

Stateline

Save or Delete? Official Email Policies Vary By State

October 30, 2014 | By Jenni Bergal

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State policies about whether employees should delete or save email vary considerably. Many open government advocates say states need to do a better job preserving electronic communications to be transparent and accountable to citizens. (AP)

In Pennsylvania, state agency employees' email is purged five days after it is deleted. In New York, email is automatically discarded after 90 days unless an employee specifically tags it. And in North Carolina, executive branch email of any kind must be

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kept for at least five years.

Every state has policies governing how long records are saved and when they can be purged—if ever. But those retention policies vary greatly across states. Often employees have to determine on their own whether to keep or delete an email.

Many media and open government advocates fear that valuable information may disappear in states that allow email to be disposed of quickly and routinely. They say that states need to do a better job of preserving electronic communications, both for transparency and historical value.

“It’s the public’s information. The fact that it can be deleted without consequence or review, everyone should care about that,” said Melissa Melewsy, media law counsel for the Pennsylvania NewsMedia Association. “The public cannot hold their government accountable if they don’t have access to the records. It shouldn’t matter whether that record is written on a piece of paper with ink or whether it’s written on a computer screen.”

Deleting Records

State legislatures typically define what public records are and designate an agency to set the retention policies. Usually, state archivists or public records administrators are responsible for setting those schedules. Emails are electronic communications, and in most states they are considered to be public records.

Record retention is based on content. An employee may be required to keep certain types of email, such as official memos or messages dealing with administrative policy, which may be retained for several years. But they also may be allowed to delete email that is deemed “transitory,” which means it has little value after its use and nothing important in it. Transitory email can range from a “help yourself to cookies in the break room” note to a list of staffers who participated in a meeting to drafts of a presentation.

In some states, a governor's email is viewed differently than a file clerk's and may be kept much longer—or not deleted at all.

While states have strict retention schedules, it's often up to the individual agency to determine how to make that work. Problems often arise when retention rules bump heads with information technology policies, which favor unclogging email boxes, deleting junk mail that can bog down the system and keeping the cost of storage to a minimum.

"It's a little bit of the Wild West," said Tanya Marshall, president of the [National Association of Government Archives and Records Administrators](#). "The processes that are being used are based on paper records. You often don't see much of a process set up for electronic records. There are very few states where it's clear to the employee what they need to do and how to manage it."

Some states keep email on their servers for about 90 days, as a backup in case employees accidentally delete it or there's a system failure. Others retain it for seven or more years as part of their overall public records maintenance, according to Todd Sander, executive director of the Center for Digital Government, a research and advisory group that works with state and local governments on IT issues.

And while employees may receive lots of training on record retention policies, in the end, it's frequently left up to them to decide whether to hit the delete key.

"The individual is given guidance about what is a public record and then makes the call," said Emily Shaw, national policy manager for the [Sunlight Foundation](#), a nonprofit group that advocates for open government and transparency. "It appears to be a matter of personal discretion."

Shaw said that her group is critical of states that allow top officials' transitory email to be expunged.

"Transitory email could be manipulated to hide things people don't want to share," she said. "An email saying, 'let's have lunch' may

not look significant, but it could be tremendously important, depending on who it's coming from.”

Email retention is also an issue at the federal level. The National Archives and Records Administration has proposed a new [approach](#) that would designate email accounts of senior level federal officials as permanent records that would not be deleted, and would save nonofficials' emails for at least three to seven years. The idea is to shift the burden of deciding which messages should be erased or archived away from the individual user.

“This model is a really promising approach, and it's a conversation that needs to happen in the states,” said the Sunlight Foundation's Shaw.

Email Policies Vary

Open government advocates often point to North Carolina as having one of the nation's best email retention policies. In that state, no executive branch employee's email, including the governor's, can be deleted for at least five years, whether it's a note about grabbing coffee or a discussion about state policy. And all of the governor's email that is identified as important or archival is retained and will be transferred at the end of the term to the state archives, where it will be saved permanently.

“Five years gives people enough time to spot if there's going to be a court case, or if there's a big public records request,” said Sarah Koonts, North Carolina's state archivist and president of the Council of State Archivists. “It is good to have a holding period. That's worked for us.”

In Texas, on the other hand, the governor's office has a policy of auto-deleting transitory emails every seven days, which officials say is in compliance with the state's retention policy. Emails that need to be archived, such as official correspondence or public information requests, are printed out and filed and will be sent to the state archives.

Open government advocates in Texas say they're disturbed that

any emails from the governor's office are being purged weekly.

"Who's to decide how important something is? When you destroy an email too fast, it doesn't give it a chance for review," said Kelley Shannon, executive director of the Freedom of Information Foundation of Texas, a nonprofit group that advocates for First Amendment rights. "It seems that deleting them very quickly is totally unnecessary and thwarts the public from finding out what the government is doing."

Email Controversies

Sometimes, the destruction of emails can get public officials into hot water.

In Massachusetts, just before Republican Gov. Mitt Romney left office in 2007, some of his top aides bought their computer hard drives and deleted the administration's emails. Their actions did not violate state laws or policies.

When Democratic Gov. Deval Patrick took over, he found that the Romney administration's electronic records were gone. Later, reporters covering Romney's presidential bid made the same discovery.

In Pennsylvania, the state's email retention policies came under scrutiny this summer when a top-ranking education official was able to produce only five emails over a year, after the *Pittsburgh Post-Gazette* filed a public records request asking for his electronic correspondence. It turned out that the state allows employees to delete what they determine are transitory emails that they no longer need. Deleted emails are permanently removed from the servers after five days, under the state's IT backup recovery system.

Pennsylvania officials said they were following state retention policies and that many emails that document a transaction or agency activity, such as meeting minutes or routine correspondence between agencies, are preserved for a period ranging from one to four years.

“We do not, by any means, delete everything every day,” Dan Egan, spokesman for the Governor’s Office of Administration said, noting that state employees only are allowed to get rid of emails that have no value as a record. “I get emails from various publications. I read them, they’re gone,” he said. “I get a message from my wife to pick up a gallon of milk at the end of the day. I don’t need to keep it.”

But Pennsylvania media and open government advocates remain skeptical.

“We’re giving thousands and thousands of public employees the discretion to determine what is and is not a public record,” said Melewsky, of the Pennsylvania media association. “The right-to-know law is complicated and one that most public employees don’t have an intimate knowledge of. Even if the intent is good, the results can be bad.”

Frederick Frank, an attorney representing the *Post-Gazette* and other newspapers, said that he’s even more disturbed that there’s no way to restore deleted email once it’s purged after five days.

“The potential for mischief here is very clear,” Frank said. “That’s particularly true when an employee feels that there may be an investigation. When he is asked where his emails are, he says they were all transitory and they’ve been deleted. There’s no way to get them back from the server.”

In New York, Democratic Gov. Andrew Cuomo’s administration came under fire after it adopted an IT policy last year that automatically purges state workers’ emails after 90 days, unless they specifically save them. While officials explained that it was a way to reduce enormous amounts of email data, critics charged that the policy conflicted with Cuomo’s pledge that his administration would be the most transparent in state history.

And in South Dakota, most emails are considered “correspondence” and are not required to be retained, according to Tony Venhuizen, spokesman for Republican Gov. Dennis

Daugaard. Emails from state employees who have left an agency are deleted within 30 days. And the state’s backup IT system holds onto deleted emails for only 37 days.

Either way, the public has little or no access to the emails because South Dakota law doesn’t consider them a public record, unless a document such as a meeting agenda is attached.

“It’s just nuts,” said Chuck Baldwin, a journalist-in-residence who teaches at the University of South Dakota and is an open government advocate. “The idea that one type of communication can be secret and another one can’t just doesn’t make sense, especially when we’re dealing with government. We want transparency, because we can’t have a good representative democracy unless people know what’s going on.”

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