

EMAILS AS PUBLIC RECORDS

The question as to whether an email is a public record does not have a simple answer. Per the Local Records Act, emails are in fact considered “records.” “Records” are defined as follows:

“...any book, paper, map, photograph, born-digital electronic material, digitized electronic material, electronic material with a combination of digitized and born-digital material, or other official documentary material, regardless of physical form or characteristics, made, produced, executed or received by any agency or officer pursuant to law or in connection with the transaction of public business.” (50 ILCS 205/3)

Per this definition, emails authored and received while performing a public duty would qualify as a record. But the mere fact that a communication is conveyed via email doesn’t make the email a record. The specific content of the email is what determines whether it is or is not a record.

Counties are required by law to have a record retention schedule that is approved by the Local Records Commission. Records cannot be disposed of legally without a retention schedule. A records retention schedule requires an inventory of the various kinds of records created by a county. The Local Records Commission reviews the types of records listed on a county’s retention schedule and determines the minimum amount of time a category of records needs to be maintained by the county.

Emails that fit within one or more of these types of records are considered public records and can only be disposed of per the timeframe established by the Local Records Commission.

A county is not permitted to simply dispose of a record once the timetable for keeping that record expires. The county must complete and submit a disposal certificate to the Local Records Commission. This certificate identifies the records the county wishes to dispose.

When disposal of the email record is approved, it is recommended that the county collaborate with its IT department to ensure the email is removed and permanently erased from the system. Records that remain on the system are still subject to the Freedom of Information Act (FOIA) and the discovery.

The Local Records Commission provides guidance to assist counties in disposing of email records. The Commission can identify non-record messages (transitory messages). These are messages that do not apply to or support the operations of an office. Examples included unwanted spam or messages of a more personal nature. These transitory messages can be disposed of without the need to file a disposal certificate. Further information about what constitutes a “transitory message” is available on the Illinois State Archives website under State and Local Records Management/Forms and Instructional Documents.

