asp?a=1245&q=394672>

State of Connecticut Telecommunications Equipment Policy (DOIT), 04/2008

<http://www.ct.gov/doit/cwp/view.asp?a=1245&q=294100>

H. SOURCES

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