

Email Retention Policy

Office of State Representative Andrew Boesenecker, House District 53

Current as of: 11/29/2023

This document serves to satisfy the requirements outlined in Senate Bill 23-286. Specifically, the newly created subsection (3) in section 24-72-204.5, C.R.S, which stipulates that: *On or before January 1, 2024, each member of the general assembly, the governor's office and each office of the governor, and each state agency and institution shall submit a report to the staff of the legislative council of the general assembly outlining its respective electronic mail retention policy. The members of the general assembly may submit individual reports or may submit a report that specifies the electronic mail retention policies of multiple members of the general assembly.*

It is important to note that each member of the General Assembly receives large numbers of unsolicited emails daily, that each has limited resources to assist with categorizing and deleting or retaining these emails, and that each member is required to obtain and pay for their own email account.

Emails are categorized and will be retained as follows:

a. Transient email. This is email that is personal in nature, of fleeting or no value, or otherwise not created or received in the course of state business. The Legislative Policies (https://leg.colorado.gov/sites/default/files/ga_open_records_policies.pdf) specify that transient email may be (and is encouraged to be) deleted immediately after reading, but in no event more than thirty days after receipt. Examples of transient email include emails about lunch plans, arranging a ride home, spam, advertising, or other non-work-related publications or notices. **The policy of our office is that transient emails can be deleted immediately after reading, but in no event more than thirty days after receipt.**

b. Administrative email. Administrative email is email that serves some state-related purpose, but is also transitory or of time-limited value because it serves a time-defined administrative purpose. Examples include email about an upcoming meeting, a reminder of an approaching deadline, or newsletters from various organizations. The Legislative Policies recommend that members of the General Assembly retain this email until it is no longer of administrative value and then delete it. Generally, it will not be necessary to retain email in this category for longer than thirty days. **The policy of our office is that administrative email shall be retained until they are no longer of any value to our office, and then deleted accordingly.**

c. Intermediate retention. The Legislative Policies describe email that requires intermediate retention as email that is neither transient nor permanent and has more significant administrative, legal, or fiscal value than an administrative email. Examples of this type of email

include information for legislation; information pertaining to a specific subject area, topic, or bill; information pertaining to a procedural aspect of the legislative process; or any other information to which our office may want to refer in the future. The Legislative Policies suggest that if it is necessary to retain an email in this category for longer than thirty days, it is a good practice to create folders to help you categorize this email. The Legislative Policies suggest that our office retain the email until we have responded to it or until it is no longer useful.

However, the consent decree (see below) further clarifies that in any electronic communication wherein public business will be discussed, and/or in situations where email discussions relate to the General Assembly's policy making process, messages should be retained as they may satisfy the meeting minutes required in order to comply with statute and respond to a Colorado Open Records Act request. **Pending further clarification or legislation, the policy of our office is that emails that fall into the intermediate retention category will be retained indefinitely.**

e. Consent decree. In addition to the policies noted above, and as a member of the House of Representatives, our office will ensure that our email retention policies are consistent with the requirements of the Amended Stipulated Judgment and Consent Decree from Epps, et al. v. Colo. House of Representatives, et al. (Consent Decree). Under the Consent Decree, members are required to retain the electronic messages or communications exchanged, and those messages or communications may constitute the written minutes of the meeting. Insofar as the messages or communications must be "exchanged," this requirement applies to written messages or communications but not to discussions through video, such as Zoom or FaceTime, where there is no exchange of the electronic message or communication. **As such, the above categories and policies therein are subject to, and will be modified as necessary on an email-by-email basis, in order to comply with the stipulations of the consent decree.**

f. Colorado Open Records Act (CORA). In relation to the email retention policies outlined above, the "Colorado Open Records Act," (CORA) does not require a member of the General Assembly to retain any record for any specified period. Because CORA does not impose a specific record retention period, a member of the General Assembly may establish an email retention policy that allows the member to retain or delete emails as best suits the member's needs, except as noted above for members of the House of Representatives as a result of the Consent Decree. However, CORA requires our office preserve all responsive records, including responsive email messages, that are in our custody at the time of the request until the request is completely resolved, regardless of any maintenance, retention, or deletion policy or practices that you may otherwise have in place as part of our email retention policy.