

SURVEY OF SELECTED STATES' ELECTRONIC MAIL RETENTION POLICIES

This memorandum is prepared in response to a request for information regarding electronic mail retention policies in selected other states.

COLORADO

Colorado law provides that government electronic mail is considered a public record. Colorado Revised Statutes Section 24-72-202 defines "electronic mail" as "an electronic message that is transmitted between two or more computers or electronic terminals, whether or not the message is converted to hard copy format after receipt and whether or not the message is viewed upon transmission or stored for later retrieval." The definition also includes electronic messages transmitted through a local, regional, or global computer network.

Section 24-80-101 includes electronic mail within the definition of "records" for purposes of the laws relating to retention and archiving of public records. Thus, under Colorado law, electronic mail records must be retained and disposed in the same manner as any other record.

MINNESOTA

Minnesota Statutes Section 13.03 provides that all government data collected, created, received, maintained, or disseminated by a state agency or statewide system is public unless otherwise classified. Government data is defined as "all data collected, created, received, maintained or disseminated by any state agency, political subdivision, or statewide system regardless of its physical form, storage media or conditions of use."

With respect to policies regarding the retention of electronic mail, the state of Minnesota has not adopted a statewide policy. However, individual departments and agencies may adopt policies relating to retention of electronic mail messages. For example, the Minnesota Department of Health adopted a policy requiring employees with electronic mail to preserve a message in an electronic format until converted to "human readable" formats and filed and retained, or as determined by the appropriate schedule governing the message.

MONTANA

Under Section 9 of Article II of the Constitution of Montana, a person may not be deprived of the right to examine documents of the state government and its subdivisions. Section 2-6-102 of the Montana Code Annotated also provides that every citizen has the

right to inspect and take a copy of any public writings of the state unless otherwise provided by law.

The Montana Information Services Division has drafted a proposed policy regarding electronic mail. The proposed policy provides that communications sent or received by the electronic mail system may be considered "documents" under Section 9 of Article II of the Montana Constitution or "public records" under Montana statutes. The policy provides that electronic mail communications should be generated and maintained according to the provisions of the constitution and state statutes in the same manner as other records. Under the policy, employees are encouraged not to include anything in an electronic mail message that the employees are not prepared for the public to read. The policy provides that items placed in an employee's archive are the employee's responsibility and the need for retention of an item should be reevaluated after it has been stored for six months.

A representative of the Information Services Division indicated that the proposed policy will likely soon be finalized and implemented.

OREGON

Pursuant to Oregon law, the State Information Resources Management Division has adopted a policy regarding acceptable uses of the state electronic information systems. Under the policy, users of the system are required to comply with public records retention laws and rules.

SOUTH DAKOTA

South Dakota law requires the State Commissioner of Administration to establish a records management program. Under South Dakota Codified Laws Section 1-27-9, a "record" includes documents and materials "regardless of the physical form or characteristics" made or received in the transaction of official business. The web page for the Board of Administration states that the "physical form of the record is not important; how it functions for the agency is the basis for calling it a record."

WISCONSIN

The Wisconsin Department of Administration's Division of Technology Management has adopted a statewide electronic mail policy. The policy provides that electronic mail messages are public records like any other record and are subject to the open records laws of the state. The policy provides that electronic mail messages must be filed and stored in such a way that the records can be located, accessed, and

provided to requesters for inspection or copying as required by the open records laws. The policy also provides that electronic mail records should be retained for the period appropriate to the content of the record and disposed in accordance with the approved records disposition authorizations for records of like content in other media. Under the policy, electronic mail messages of limited communicative value can be deleted once the records are no longer needed. The policy also provides that

electronic mail systems frequently contain duplicates of a record and a duplicate may be considered a nonrecord that can be deleted unless the message is needed for documentation.

WYOMING

The state of Wyoming has established a Records Management Committee that has been given the responsibility to develop a state records management policy.