

		
<b>Policies &amp; Procedures</b>		<b>Approved July 24, 2011</b>
<b>6.4</b>	<b>Information Technology</b>	<b>Email Retention Policy</b>

1. Purpose: This policy is intended to help personnel determine what information sent or received by email should be retained and for how long. The information covered in this policy includes, but is not limited to, information that is either stored or shared via email.
2. Authority:
  - A. O.C.G.A. § 15-18-40(c)(2)
  - B. O.C.G.A. §§ 50-18-90(2); 50-18-92(b); 50-18-95;
  - C. Fed. R. Civ. Proc. R. 26(a)(2) & (f);
  - D. Record Retention Schedules adopted pursuant to O.C.G.A. § 50-18-90, et seq.
3. Application. This policy applies to all individuals using the Council email system who are assigned an email address ending “@pacga.org.”
4. Definitions:
  - A. “Electronic Discovery” or “e-discovery” is the providing of information that has been created, maintained, and stored in an electronic medium which is subject to a request for discovery pursuant to the Federal Rules of Civil Procedure or a comparable state statute or court rule.
  - B. “Electronic Mail,” “e-mail” or “email,” is a method of composing, sending, storing, and receiving messages over electronic communication systems or email systems. The term e-mail applies both to the Internet e-mail system based on the Simple Mail Transfer Protocol (SMTP) and to intranet systems allowing users within one organization to send messages to each other.
  - C. “Email Systems” are software and hardware systems that transport messages from one computer user to another. Email systems range in scope and size from a local email system that carries messages to users within an agency or office over a local area network (LAN) or an enterprise-wide e-mail system that carries messages to various users in various physical locations over a wide area network (WAN) e-mail system to an e-mail system that sends and receives messages around the world over the internet. Often the same e-mail system serves all three functions.

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- D. “E-mail Messages” are electronic documents created and sent or received by a computer via an e-mail system. This definition applies equally to the contents of the communication, the transactional information, and any attachments associated with such communication. E-mail messages are similar to other forms of communicated messages, such as correspondence, memoranda and circular letters.
- E. “Logistical” communications include emails which only contain travel information, or dates and times of hearings or meetings.
- F. “Metadata” is invisible information that software programs like MS Word, Word Perfect or other programs attach to each document or email. In other words, metadata is “information about your information.” Email metadata might include who was "bcc'd" on an email, when an email was forwarded (and to whom), and when the email was created. Similarly, Excel spreadsheet metadata may include items such as the author, hidden cells, cell formulas, etc. MS Word metadata may include the author, prior versions, date saved, date edited, last person who edited, and track changes. If documents are produced electronically in their native format, the processing systems can "harvest" the metadata and create a full-text (Word) searchable database of the documents for very little cost.
- G. “Record copy” is the official record of a case, investigation or event.
  - (1) When referencing a civil or criminal case, the record copy is the file maintained by the prosecuting attorney having jurisdiction to prosecute the case.
  - (2) The Council staff will maintain the record copy of a case only in those cases where the Executive Director or another attorney on the staff has been designated as the prosecutor pro-tem pursuant to O.C.G.A. § 15-18-5 or 15-18-65.
- H. “Substantive, case-related” communications include reports about investigative activity<sup>1</sup>, discussions of the relative merits of evidence, characterizations of potential

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<sup>1</sup> Email communications from paralegals, auditors or other prosecution personnel may become witness statements if such communications relate to matters on which they later become a

		
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testimony, interviews of or interactions with witnesses/victims, and issues relating to credibility.

I. “Transitory Email” consists of email which is related to:

- (1) Passing events (training events, social events);
- (2) Voicemail notifications (without attachments);
- (3) News articles and photos;
- (4) Records, publications, and other materials used to answer routine inquiries and questions
- (5) General announcements;
- (6) Meeting notices;
- (7) Listserv messages;
- (8) Duplicates of documents that are kept in paper form and attachments unless otherwise needed;
- (9) Emails not related to an open matter or case;
- (10) Case related emails containing purely logistical information, including non-substantive issues such as scheduling meetings, interviews, and court appearances;
- (11) Casual emails to or from staff, a member of a prosecuting attorney’s office, a law enforcement agency or other governmental agency;
- (12) Personal emails.

5. Policy.

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witness, e.g., emails relating to results of searches of electronic databases, analysis of financial records, etc.

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- A. Emails are not private property and courts have held that any expectation of privacy is lost once an email “is sent to and received by a third party.”<sup>2</sup> Emails can be monitored, stored and recovered. Moreover, emails sent to others, particularly to multiple recipients, may be inadvertently or intentionally disseminated to third parties.
- B. Email should not be used by prosecuting attorneys, staff investigators, victim advocates other prosecution staff or law enforcement personnel to communicate substantive case-related information in criminal and civil cases whenever possible. Because email communications from law enforcement officers may not be as complete as investigative reports, and may have the unintended effect of circumventing the investigative agency’s established procedures for writing and reviewing reports, prosecutors should advise investigative agents that, unless circumstances dictate otherwise, substantive written communications from agents about cases should be in the form of a formal investigative report, rather than an email.
- C. When communicating by email, do not use unprofessional language or engage in unprofessional dialogue in emails. It is too easy to use slang or other language in emails that may seem humorous or clever at the time, but will be deemed unprofessional and unfortunate when seen in the public light.
- D. All email communication is classified into two primary categories: Transitory and Extended.
- E. Email documents are to be inventoried and analyzed to ensure that: valuable records are adequately preserved & non-records and obsolete records are destroyed in accord with this policy.
- F. All email communications on the pacga.org domain are subject to the provisions of the Georgia Open Records Act and the Georgia Records Act.

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<sup>2</sup> *Rehberg v. Paulk*, 598 F.3d 1268, 1281 (11th Cir. 2010); see also *Guest v. Leis*, 255 F.3d 325, 333 (6th Cir. 2001); *United States v. Lifshitz*, 369 F.3d 173, 190 (2d Cir. 2004)

		
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6. Case-related Email.

- A. When substantive case-related communications are sent via email, these guidelines should be followed:
- (1) If email is used to communicate substantive case-related information with law enforcement personnel, victim/witnesses, or anyone else, the email must be printed and maintained in the case file.
  - (2) As part of the discovery collection and review process, prosecuting attorneys should routinely ask prosecution personnel and agents to provide them with copies of all emails that contain substantive case-related information. This includes, but is not limited to, communications between law enforcement personnel associated with the case, and between law enforcement personnel and personnel in the prosecutor's office, or anyone else, just as any formal reports would be collected and reviewed.
  - (3) While substantive case-related emails need to be maintained and reviewed during the discovery phase, any discoverable information may be disclosed in a redacted or alternative form (e.g., a letter or memo) in appropriate circumstances.
  - (4) Prosecuting attorneys and prosecution personnel who interact with victims and witnesses should limit email exchanges to non-substantive matters such as the scheduling of interviews or notification of dates and times of hearings. Any substantive information received from a victim or witness should be considered potential witness statements and also maintained for Brady/Giglio review. If prosecution personnel, other than the prosecuting attorney assigned to the case, receives a substantive email from a victim or witness, such email should be forwarded to the prosecuting attorney assigned to the case.
- B. Email may be used to communicate purely logistical information and to send formal investigative reports as attachments, or to communicate efficiently regarding non-substantive issues such as scheduling meetings, interviews, and court appearances. These emails may be considered as transitory.

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7. Retention Policy.

A. Except as otherwise provided in B and C below, manage your email messages as follows:

- (1) Although the Council email system is meant for business use, the Council allows the reasonable use of email for personal use (see PAC Policy 6.2);
- (2) Messages and attachments should be reviewed at minimum every 30 days.
- (3) Transitory emails should be deleted as soon as they have fulfilled their purpose. (RS # 03-010).
- (4) Where email communication is between a sender and a recipient, both of whom use the @pacga.org email system, the sender's copy is designated as the record copy. In other words, it is the sender's copy to which any retention requirements apply. All other copies are "merely "duplicates" and can be disposed of at will. If email is received from other agencies or from the public, the recipient's copy is the record copy;
- (5) Email backups are kept for disaster recovery purposes only;
- (6) Upon an individual's termination or separation from the Council or a prosecuting attorney's office using the @pacga.org system, the Information Technology Division will deny such person all access to electronic messaging resources, unless otherwise directed by the Executive Director;
- (7) Questions about the proper classification of a specific piece of information should be addressed to the Division Director or the General Counsel;
- (8) Within the Council staff, the Executive Director, Deputy Executive Director, General Counsel and Information Technology Division Director will have access to all emails. Division directors will have access to their employee's mailboxes. Within a prosecuting attorney's office, the elected head of the office, and such management personnel designated in writing by the elected head of the office, will have access to their employee mail boxes.

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B. Extended Email. All other emails will be retained based on the applicable retention schedule established in accordance with the State Records Act.

(1) State records retention policies provide that retention of email is based on the **content** of the record rather than the format of the record. The State Retention Schedules (RS) are available on line from the Secretary of State at:

<http://sos.georgia.gov/archives/>

(2) The records of a prosecuting attorney's office (PAC, DA or S-G) are court records, O.C.G.A. § 50-18-91(2), and not local government records. O.C.G.A. § 50-18-99; Ga. Op. Att'y Gen. 81-65. Exhibit A contains a summary of state records retention schedules as of September 10, 2010 that apply to prosecutor records.. In the case of a conflict between the information in Exhibit A and the information on the Secretary of State's website, the website takes precedence.

8. Notice of Litigation.

A. Upon receipt of notice of litigation which potentially involves matters addressed in email, the recipient will immediately notify the head of the office, the Director of Information Technology and the General Counsel of the Council.

B. The head of the Director of Information Technology will take such action as may be necessary to preserve all relevant electronic records and emails and to prevent the deletion or alteration of such records and emails.

9. Disclaimer. All email messages should be appended with a disclaimer similar to the following:

*This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged or confidential or otherwise legally exempt from disclosure under the Georgia Open Records Act. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately by e-mail and delete all copies of the message.*

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## Exhibit A Summary of Selected State Retention Schedules

Generally, non-transitory emails will be retained as follows:<sup>3</sup>

10. Permanent.<sup>4</sup>
  - A. Minutes of Council meetings (RS # 02-014<sup>5</sup>)
  - B. Annual and other periodic narrative reports that describe agency functions and activities (RS # 02-015).
11. 25 Years - the closed record copy of felony case files (RS 2010.1502; RS # 82-61). (Death penalty cases will not be considered closed until after the death of the defendant or the defendant is no longer under a sentence of death, whichever occurs first.)
12. 6 Years - Civil case files, including forfeiture cases. (RS 2010.1506, RS # 12-001)
13. 5 Years.
  - A. The closed record copy of misdemeanor case files (RS 2010.1501, RS # 87-66)
  - B. Records documenting events and damages to agency property due to storms, riots, fires, drought, floods, and other acts affecting the citizens or agency facilities; may include photos, logs, reports, notes and correspondence (RS # 02-005)

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<sup>3</sup> This list is not intended to be inclusive of all of the types of email records that may be maintained in an office. The user should consult the applicable state retention schedules to determine how long other types of records must be retained.

<sup>4</sup> Permanent retention is not required for electronic copies that are duplicates of the official record copy and are maintained solely for reference by an employee and “used to answer routine inquiries and questions” will be considered to be “Reference Files.” The retention period for “Reference Files” is to “retain for useful life” and then destroy. See RS # 03-010.

<sup>5</sup> The “RS # \_\_\_\_\_” refers to the designation of the approved records retention schedule.

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14. Useful life:

- A. Electronic calendars (RS # 03-001);
- B. Electronic directories and personal address books (individual entries may be changed as needed to maintain the usefulness of the directory or address book) (RS # 03-011).

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