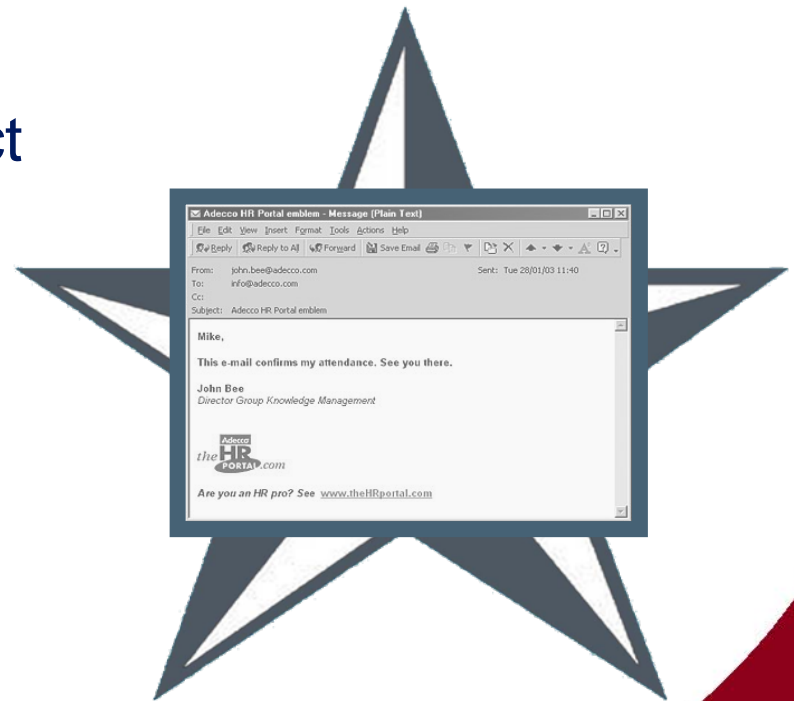


e-Mail Retention: What You Need to Know and Do

CTO Clinic for School District
Technology Leaders

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e-Mail Retention

- Public Information Act overview
- Record retention and destruction
- e-Mail retention program



Public Information Act

Each person is entitled . . . to complete information about the affairs of government



What is Public Information?

Information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business.



Many Forms of Public Information

- “A magnetic, optical, or solid state device that can store an electronic signal”
- “A voice, data, or video representation held in computer memory”



Existing Records

- Information in existence at time of request
- No duty to create new data
 - No standing requests
 - No duty to notify
- May need to manipulate existing data
 - Ex: Manipulate a spreadsheet



Production Issues

- Backup tapes may be outside of PIA
 - Ask attorney general
- 10 day rule normally applies unless:
 - Ask attorney general, or
 - Give requestor notice
- Record preservation based on district's plan, not the PIA



The PIA is Not Optional

- Requestor can compel compliance through a court
 - Attorney fees
- Criminal liability
 - Destruction of records
 - Distribution of confidential information
 - Failure to provide access or copies
 - PIA officer or an agent



Retention Schedules

- Retention schedules set out length of time the district will keep a record before destroying the record
- Content of record matters, not form of record
- Destruction allowed only in accordance with a document retention schedule



Library and Archives Schedules

- Commission Schedules applicable to school districts:
 - Local Schedule GR: Records Common to all Local Governments
 - Local Schedule SD: Records of Public Schools
- REMEMBER: E-mails sorted by content



District Options for Adopting Retention Schedules

- Adopt the Commission Retention Schedules
 - Written certification to commission
- Adopt a Local Retention Schedule
 - Required state minimums
 - Submit for approval
 - Submit changes



Application of Local Schedule

- Retain data per your schedule
- Destroy data per you schedule
 - No further notice needed
- Review state schedule for changes
 - Infrequent updates
- Submit local changes to commission



Documents not Listed on Retention Schedule

- May be destroyed only with authorization of Commissioner
 - Form SLR-501 (link in paper)
- Otherwise, keep it forever



Destruction of Documents Can be Illegal

- **Litigation or PIA requests** – hold until litigation or request is complete
- **Federal Law** – interference with an investigation by knowingly altering or destroying documents. (ex: Enron)
- **FACTA** - Consumer report information must be carefully destroyed.
 - Computer hard drives
 - Third party vendors



Destruction of Documents Can Be Illegal

- **Texas Penal Code** – tampering with a governmental record without legal authority
- **Local Gov't Code** – no *personal* liability if destruction done legally; under a local retention schedule
- An offense if destruction done outside of a local retention schedule
- **E-mail should be held under the retention schedule based on the content of the email**



Federal E-Discovery Rules

- Obligation to preserve documents after an event gives rise to the potential for litigation.
- Spoliation possible.
- Safe harbor for the routine good faith operation of an electronic information system.



Litigation Holds

- “Litigation Hold” procedures need to be in place
 - Policy CPC(LOCAL)
- Authority to central and campus administration
- Inform everyone, including IT



IT Response to Litigation Holds

- Act Quickly to:
 - Review the request and work with counsel
 - Consider:
 - Metadata
 - Backup tapes
 - Employee access
 - Document retention efforts
- Superintendent will release the hold



No Easy Answers for E-mail

- E-mail is a medium, not a type of record
- E-mail must be retained according to the type of record contained in the email.
- Case by case review
- Sophisticated software may be an option



1. Keep all Records Forever?

- No need to follow retention schedules or request permission to destroy documents
- Problem producing requested documents under the PIA or for litigation within time allowed
- Storage issues



2. Adopt State Agencies' Model Policy?

- Online Model Policy available at www.tsl.state.tx.us/slrn/recordspubs/email.pdf
- Adapt for school use
- Two principles
 - Train employees on the policy
 - Ensure compliance



2. Adopt State Agencies' Model Policy?

- People Programming
 - Train users to recognize categories
 - Sort by category of record
 - Auto-delete categories on set schedule
 - Varying retention timelines
- Ensure compliance
 - Monitor compliance
 - Evaluations and reprimands



2. Adopt State Agencies' Model Policy?

- What about Duplicate Messages?
- Messages from district employees
 - Sender responsible
- Messages from outside the district
 - Recipient responsible



2. Adopt State Agencies' Model Policy?

- **Official Records vs Transitory Information**
- Created or received while conducting school business
- VS
- Information with only short term value
 - Meeting notices, FYI notices, etc.
- Personal email



3. Create Your Own

- Tailored to your district's needs
 - Mix of e-mail sorting and long term retention
- Local Development could be expensive
- Work with your attorney and information specialists
- See chart on Page 13



4. Worry About It Later

- Cannot delete all e-mails at a set time.
- e-Mails are a medium, not a type of record.



. . . and finally

- The Public Information Act is mandatory, but the burden of responding may be limited by adopting a records retention schedule.
- Document retention and destruction must be done according to a plan.
- Consider special concerns regarding e-Mail retention and destruction when developing relevant procedures.



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