
Coates' Canons Blog: Email as Public Record: Five Things You Should Know [Updated]

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This is an update of my January 27th, 2010 blog post on this topic.

You probably already know that the definition of public records in our state law is extremely broad, and certainly includes electronic records like email. This means that email is subject to both the public access and records retention aspects of that law. Here's a list of five other things you should know about email as a public record.

- 1. The content of an email – not its location – determines whether it is a public record.** If an email is made or received in connection with the transaction of public business, it is a public record regardless of whether it is created or stored on a public or a private computer, mobile device, or email system. So an email that relates to public business is a public record even if it is sent from a home computer, or made on a personal email account from any device. This is true whether the email is sent or received by any public employee, or any elected or appointed public official.
- 2. Personal (non work-related) email is not subject to the public records law, even if it is made or received on a public computer or email system.** Most public agencies allow some reasonable use of public computers and email systems for purely personal communication. Since these emails do not involve the transaction of public business, however, they are not subject to the public records law. Examples of such email may include the proverbial request to pick up a loaf of bread, and the forwarded jokes and cartoons. This would also include emails that are not necessarily authorized by the public employer, for example, an email sent to inquire about alternative job possibilities (which might become necessary for those who do too much non work-related emailing). Even though non work-related emails are not subject to the public records law, if you use a public computer or email system for personal use, it's likely that your employer will have, and may demand access to them.
- 3. There is no separate rule for retention of email records.** As with paper records, the rules about what has to be retained, and for how long, are based on the *content of the record*. The North Carolina State Archives and Records division (within the North Carolina Department of Natural and Cultural Resources) promulgates the rules for retention of public records. These rules also provide authority to destroy records. Records retention schedules provide the following guidance about email: "Electronic mail is just as much a record as any traditional paper record, and must be treated in the same ways. **It is the content of each message that is important.** If a particular message would have been filed as a paper memo, it should still be filed (either in your email program or in your regular directory structure), and it should be retained the same length of time as its paper counterparts." See, *Municipal Schedule, p. viii*.
- 4. Lots of email does not have to be retained at all.** There are three basic categories of records for purposes of retention: Short term, long term, and permanent. As defined in the State Archives guidelines: "Short-term records are temporary in nature. Most e-mail messages fall into this category. Some examples of these types of messages are communications received from professional listservs and broad announcements received by all employees. They have no significant value to an agency for documenting policy, establishing guidelines or procedures, or verifying transactions." There is no requirement to retain short term records so they can be destroyed when their administrative value ends.
- 5. As the physical custodian of the emails you make and receive using your government-issued or personal devices, you have an obligation to retain them (when retention is required) and to provide access to them in response to public records requests.** If you have emails that are the subject of a records request, you have a legal responsibility to provide access to them under the public records law (unless an exception applies). This is the case even

if they reside on your personal device or in your personal email account. And this is the case even if they are “short term” records that could have been discarded. If they still exist at the time of the request, you must provide them. For more about the legal obligations of custodians of records, see my blog post here. Managing and storing email can be very important for compliance with the public records and for maintaining an efficient work environment. Some jurisdictions have locally adopted policies, which may include centralized systems and requirements for managing and storing email. The day-to-day management of emails, however, rests with individuals as they receive, save, and delete messages. State Archives provides several helpful resources to help you manage emails consistent with state legal requirements.

- [Frequently Asked Questions](#)
- [Digital Records Policies and Guidelines](#)

The Division's **State Archives website** also houses several on-line tutorials about managing emails along with links to specific retention schedules and other resources.

Related blog posts:

[Using Private Email for Public Business: Is it Illegal in North Carolina?](#)

[Text Messages as Public Records](#)

[Email Subscriber Lists: A New Exception to the Public Records Law](#)

[Individual Board Member Access to Email](#)

Links

- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_132/GS_132-1.html
- archives.ncdcr.gov/About
- www.ncdcr.gov
- archives.ncdcr.gov/For-Government/Retention-Schedules
- files.nc.gov/dncr-archives/documents/files/municipal_20120910_0.pdf
- archives.ncdcr.gov/search?search_api_views_fulltext=guidelines
- ncrecords.wordpress.com/2012/09/25/local-agency-policy-defining-when-administrative-value-ends/
- canons.sog.unc.edu/custodians-of-public-records/
- archives.ncdcr.gov/search?search_api_views_fulltext=FAQ
- archives.ncdcr.gov/government/digital-records/digital-records-policies-and-guidelines
- canons.sog.unc.edu/using-private-email-for-public-business-is-it-illegal-in-north-carolina/
- canons.sog.unc.edu/text-messages-as-public-records/
- canons.sog.unc.edu/email-subscriber-lists-a-new-exception-to-the-public-records-law/
- canons.sog.unc.edu/individual-board-member-access-to-email/