

Montgomery County E-Mail Policy

Per the Montgomery County Public Records Policy, documents in electronic formats, such as e-mail, are records when their content relates to the business of a Montgomery County office, department or agency.

In accordance with the Ohio Revised Code, records are defined as including the following: any document—paper, electronic (including, but not limited to, e-mail), or other format—that is created or received by, or comes under the jurisdiction of a public office that documents the organization, functions, policies, decisions, procedures, operations, or other activities of the office. All records of Montgomery County are public unless they are exempt from disclosure under the Ohio Revised Code.

If an e-mail created by, received by, or coming under the jurisdiction of a public office also serves to document the organization, functions, etc., of the public office, then it meets the definition of a record. If an e-mail does not serve to document the activities of the office, then it does not meet the definition of a record.

E-mail is simply a means of transmitting information, just as is paper. A Montgomery County employee must analyze an e-mail message like any other item to determine if it meets the definition of a record. E-mail must be retained and managed by its content, not by its format. **There is no single retention period for all electronic mail.**

E-Mail Retention

Non-County Related E-mail Messages (Non-Records)

Examples include personal correspondence, professional association correspondence, list serves, non-county publications, files downloaded from the internet, and vendor and promotional material, solicited or unsolicited. Such messages not received or created in the course of county business should be deleted immediately.

County Related E-Mail Messages

Transient Retention: Examples include informal messages conveying information of temporary importance sent in lieu of oral communication, notices of meetings, memos, flyers, reference drafts of documents, etc. Such messages should be deleted as soon as they are of no further administrative value—as soon as possible.

Intermediate Retention: Examples include general or routine correspondence, routine requests for information such as those that may be answered by standard form letters, referral letters, weekly or monthly reports, and other non-policy material. Such messages should be retained according to the Office's Schedule of Records Retention and Disposition or the County General Schedule and disposed of in accordance with the policies of the Montgomery County Records Commission. They may be transferred to an electronic folder or printed out and filed in hard copy, retaining the metadata. (Metadata includes the transmission information—sender, receiver(s), dates, routing information, subject lines, etc.)

Long Term or Permanent Retention: Examples include executive correspondence, information regarding policies, programs, fiscal and personnel matters, and departmental policies and procedures. They must be examined carefully. First determine who is responsible for maintaining the record copy of messages that are distributed to a number of people. This is usually the creator of the message. Other copies are regarded as duplicates and should be deleted when they are no longer administratively useful. The record copy should be retained according to the Office's Schedule of Records Retention and Disposition or the County General Schedule and disposed of in accordance with the policies of the Montgomery County Records Commission. Such messages may be transferred to an electronic folder and migrated as electronic systems change, or printed out and filed in hard copy, retaining the metadata.

Legal and Regulatory Requirements for Electronic Records Retention

On December 1, 2006, the Federal Rules of Civil Procedure were amended to expressly provide that electronically stored information is discoverable in litigation filed in federal court. As a result, when a lawsuit is filed against an individual or office in federal court, the office is obligated to preserve not only relevant hard-copy documents, but all relevant electronically stored documents and information, including e-mail and voice-mail. While the Ohio rules of court do not expressly provide for the discovery of electronically stored information, such a requirement may be reasonably implied for actions pending in state court, as well as those pending in federal court.

Records in the form of e-mail, text messaging, and social media, including those sent and received via hand-held communications device (such as a Blackberry) are to be treated in the same fashion as records in other formats, such as paper or audiotape.

Public record content transmitted to or from private accounts or personal devices is subject to disclosure. All employees or representatives of this office are required to retain their e-mail records and other electronic records in accordance with applicable retention schedules.

Although the Ohio Supreme Court has not ruled directly on whether communications of public employees to or from private e-mail accounts that otherwise meet the definition of a record are subject to the Ohio Public Records Act, the issue is analogous to mailing a record from one's home, versus mailing it from the office—the location from which the item is sent does not change its status as a record. Records transmitted via e-mail, like all other records, must be maintained in accordance with the office's relevant records retention schedules, based on content.

In the event of a lawsuit against an individual or office, all documents that may relate to the lawsuit, including electronically stored documents, should be preserved. If there is doubt whether a category of document is relevant, the Assistant Prosecuting Attorney handling the case should be consulted.

E-Mail Policy for Terminated/Resigned Employees

To control security and to reduce the cost of e-mail maintenance, any employee who has left employment with Montgomery County (through voluntary resignation or termination) will be removed from his or her respective office e-mail system in accordance with county and office policies.

(Approved by the Montgomery County Records Commission on November 20, 2013.)