



# the *Policy Page*

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*E-mail is no longer a new technology; it is an integral part of the day-to-day operation of every school division. The Records Retention rules written by the Library of Virginia (LVA) establish the rules relating to the retention and distribution of all public records, including records sent via e-mail. The LVA has prepared the following useful set of questions and answers relating to e-mail.*

## **1. Is e-mail considered a public record?**

According to the [Virginia Public Records Act](#) of the *Code of Virginia* (42.1-77), a public record is defined as:

“recorded information that documents a transaction or activity by or with any public officer, agency, or employee of an agency. Regardless of physical form or characteristic, the recorded information is a public record if it is produced, collected, received, or retained in pursuance of law or in connection with the transaction of public business. **The medium upon which such information is recorded has no bearing on the determination of whether the recording is a public record**” [emphasis added].

Furthermore, the [Virginia Freedom of Information Act](#) (FOIA) of the *Code of Virginia* (2.2-3701) defines a public record as:

“all writings and recordings that consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, Photostatting, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording, or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees, or agents in the transaction of public business.”

Therefore, it is the content of a record—and not its medium—that determines whether a record constitutes a public record. For example, e-mails that document a government transaction are considered public records, while e-mails that do not document a government transaction are considered non-records. E-mails that qualify as “public records” should be retained and disposed of in accordance with an approved Records Retention and Disposition Schedule.

## **2. What are some examples of e-mail that must be retained according to retention and disposition schedules?**

Some examples of e-mail that are considered records and must be retained according to established retention and disposition schedules are: policies and directives; correspondence or memos pertaining to the organization's business; work schedules and assignments; documents circulated for approval or comment; and any message that initiates, authorizes, or completes a business transaction, final report, or recommendation.

## **3. What are some examples of non-record e-mails?**

Some examples of e-mail that are not considered records and therefore not subject to retention and disposition schedules are: personal messages or announcements, courtesy or reference copies, phone message reminders, routine chat on e-mail listservs, and announcements of social events.

#### 4. How long do e-mails that qualify as public records need to be retained?

According to the Virginia Public Records Act, state agencies and localities are responsible for ensuring that their public records are “preserved, maintained, and accessible throughout their lifecycle.” The “lifecycle” of a record is determined by its Records Retention and Disposition Schedule, of which there are two kinds: general schedules apply to records commonly found in most [agencies](#) or [localities](#), and specific schedules apply to records that are unique to an agency or locality. **Since e-mail is usually considered correspondence, refer to the [General Records Retention and Disposition Schedule \(101\)](#) for administrative records of state agencies and [General Records Retention and Disposition Schedule \(19\)](#) for localities. If you have determined that the record should not be classified as correspondence, review the appropriate retention schedule to determine the applicable retention and disposition period** [emphasis added].

#### 5. Who is responsible for implementing an e-mail policy and retaining e-mail according to the established retention and disposition schedules?

The effort to develop and implement an e-mail policy is the responsibility of each agency or locality. It involves a cooperative effort between your records management staff, administration, legal counsel, and information technology department. Agencies and localities must ensure that records are:

- organized for convenient retrieval
- maintained in accordance with an approved Records Retention and Disposition Schedule
- disposed of in accordance with the provisions of the Virginia Public Records Act of the *Code of Virginia*

Furthermore, agencies and localities are responsible for ensuring that e-mail messages remain accessible as technology is upgraded or changed.

#### 6. Is e-mail subject to FOIA requests or open to public access?

**E-mail records are subject to the same accessibility requirements as any other public record** [emphasis added]. They are exempt from access only if they fall within the exemptions provided under FOIA. Therefore, requests from the public for e-mail records must be honored in the same manner as other public records. E-mail records must remain accessible during their entire retention period and should be maintained in such a manner as to permit easy access and timely retrieval.

#### 7. Is e-mail security important?

Agencies and localities should develop procedures to provide security for e-mail so that it cannot be altered or deleted either intentionally or unintentionally. E-mail records stored online should be backed up regularly to protect them from system failures, tampering, or deletion. Back-up procedures should be coordinated to ensure that no copies of e-mail records are maintained after their retention period expires.

#### 8. Where can I find additional information about retention and disposition of e-mail?

The [Archival and Records Management Services Division](#) of the Library of Virginia (LVA) issues retention and disposition schedules that specify how long to keep various records. Each state agency and locality is required to designate at least one [records officer](#) to serve as a liaison to the LVA for the purposes of implementing a records management program. The LVA recommends that you first contact your agency or locality records officer for assistance. You may also contact the Records Analysis section of the Archival and Records Management Services Division at 804-692-3600 or [recman@lva.lib.va.us](mailto:recman@lva.lib.va.us).

#### Recommended Reading

- [Virginia Public Records Act](#) of the *Code of Virginia*
- [Virginia Freedom of Information Act](#) (FOIA) of the *Code of Virginia*
- LVA's [E-mail Management Guidelines](#)