



Managing e-mailed records and the law:
What governmental bodies need to know

National Archives and Records Service of
South Africa

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The National Archives and Records Service of South Africa Act and the management of e-mailed records

Records are created for a purpose and, as evidence of transactions, they have on-going use as a means of management, accountability, operational continuity, legal evidence and disaster recovery. The National Archives and Records Service has a statutory responsibility to promote effective management of public records to support evidence-based governance and service delivery. Records created in electronic and paper-based record-keeping systems contain the memory of governmental decision-making and its impact. The National Archives and Records Service also has a responsibility to ensure that this memory is maintained and protected for centuries to come.

The National Archives and Records Service of South Africa Act charges the National Archivist with the proper management and care of public records in the custody of governmental bodies. It specifies that no public record under the control of a governmental body may be transferred to an archives repository, destroyed, erased or otherwise disposed of without the written auth-

orisation of the National Archivist. The Act also charges the National Archivist with the responsibility to determine the records classification systems to be applied by governmental bodies and to determine the conditions for the management of electronic records systems.

E-mail is a communication medium

The use of e-mail as a means of communication is increasing on a daily basis. E-mail is no longer used as an unofficial communication medium e.g. to replace telephone calls, but is increasingly used to conduct business transactions and to convey information of an official nature. However, users are unaware that e-mailed records should be managed according to the same sound record keeping and records management practices as any other records created or received in the pursuance of official business. E-mailed records may be subject to promotion of access to information requests, but users may have an inappropriate expectation of privacy and informality not realizing that the records contained in e-mails are actually public records. Messages sent or received in the performance of the functions of an office (as well as their attached metadata) are

public records that must be retained for as long as they are needed for functional, legal and historical purposes.

Examples of messages sent by e-mail that are public records include:

- policies and directives
- correspondence or memoranda related to official business
- work schedules and assignments
- agendas and minutes of meetings
- drafts of documents that are circulated for comment or approval
- any document that initiates, authorizes, or completes an official business transaction
- final reports or recommendations.

Some examples of messages that are not public records are:

- personal messages and announcements not related to official business
- copies or extracts of documents distributed for convenience of reference
- phone message slips
- announcements of social events, such as retirement parties or holiday celebrations
- spam
- unsolicited e-mail

Disposing e-mailed records

E-mails are deleted at the discretion of the user or system administrators who are purging systems to save storage space. With no control over the systematic disposal of e-mailed records governmental bodies run the risk of losing records that are critical to continued service delivery and that should be kept as part of the corporate memory of the body.

Sharing information contained in e-mailed records

E-mailed records are not kept in open repositories or shared domains, which makes access to the corporate knowledge-base and the sharing of information very difficult. This tendency also contributes to the abundance of e-mailed records floating around, because the only way to share information contained in e-mails is to forward them to other people. Further-more, if e-mailed records, like other public records, are not classified and maintained in corporate record keeping systems, it will result in diminished evidential weight in legal proceedings and it will make it very difficult to retrieve them in context.

Proving the authenticity of e-mailed records

According to the Electronic Communications and Transactions Act data messages are legally admissible records, provided that their authenticity and reliability as true evidence of a transaction can be proven beyond any doubt.

The evidential weight of electronic records (including e-mailed records) depends amongst others on the reliability of the manner in which the originator and the receiver managed the messages. Should bodies not have a properly enforced records management and e-mail policy and a reliable and secure record keeping system, they run the risk that the evidential weight of their electronic records (including e-mailed records) is being diminished.

E-mailed records are records as defined in the National Archives and Records Service Act

In terms of the National Archives and Records Service Act, the definition of a record is "recorded information regard-less of form or medium". E-mailed records are considered to be a type (form) of record as well as the channel (medium) through which the communication is transmitted. E-mail messages should always be treated

as potential official records. If not, valuable information will be lost. E-mailed records should be managed according to the basic principles that apply to records in any medium.

The National Archives and Records Service has designed comprehensive guidance regarding the management of e-mailed records. These guidelines are contained in the National Archives and Records Service's publication: *Managing electronic records in governmental bodies: Policy, principles and requirements*.

Further information

Further guidance on the management of public records can be obtained from:

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