

BEFORE
THE BOARD OF SUPERVISORS
OF THE COUNTY OF MADERA
STATE OF CALIFORNIA

In the Matter of) Resolution No. 2010 - 186
)
DEPARTMENT OF) A RESOLUTION ACCEPTING AND
INFORMATION TECHNOLOGY) APPROVING THE E-MAIL RETENTION
) POLICY OF THE COUNTY OF MADERA
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)
)
_____)

WHEREAS, the Offices of County Counsel and Information Technology have prepared an E-mail Retention Policy for use by all departments of the County of Madera, and

WHEREAS, the E-mail Retention Policy has been reviewed as to form.

NOW, THEREFORE, the Board of Supervisors of the County of Madera, State of California, resolves as follows:

1. The E-mail Retention Policy, attached hereto as Exhibit "A," is hereby accepted and approved for use by all departments of the County of Madera, and shall take effect immediately.

2. Copies of the E-mail Retention Policy shall be distributed to all County departments forthwith.

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The foregoing Resolution was adopted this 3rd day of August,

2010, by the following vote:

Supervisor Bigelow voted:	<u>yes</u>
Supervisor Moss voted:	<u>yes</u>
Supervisor Dominici voted:	<u>yes</u>
Supervisor Rodriguez voted:	<u>yes</u>
Supervisor Wheeler voted:	<u>yes</u>



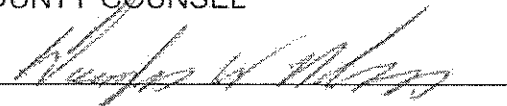
 Chairman, Board of Supervisors

ATTEST:



 Clerk, Board of Supervisors

Approved as to Legal Form:
COUNTY COUNSEL

By 

ACCOUNT NUMBER(S):

EXHIBIT "A"

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COUNTY OF MADERA
E-MAIL RETENTION POLICY

I. PURPOSE

Electronic mail (email) and instant messages (IM) have become ubiquitous services that greatly enhance communication, both internally within the County and externally to all of the various vendors, developers, entities and organizations involved with the County and with the public at large.

The 2006 amendments to the Federal Rules of Civil Procedure addressing the discovery of electronically stored information and the cases analyzing and applying these rules, clearly require agencies such as the County to establish email and IM deletion and retention policies that conform and comply with the law.

This policy establishes the default retention periods for email and instant messages retained on County email servers. It also defines various roles and responsibilities for implementation of the policy, and departmental responsibilities including the management of litigation holds.

II. SCOPE

This retention policy applies to:

1. All email and IM systems provided and owned (in part or in whole) by County of Madera;
2. All users and account holders of County email and IM accounts; and
3. All email and instant messages sent or received using County email and IM systems.

P O L I C Y

Transitory Messages

Most email and usually all instant messaging records are created primarily for routine communication or information exchange, and not defined as a Public Record (*Govt. Code § 6252 (e)*)¹. These messages should be considered **transitory** messages that do not have **lasting value** (defined below) and should be:

¹ Govt. Code § 6252(e) provides: "Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. "Public records" in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975.

1. Read and promptly deleted; or
2. Read and retained on the active server for no longer than the **default retention period** (defined below) or until their usefulness has ended (whichever occurs first), and then promptly deleted; or
3. Read and moved off the active server when job requirements necessitate retention for periods longer than the **default retention period**, and then promptly deleted when their usefulness has ended.

Examples of **transitory** messages:

- Notices about meetings or events
- Internal requests for information
- An inquiry about department scheduling issues
- Announcements, etc.
- Any other non-County business type messages

Lasting Value Messages

When the contents of an email or instant message exhibits one or more of the characteristics of a Public Record as defined in section 6252 (e), it should be classified as having **lasting value**. Examples of lasting value messages include the following:

- Has **operational** value (required by a department to perform its primary function)
- Administrative actions taken or planned
- Reports or recommendations
- Policies, procedures, guidelines, rubrics, or templates
- Has **legal** or evidentiary value (required to be kept by law)
- Falls within a litigation hold or internal investigation (see "Litigation Holds" below)
- Has **fiscal** value (related to financial transactions of the county)
- Required for financial reporting and audits
- Has **historical** significance (of long-term value to document past events)
- May arise from exceptional age and/or some significant historical event
- Has **vital** value (critical to maintain to ensure operational continuity after a disruption or disaster)
- Vital records or information may fall into any one of the above value categories

Messages, records, and information, in essence Public Records with **lasting value** must be retained in accordance with the County Retention of Records/Destruction of Records Schedule. Current retention schedules can be found as adopted by County Resolution No.: 2001-125.

Since email and instant messaging systems are not designed to be records retention or document management systems, email and instant messages that have **lasting value** should:

1. Be moved by the department's Document Compliance Officer to a centrally located dedicated storage system with pre-assigned retention periods; and
2. **Not** be stored within individual users' email or instant messaging folders/files.

Responsibility for Retention of Messages with Lasting Value

The burden of determining whether a specific message has **lasting value** should fall to the department responsible for that particular class or series of records - typically the originator or custodian of those records. Other recipients should not retain messages longer than required for their respective job purposes. When that need no longer exists, the information should be destroyed. In other words, only the department responsible for retention of a specific type of information or record shall store and control the disposition of information, including that which is in electronic form.

Questions about the proper classification (**transitory** or **lasting value**) of a specific message, record, or piece of information should be directed to the employee's departmental Document Compliance Officer, department head, risk management, or County Counsel.

Default Retention Period

County mail systems will be configured to **automatically delete** messages retained for more than ninety **(90) days** on active email servers. This auto-delete policy applies to messages within all folders (inbox folders, sent file folders, draft file folders, etc.) stored on active email servers.

County email systems will also be configured to automatically delete messages that have been marked for deletion by users but are still sitting in their "deleted items" folders for more than seven **(7) days** on active email servers.

County IM systems will be configured to **prevent** the storage of instant messages on the servers.

All County email system users are expected to:

1. Regularly check for new messages;
2. Routinely move messages with **lasting value** to dedicated storage on departmental/office networked file system; and to
3. Delete **transitory** messages as quickly as possible.

Departmental Document Compliance Officer

Each department shall delegate, appoint or otherwise assign a department employee to act as that department's Document Compliance Officer (DCO). Each departmental DCO shall ensure departmental compliance with this policy regarding lasting value messages, but shall also ensure departmental compliance with the document retention policy set forth in County Resolution 2001-125.

Backup Files

Backup copies of County email and IM system files will be kept for no more than five (5) weeks. These backups are for system restoration and disaster recovery purposes, and are not designed to facilitate retrieval of deleted messages.

Litigation Holds

When litigation is pending or threatened against the County or its employees, the law² imposes a duty upon the County to preserve all documents and records that pertain to the issues. A **litigation hold** directive shall be issued to the necessary departmental Document Compliance Officers by the County Counsel's office or the County Risk Manager or both.

A **litigation hold** directive overrides this email and IM retention policy, as well as any records retention schedules that may have otherwise called for the transfer, disposal or destruction of relevant documents, until the hold has been cleared.

Email and accounts of separated employees that have been placed on **litigation hold** status must be maintained by the Information Technology Services (ITS) Division until the hold is released.

No employee who has received a **litigation hold** directive may alter or delete an electronic record that falls within the scope of that hold. Those employees are required to provide access to or copies of any electronic records that they have downloaded and saved, or moved to some other storage account or device.

² *Govt. Code Section 6250 et seq; Fed. Rules of Civ.Proc. Rule 26*

IV. ROLES & RESPONSIBILITIES

Information Technology Services (ITS) Division will:

- Establish and publish standards for email and IM account administration, storage allocations, and automatic archiving of messages (that must be retained for periods longer than the **default retention period**) to users' local computer folders/files;
- Provide facilities and instructions for moving messages with **lasting value** to dedicated storage on departmental/office networked file systems;
- Provide the required end user training and helpdesk support;
- Manage server implementations of **litigation holds** that are issued by County Counsel; and
- Suspend automatic deletion processes, as necessary to preserve specific electronic messages, records and information that fall within the scope of the **litigation hold**, and that reside on active servers.

Department Heads and unit managers are responsible for providing records retention guidance to staff. The guidance provided must be in accordance with this policy and current County retention schedules as adopted by County Resolution No.: 2001-125.

- **Originators and custodians** of electronic messages, records, and information that have **lasting value** are responsible for:
- Appropriately identifying and retaining such records in accordance with this policy and current County retention schedules as adopted by County Resolution No.: 2001-125; and
- Seeking assistance from their respective unit managers, department head or County Counsel when unsure about how to categorize specific types of messages.
- County **employees** who have been notified by management of a **litigation hold** are responsible for preserving all messages, records, and information that fall within the scope of the hold that they have downloaded and/or stored locally.

V. RELATED INFORMATION

For information about the Federal Rules of Civil Procedure, visit <http://www.uscourts.gov/rules/EDiscoverywNotes.pdf>.

For information about Litigation Holds contact County Counsel or County Risk Management in Administration

VI. REVISION HISTORY

This policy is subject to revision in response to changes in technology or County operational initiatives.