

# MINNESOTA COALITION ON GOVERNMENT INFORMATION (MNCOGI)

## Testimony in support of HF 1185

Data Practices Commission October 31, 2017

Prepared by Matt Ehling, Chair, MNCOGI Legislative Issues Committee

### BACKGROUND

- "Correspondence" is a category of government records under Minn. Stat. 138.17 (the Records Management Statute). E-mail is a subset of "correspondence."
- Government entity correspondence sheds important light on government activity, and documents how decisions are made.
- Many model record retention schedules for Minnesota government entities (counties, school districts, townships, cities\*) have a "3-year" retention period for correspondence. These model schedules are in wide use across Minnesota today.
- Recently, some government entities have started to reduce the length of time for which they are retaining e-mail correspondence. (For instance, the Hennepin County Sheriff's Office now auto-deletes e-mail after 30 days unless employees have saved the records elsewhere.)
- In some cases, government entities have claimed that many of their e-mails are not "official records" and therefore do not need to be retained. (This has been the case with the governor's office, for instance - from the Ventura administration through today).
- Shorter retention periods for e-mail correspondence result in a smaller amount of documentation about government operations being available for audits, press inquiries, or public data requests. Destroying e-mails because they are not "official" can grant too much discretion to government agencies, due to the vagueness of the distinction between "official" and other government records.

### POLICY RECOMMENDATION

- Not all correspondence needs to be kept forever. However, given the wide use of letters, e-mail, and other written communication to transact government business, government entities should have a standardized retention requirement for correspondence. HF 1185's 3-year statutory requirement makes sense given widespread, past practice. HF 1185 also specifically defines what communications are excluded from the definition of "correspondence," and can therefore be destroyed at any time.
- Minnesota statutes should be amended to remove any distinction between "official" and other government records, so that the text of Minn. Stats. 15.17 and 138.17 is better aligned. Both provisions should only reference "government records." HF 1185 accomplishes this.

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\* *The model records retention schedule for cities has "general" correspondence at a 3-year retention period, but allows "transitory" communications to be deleted after being read.*

**The New York Times** <https://nyti.ms/2dQ5MUR>

N.Y. / REGION

# In Closing Words at Bridge Trial, Prosecution Returns to a Familiar Email

By KATE ZERNIKE OCT. 28, 2016

NEWARK — Three years after the lane closings at the George Washington Bridge and at the end of a six-week trial against two former aides to Gov. Chris Christie of New Jersey who are accused of orchestrating them, the prosecution closed its case here on Friday by returning to the stark directive that started the whole thing.

“Time for some traffic problems in Fort Lee.”

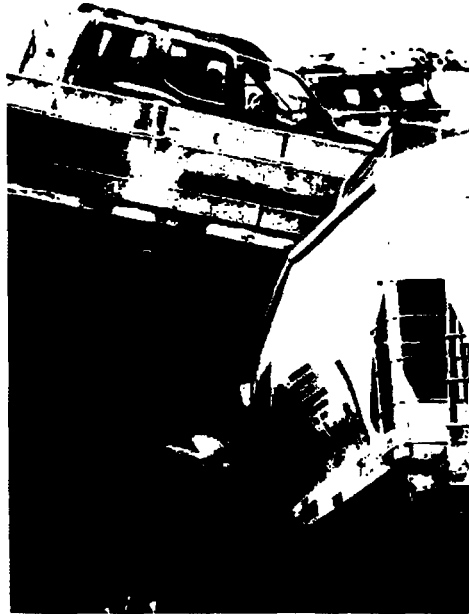
Those words, in an email sent by one of the aides a month before the closings in September 2013, were magnified on a screen in the courtroom as a federal prosecutor began a nearly four-hour closing argument, a reminder of the callousness he said drove the alleged crimes.

The prosecutor, Lee Cortes, described the lane closings as a “malicious scheme” by public officials who “shared an intense commitment to the political success of Governor Christie.”

“They saw themselves as his loyal lieutenants, who were free to use their government jobs to launch political attacks,” he said. He described the plot as a byproduct of a government operation focused on winning friends and punishing enemies as the governor sought to win re-election. The defendants misused

# Why did the bridge collapse?

Elizabeth Stawicki



Minnesota officials were warned as early as 1990 that the bridge that collapsed into the Mississippi River was "structurally deficient," yet they relied on patchwork repairs and stepped-up inspections that unraveled amid a thunderous plunge of concrete and automobiles.

# Open-Records Advocates Question St. Paul, Minn., Email Deletion Policy

BY: Frederick Melo, Pioneer Press | August 3, 2015

(TNS) — As of Saturday, the city of St. Paul, Minn., began automatically deleting employee emails from their inboxes after six months. City workers have been encouraged to do the same even sooner.

"Don't save messages that are no longer useful," states the city's new records retention training guide. "Delete as soon as their purpose is served."

The city's new records retention policy has raised eyebrows among open-records advocates, journalists, archivists and others who feel that internal communications at City Hall should be subject to public scrutiny well into the future.

City officials say they're operating within the state open-records law. The city's 22-page training document outlines the difference between important documents and "transitory messages, non-records and personal messages" that can be deleted right away. It also states emails with officials records can be saved for three years.

Before the policy change, all emails were automatically deleted from city servers after three years, which struck city officials as cumbersome. The change, though, is not about saving server space, said Angie Nalezny, St. Paul's human resources director.

"We want employees to be more strategic, efficient and helpful in what they're saving, and the best way to do that is to be able to find what you need quickly," she said. "What we're saying is, keep what you need to do your work."

Nalezny emphasized that budget documents, city council hearing materials and emails related to an upcoming city council hearing would still be stored for three years or more.

"We are saving official records absolutely according to the records retention schedule," she said.

St. Paul's training documents emphasize that city email is not the appropriate place to store official documents, which should be filed according to each department's management system.

Meanwhile, an employee can save any email they want for longer than six months. "You can put whatever you want in your projects folder, and that remains for three years. The employee chooses what they want to keep," Nalezny said.

The new policy has nevertheless raised some concern from open-records advocates.

"It's certainly a head-scratcher," said Mark Anfinson, an attorney who has been retained by the Pioneer Press for guidance on open records issues. He worries about the automatic deletion of government materials without human review.

"What if somebody sues you two years after an email has been sent?" Anfinson asks. "How expensive or difficult would it be with modern server technology to save those emails for a longer period of time?"

Sonny Albarado, a special projects editor with the Arkansas Democrat-Gazette, has been a national advocate for open records and greater transparency in government through the Society of Professional Journalists, which he led from 2012 to 2013.

In Arkansas, he said, the state treasurer planned to erase his email every 30 days but reversed course in

may alter media attention. What the public loses is, a decision made in May -- if it's only keeping the email for 30 days -- you don't have a way of going back 90 days later and determining how a decision was arrived at," Albarado said.

"I understand the issue that storage space is finite, but 30 days is too short a period," he said, while noting that email retention policies vary widely. "It fluctuates even at the federal level between different agencies."

Minnesota State Auditor Rebecca Otto said she was not intimately familiar with St. Paul's policy change, but she emphasized that it's important to discern between official government business and "non-records" that take up expensive storage space. "I always refer to the 'There's donuts in the kitchen!' email," Otto said.

## **POLICIES VARY**

As aggressive as St. Paul's new email policy may appear to critics, the city is hardly alone in getting rid of internal messages as quickly as possible.

The Metropolitan Council, which serves as a planning agency for the seven-county region, maintains a policy of holding onto emails for "no more than 60 days for the purpose of restoration and disaster-recovery purposes only," according to official policy.

The emails are automatically deleted from the Met Council's computer server based on their date stamp, said a Met Council spokeswoman. That includes text messages sent from or to a Met Council BlackBerry smartphone.

Stacie Christensen, director of the state's Information Policy Analysis Division (IPAD) -- the state's administrative experts on information policy -- said no particular state office has jurisdiction over statewide records management. Every government entity is required to have a records retention schedule, but those schedules vary between state departments and from municipality to municipality and county to county.

Don Gemberling, a spokesman for the Minnesota Coalition on Government Information, said recently that Minnesota's records management requirements are weak.

State statutes require public agencies to have their records retention schedules approved by the state's Records Disposition Panel. The panel includes representatives from the Minnesota Historical Society, the state auditor's office and the state attorney general.

"The practical reality of records management policy ... as long as they can get that approved by the Records Disposition Panel, then they can do that," Gemberling said of cities like St. Paul instituting policies.

Anfinson said more cities, counties and government agencies will likely set new parameters of their own.

"As St. Paul looks at implementing this, it's not going to be the last one," he said.

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WEST METRO

# Facial recognition technology comes out of the shadows

By David Chanen (<http://www.startribune.com/david-chanen/10644586/>) Star Tribune

JUNE 14, 2016 — 10:30PM

A crime-fighting tool until now kept under wraps by the Hennepin County Sheriff's Office is drawing both praise as a critical asset in the hunt for bad guys, but also concern in an era of growing surveillance.

The Sheriff's Office is the only law enforcement agency in the state to offer facial recognition technology, once the domain of the military and top national intelligence investigators. The software now generates leads on drug dealers, bank robbers, burglars and other conventional criminal suspects.

Known formally as Image Identification Technology, it works by identifying thousands of points on a person's face to determine such things as the distance between the eyes or the shape of the lips. It takes about 30 minutes to find a possible match.

While the Sheriff's Office began using the software in August 2013, its use came to the forefront last week following lengthy efforts in court by Tony Webster, a self-employed software engineer who lives in Minneapolis, to compel the Sheriff's Office to release its e-mail communication about the technology. Abiding by the court order, the Sheriff's Office provided Webster access to the e-mails.

"I was surprised to learn they had been using the technology for three years and there was no public disclosure about it," Webster said. "I don't think Minnesotans would be against the technology, but it's going to be a big issue to watch."

On the day Webster published a blog post detailing what he discovered, the Sheriff's Office posted a Facebook statement (<https://www.facebook.com/hennepinsheriff/posts/10154300491987783:0>) defending facial recognition technology and "dispelling myths," Hennepin County Sheriff Rich Stanek said. The post explained how the software was used to identify Anthony M. Rechichi, who is a suspect in the May 20 robbery of Hiway Credit Union in Minneapolis and a person of interest in another bank robbery. Rechichi turned himself in last week and was charged with aggravated robbery. The Sheriff's Office kept word of the software quiet to stay a step ahead of criminals, Stanek said.

"Ours is a law enforcement agency; we make no apology for our mission to solve crime, or to prioritize violent crime," the Sheriff's Office post read. "And as we conduct our mandated responsibilities, we respect our laws, including data practice laws, and we respect and protect the privacy rights of all residents."

With any new surveillance advancements, critics are quick to point out the potential for abuse. Stanek said his office developed a policy and training program to guarantee the software's public safety goal isn't at the expense of civil liberties, he said.

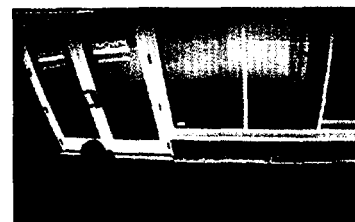
"We attempt to match unknown criminal suspects to a database of public Hennepin County booking photos, which are public information," he said. "In the Sheriff's Office, we do not gather or retain photos real-time from cameras in the community."

The Sheriff's Office received more than 80 requests for assistance with facial recognition from other law enforcement agencies this year. Nearly half resulted in an identification, arrest or conviction, Stanek said.

Despite recognition rates of 99.7 percent for well-lit, frontal photos, security cameras often don't produce quality images, requiring extra legwork.

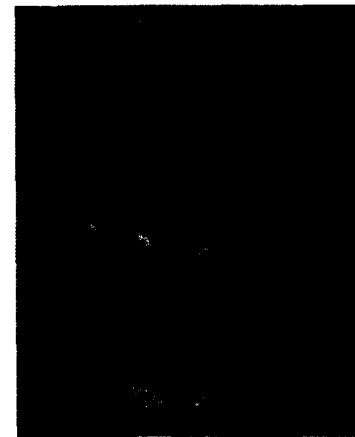
"The software is a cool thing, but it's not like you see on TV," he said. "It doesn't take away the human factor in solving crimes."

## The next privacy debate



([http://stmedia.startribune.com/images/1465917121\\_08+2.235402+FA:HENNEPIN COUNTY SHERIFF S OFFICE](http://stmedia.startribune.com/images/1465917121_08+2.235402+FA:HENNEPIN COUNTY SHERIFF S OFFICE))

Facial recognition technology compares surveillance camera footage to booking photos to make a match. James W. Russell was



([http://stmedia.stimg.co/1465917121\\_08+235402+FACIAL06w=263](http://stmedia.stimg.co/1465917121_08+235402+FACIAL06w=263))

HENNEPIN COUNTY SHERIFF'S OFFICE

James W. Russell was identified as a suspect and convicted of felony theft of security cameras thanks to facial recognition technology.

### School District General Records Retention Schedule

Administration

Title	Example and Description	Retention Period	Archival
Census, Certified Reports	Conducted Once Per Decade	Permanent	No
Closed Rural Schools	Includes: Clerk's, Treasurer's, and Teacher's Records of Closed Rural Schools Which Were Consolidated into the Independent District.	Transfer to the State Archives for Selection and Disposition	Yes
Correspondence/ Administrative	Superintendent, Principal, Assistant Principal and Other Administrators Unless Otherwise Specifically Addressed Elsewhere in Records Retention Schedule	3 Years	No
Court Case/Trial Information	Litigation Correspondence	10 Years	No
Court orders		1 Year after Action is Completed	No
Grant Applications	Successful	3 Years -- For Federal Funds three (3) years after completion of the activity for which the funds were used. 20 U.S.C. Section 1232f(a)	No
Grant Applications	Unsuccessful	1 Year	No

SERIES DESCRIPTION	ENABLING AUTHORITY	DATA CLASS	CITATION FOR CLASSIFICATION	PRE POST CURR	PURPOSE AND USE FOR COLLECTION	AUTHORIZED RECIPIENTS	RETENTION/STATUS
ANNUAL REPORTS		Publ	MS 13.03				Retain permanent or transfer to State Archive
ATTENDANCE RECORDS sick leave, vacations, paid and paid leave requests, compensation, leave sheets, part-time claims. Department copies.		Publ Priv	MS 13.03 MS 13.43				2 yrs.
BUDGET/BUDGET RECORDS Budget proposals; approved budget. Includes supporting data and monthly Department budget report.		Publ	MS 13.03				2 yrs.
TRAVEL CLAIMS Monthly expense records for depart- ment expenses, purchase orders, invoices, claim forms, accounts receivable forms, etc.		Publ	MS 13.03				6 yrs.
CONTRACT/AGREEMENTS Copies of contracts and agreements entered into with agencies and businesses and other pertinent information, i.e. selection process vendor, equipment and bid specifications.		Publ	MS 13.03				10 yrs. after contract has expi
CORRESPONDENCE Routine correspondence and memo- randums between departments, administration, and other agencies. County Administrator/Executive Secretary/County Executive corres- pondence and subject files of a policy making nature.					Varies with subject of correspondence.		3 yrs.  3 yrs., then t fer to the Sta Archives for s tion and dispo


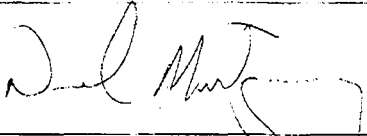


TOWNSHIP

<u>Description</u>	<u>Location</u>	<u>Retention</u>	<u>Archive</u>
<b>CORRESPONDENCE</b>			
Historical	File	Permanent	Y
Other subs optional	File	3 year minimum	N
<b>COUNTY</b>			
Correspondence In	File	3 year/optional	N
Correspondence Out	File	3 year/optional	N
<b>DEVELOPMENT</b>			
Business	File	3 year/Permanent	N/Y
Correspondence	File	3 year minimum	N/Y
Economic	File	3 year/Permanent	N/Y
General Information	File	Until superseded	N
Local	File	Permanent	Y
Regional	File	3 year	N
Rural	File	3 year	N
<b>ELECTIONS</b>			
Absentee Ballot Applications	File	22 months	N
Absentee Ballot Materials	Box	Until used	N
Affidavits of Candidacy	File	22 months	N
Affidavits of Publication	File	22 months	N
Accessibility Survey (handicap)	File	Until superseded	N
Certificates of Election	File	22 months	N
Declaration of Candidacy	File	22 months	N
Election Board of Canvass minutes	Book/file	22 months	N
Financial Reporting (campaign)	File	22 months	N
Flag Certificates	File	22 months	N
Instructions/Manuals	Shelves	Until superseded	N
Judges Oath	File	22 months	N
Judges Roster (eligible judges)	File	Until superseded	N
Judges Training Record	File	Until superseded	N
Nominating Petitions	File	22 months	N
Poll Books	Archives	Permanent	Y
Poll Lists	County Auditor	Until superseded	N
Precinct books	County Auditor	22 months	N
Precinct Map/Finder	File	Permanent	Y
Receipts from Clerk	File	22 months	N
Return Reports	File	22 months	N
Special Votes	File	22 months	N
Spoiled Ballots	File	22 months	N
Summary Statements	File	22 months	N
Supplies	Box	Until superseded	N
Tally Ballots	File	22 months	N
Unvoted Ballots	File	22 months	N
Voted Ballots	File	22 months	N
Voting Certificates	File	22 months	N
Voter Registration Cards	File/Box	Until used	N

**GENERAL RECORDS RETENTION SCHEDULE FOR MINNESOTA CITIES**

<b>CODE</b>	<b>TITLE &amp; DESCRIPTION</b>	<b>RETENTION PERIOD</b>	<b>CLASSIFICATION</b>
ADM 02700	COMPLAINTS - GENERAL General city services, maintenance, repair, citizen complaints.	1 after action completed	Public
ADM 02800	COPYRIGHTS & PATENTS	Until expired	Public
ADM 02900	CORRESPONDENCE - GENERAL	3	Public
ADM 03000	CORRESPONDENCE - HISTORICAL Correspondence to/from mayor, city manager, city administrator. Official correspondence that documents important events or major functions of the office. Usually deals with a specific topic, issue, organization, or individual.	Permanent	Public/Private
ADM 03050	CORRESPONDENCE - MESSAGES Transitory messages, e-mail, social media, or phone messages of short-term interest which are considered incidental and non-vital correspondence. Note: Messages which relate to transactions of city business should be retained in accordance with applicable retention schedule. Data Practices classification for this is public.	Until read	Public
ADM 03070	DATA PRACTICES REQUESTS	3	Public
ADM 03100	DEPARTMENTAL REPORTS Annual.	Permanent	Public
ADM 03200	DEPARTMENTAL REPORTS Monthly/ semi-annual.	1	Public
ADM 03300	GRANTS Miscellaneous grant programs and stipulations.	Consult issuing agency. Typically 3 after audit State CFR 24.42, 6 after audit Federal 28USC2415(b)	Public, unless otherwise required by other governmental agency.
ADM 03400	INVENTORIES Reports, equipment supplies, etc.	Until Superseded	Public
ADM 03700	LIENS	10	Public

	<b>RECORDS MANAGEMENT</b>	
	<b>Supersedes:</b> N/A	<b>Date Approved:</b> December 29, 2014
<b>Policy &amp; Procedure</b>	<b>Approved:</b> 	Page 2 of 2

**CITY RECORDS MANAGER & RECORDS COORDINATORS**

The City Clerk can designate the responsibility for the development and maintenance of the City Records Management Program ("Program") to a City Records Manager. The Program shall consist of procedures and guidelines for the disposition and retention of records pursuant to the Retention Schedule.

The head of each department is responsible for the records that their departments create and receive. A department head shall act as or designate a staff member (larger departments may require several – as in the case of Public Works) to serve as a Records Coordinator to implement the Program in the department.

**RECORDS RETENTION**

The City of Duluth has adopted the Minnesota General Records Retention Schedule for Minnesota Cities (City Council Resolution 12-0437R) ("Retention Schedule"). Department Heads and designated Records Coordinators are responsible for the records that are unique to departments and which are not listed on the Retention Schedule. City staff must maintain records for the period specified on the appropriate Retention Schedule.

**RECORDS DISPOSITION**

Before records can be destroyed, the records must exist on a Retention Schedule. City staff must follow destruction guidelines as set forth in the Records Management Program when destroying City records.

Point of Contact: City Clerk's Office, (218) 730-5500



# Policy # SR 1.3: Record Retention

## Policy # SR 1.3: Record Retention Statutory Requirements

**Policy Title:** Record Retention Schedule

**Policy Level:** SR 1.3

**Date Approved:** First Reading: 5-25-2000; Policy adopted: 6-15-2000

This is the policy of I.S.D. 834 that I.S.D. 834 follows the Minnesota School District General Records Retention Schedule.

**Legal References:**

**Legal Reference:** Minnesota Statute 138.17

**Rationale:** This schedule defines the storage, archiving and destruction of school records.

### District

1875 Greeley Street S.  
Stillwater, MN 55082

[Email us >>](#)

Main: 651.351.8340  
Fax: 651.351.8380

## City Clerk

The City Clerk's department carries out various statutory duties and City Charter requirements.

### Legal Notices

The City Clerk maintains a record of all Council proceedings. The Clerk is also responsible for:

- Maintaining the City's official records
- Publishing legal notices and newly adopted ordinances
- Responding to inquiries regarding the City Code

### Licenses

The Clerk's Department is the official keeper of all City records and processes all code-required licenses for dogs, liquor establishments, peddlers, massage, tobacco and more.

### Elections

The City Clerk administers all federal, state, and local elections for the city.

### Records

The City's official records are executed, filed, and maintained in the City Clerk's department, which includes Council minutes, resolutions and ordinances. Certified copies of minutes, agendas, or resolutions can be obtained by contacting the City Clerk's department.

The City Clerk oversees and administers the records management program and maintains the records retention schedules based on the state GRRS (General Records Retention Schedule).

### City Code

The Coon Rapids Code of Ordinances is updated and maintained

**CITY OF SAINT PAUL**  
**ELECTRONIC MAIL RETENTION POLICY**  
Effective Date 5/11/2015; Retention Schedule Effective 8/1/2015

**Introduction**

The City of Saint Paul is subject to multiple laws regulating City information and records, including electronic mail (email). Email is a means of exchanging messages and documents using telecommunications equipment and computers. A complete email message not only includes the contents of the communication, but also the transactional information (dates and times that messages were sent, received, opened, deleted, etc.; as well as aliases and names of members of groups), and any attachments.

If an email message is an official record, as defined below, the responsible party must retain said record and the transactional information pursuant to the retention schedule and the user departments' document management filing system or repository.

**Records**

Minnesota law requires the City, its employees and officials "make and preserve all records necessary to a full and accurate knowledge of their official activities." Minn. Stat. §15.17 (Official Records). An official record is recorded information that is prepared, owned, used, in the possession of, or retained by the City in performance of an official function. The record of the official function may be the email message, attachments to the email, or both. The law requires that all official records be listed on an approved retention schedule that identifies how long the records must be kept, and when they may be destroyed. Just like paper records, senders and recipients of email messages must evaluate each email message to determine if they need to keep it as documentation of their role in the business process. Not all email is an official record. Just like paper records, the retention period for an email message is based upon its content and purpose, and it must be retained in accordance with the approved retention schedule.

Official Records: If the email message itself has been determined to be an "official record," it may be correspondence. Official correspondence can be destroyed pursuant to the adopted records retention schedule.

Non-Official Records: If the email message is not an official record it may be a 1) transitory record 2) non-record or 3) personal record.

- 1) Transitory records are non-vital records relating to City business or activities which have a temporary value and do not need to be retained once their intended purpose has been fulfilled.
- 2) Non-records are emails or information in the possession of the City that is not needed to document the performance of an official function. These records are not subject to any record retention schedule and do not need to be retained.

**CITY OF SAINT PAUL**  
**ELECTRONIC MAIL RETENTION POLICY**  
Effective Date 5/11/2015; Retention Schedule Effective 8/1/2015  
Page Two

- 3) Personal records are emails that document non-government business or activities. These records are not subject to the records retention schedule and do not need to be retained.

**Data Requests and Litigation**

In accordance with the Minnesota Government Data Practices Act (MGDPA) (Chapter 13, Minnesota Statutes), email messages created or received as part of a public employee's official duties are government data and are subject to requests for review and/or copying pursuant to the MGDPA. If a government data request is received for email relating to a particular subject, emails will be identified and produced without regard to whether they are official records or non-official records. If an employee is responding to a government data request, and that data is contained within the City's email system, the employee must identify and produce the relevant email. Just like paper records, email messages may be subject to disclosure during the discovery phase of litigation. Attorneys representing the City are responsible for identifying if the records requested through the discovery process are stored in email. Attorneys are responsible for ensuring information technology staff is notified that a discovery order involving email was received to prevent the destruction of relevant messages.

**Employee Responsibilities**

As public sector employees subject to MGDPA and Official Records Act, City employees are responsible for identifying emails that are official records and keeping the official record in the location and format their department has identified for that type of document. Official records should not be maintained solely as emails in the email system, unless the department has established an email account for that particular purpose.

**Email Retention Schedule**

Inbox	180 days
Drafts	180 days
Sent Items	180 days
Deleted Items	14 days
Cabinet/Folders	3 years
Junk Email	14 days
Calendar	1 year

**HENNEPIN COUNTY SHERIFF'S OFFICE  
ADMINISTRATION**

**SPECIAL ORDER**

<b>FROM:</b> <b>Major Darrell L. Huggett</b>	<b>NUMBER:</b> <b>SO 16-13</b>
<b>DATE:</b> <b>August 2<sup>nd</sup>, 2016</b>	<b>SUBJECT:</b> <b>Email Retention</b>

Email is used every day by Hennepin County employees. It is a convenient way to communicate with coworkers, external partners and residents. As an employee of Hennepin County, you have the important responsibility of maintaining accurate, timely information in your email box. Good email management helps the county mitigate risk, save money and improve system performance.

Email should be used for its intended purpose. Email is a communication tool, not a document repository. It is important to remember that although any work related email is government data, not all email is an official record that an entity is required to keep. Emails that belong in an official record should be moved to that record. As the amount of information sent across the county's email network and kept in mailboxes continues to grow, establishing email best practices, such as limiting the amount of email saved in your mailbox, and deleting unnecessary messages, maximizes the capacity for using email as an efficient tool and helps control the county's storage costs.

To assist Hennepin County and HCSO in becoming better data stewards, the following new email retention policy will go into effect on September 1, 2016.

\*After 30 days, all emails will be removed from the server and permanently deleted UNLESS the email is deemed necessary for a legitimate law enforcement/business purpose or as evidence in any investigation, claim, pending litigation or in anticipation thereof. The email shall be preserved until the legitimate law enforcement/business purpose, investigation, claim or litigation is no longer active or closed. Email attachments shall be saved in accordance with established HCSO record retention schedule.

\*Employees have thirty days to delete emails currently on the server and save the attachments in accordance with this Special Order.

\*If an email is retained for legitimate law enforcement/business purposes as noted above, the employee will save the email to their network drive per the "HCSO Email Retention" Training Module in Apex.



## DEALING WITH LARGE DATA REQUESTS - MNCOGI

During past discussions about the retention of government correspondence, some government entities have raised concerns about dealing with large data requests, claiming that the 3-year long retention of correspondence and e-mails makes responding to Data Practices requests more difficult due to the volume of material. MNCOGI notes the following in response:

- The question of how to respond to large data requests pre-dates the existence of e-mail as a communications medium. Prior to the advent of e-mail, government entities would sometimes get large requests for the paper files that they maintained as well.
- Large requests are manageable under the legal framework of the Data Practices Act, given the statutory construction of the Act, and the way its provisions can be implemented in practicality.

### **Discussions to narrow the request**

- In the case of many large data requests, a requester has made a broad request because they do not understand the manner in which a government entity maintains its records. While they may be searching for something more specific, they may have asked for it in a broad way, since they do not know exactly how it would be maintained. Discussions between the agency and the requester at the outset can help to narrow requests, and make them more specific.

### **The timeframe for responding is "reasonable"**

- Under Minn. Stat. 13.03, government entities must respond to requests for government data in a "reasonable" time. That timeframe varies based on several factors, including the scope of the records request. If a request is very large, a government entity has a longer time to fulfill the request, since such a time period is "reasonable" given the circumstances.
- Government entities who are dealing with large requests can respond in a "rolling" fashion by gathering a small amount of material first, preparing it for inspection or copying, and then presenting it to the requester. After the requester has had time to review the initial batch of material (and pay any applicable copy fees), the next batch can be gathered and presented, etc. In many circumstances, requesters who have submitted very broad requests will later narrow them in order to avoid the long production periods sometimes required by extensive requests.

### **No "retaliatory" requests**

- If a requester asks for a large set of data, but is only doing so out of an effort to frustrate or retaliate against a government entity, the entity can refuse to produce the data (IPAD opinion 01-034). Likewise, if a requester asks for a large set of data, but never takes steps to inspect any of it or pay for copies, the requester can be denied access to the data (opinion 01-031).

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### **A note on e-mail searches**

Unlike paper files, e-mails are text-searchable using electronic search tools. These tools allow a broad range of electronic records to be searched through the use of "key words." The more key words that are utilized, the greater the specificity with which records can be located - even among large volumes of e-mail material.