

**State of Michigan**  
**Records Management Services**

**Frequently Asked Questions about Electronic Records for Local Governments**

It is essential that government agencies manage their electronic records appropriately. Like all other government records, electronic records may be released to the public in accordance with the Freedom of Information Act (FOIA) and can be used as evidence in litigation. Agencies can be held liable if they keep their electronic records too long, if their electronic records are not properly destroyed, or if they are destroyed too soon. Under all of these circumstances, the agency can be publicly embarrassed by the events, and can lose significant dollars attempting to protect itself, to produce the required records, to identify the relevant records, or to recover lost records.

**This guide is designed to help employees of local governments who create, receive, and retain electronic records follow existing procedures and protect themselves and their agency.**

**Q: What are electronic records?**

**A:** An *electronic record* is information recorded by a computer that is produced or received in the initiation, conduct or completion of an agency or individual activity. Examples of electronic records include: e-mail messages, word-processed documents, electronic spreadsheets, digital images and databases. Many electronic records are maintained as part of an *electronic recordkeeping system*, such as geographic information systems (GIS), digital image storage systems, computer aided design (CAD) systems, etc.

**Q: Are electronic records public records?**

**A:** Electronic records are public records if they are created or received as part of performing official duties. The Michigan Freedom of Information Act (FOIA) (M.C.L. 15.231-15.232) defines public records as "a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created."

**Q: Do the electronic records I create and use at work belong to me?**

**A:** No. All electronic records that are created, received or stored by a government agency are the property of the government agency; they are not the property of its employees, vendors or customers. Employees should have no expectation of privacy when using the agency's computer resources.

**Q: I sometimes use my home computer and to conduct government business. Am I creating public records?**

**A:** Yes. Records created in the performance of an official function must be managed the same way as those created and received using government computer resources.

**Q: Could my electronic records be released in accordance with the Freedom of Information Act (FOIA) or during litigation (discovery)?**

**A:** Electronic records might be released in accordance with FOIA or during the discovery process. Computers are provided to employees for conducting public business. Employees should be prepared to provide access to their electronic records to their FOIA Coordinator or their agency's attorney under these circumstances. Electronic records that are created using home computers that are related to public business might also be released in accordance with FOIA and discovery.

**Q: What are my responsibilities as a government employee who creates electronic records?**

**A:** Government employees' responsibilities for managing electronic records are the same as those for other records. Government employees are responsible for organizing their electronic records so they can be located and used. Government employees are responsible for using an approved Retention and Disposal Schedule to identify how long electronic records must be kept. Government employees are responsible for keeping electronic records for their entire retention period, and for deleting electronic records in accordance with an approved Retention and Disposal Schedule.

**Q: What is a Retention and Disposal Schedule?**

**A:** Michigan law requires that all public records, regardless of physical format, be listed on an approved Retention and Disposal Schedule that identifies how long

the records must be kept, when they must be destroyed and when certain records can be sent to the Archives of Michigan for permanent preservation. No public record can be destroyed without the authorization of an approved Retention and Disposal Schedule.

**Q: Is there a Retention and Disposal Schedule that covers the records in my office?**

**A:** Many General Retention and Disposal Schedules have been approved for use by local agencies. If the records in an office are not listed on a General Schedule, a special or specific schedule must be created to cover the records in that office. The Records Management Services is available to advise local government agencies about the creation of special Retention and Disposal Schedules.

**Q: What should I do if my electronic records are not listed on a Retention and Disposal Schedule?**

**A:** You can contact the Records Management Services at (517) 335-9132 and an analyst will assist you in adding electronic records to your agency's Retention and Disposal Schedule.

**Q: My agency's paper records were listed on a Retention and Disposal Schedule; now most of our records are created electronically. Does the Retention and Disposal Schedule still apply?**

**A:** Maybe. You should contact the Records Management Services at (517) 335-9132 and an analyst will assist you in reviewing your electronic recordkeeping systems to determine if any changes are needed to your agency's Retention and Disposal Schedule.

**Q: My agency is buying new software for a database, and we do not know which data from the old database we need to keep.**

**A:** Electronic records must be retained in accordance with a Retention and Disposal Schedule, so it is very important that the database be listed on a schedule. The schedule will tell you how long to keep the older data, and will help you design the new computer system to purge data at the appropriate time. *Note: Electronic records cannot be destroyed if they have been requested under the Freedom on Information Act (FOIA), or if they are part of on-going litigation, even if their retention period has expired.*

**Q: How should I store my electronic records?**

**A:** Agencies need to know how long their electronic records must be retained before they select their storage media; therefore it is very important that Retention and Disposal Schedules include electronic records. It is unlikely that most electronic records will be stored in their original software format and on their original storage media for their entire retention period. Agencies need to consider these changes in hardware and software when they select new technology.

**Q: Will my older electronic records be accessible when our technology (hardware and software) is upgraded or changed?**

**A:** Many electronic records need to be kept longer than the original technology that was used to create them. New technology is not always compatible with older technology that agencies may have used. Agencies are responsible for ensuring that older electronic records remain accessible as technology is upgraded or changed. Each time technology upgrades and changes take place, agencies should inform their information technology staff about the existence and location of older electronic records so they can be migrated to the new technology.

**Q: Are deleted electronic records destroyed?**

**A:** Not necessarily. Individual employees are responsible for deleting electronic records in accordance with the appropriate Retention and Disposal Schedule. However, deleted electronic records may be stored on backup tapes for several days, weeks or months after they are deleted. Agencies need written procedures for ensuring that deleted electronic records are rendered unrecoverable on a regular basis. *Note: Electronic records cannot be destroyed if they have been requested under the Freedom on Information Act (FOIA), or if they are part of on-going litigation, even if their retention period has expired.*

## **Questions?**

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