

What are Electronic Records?

Basic Management, Retention, and Disposition

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KRS Defining Public Records

Are electronic records considered public records in Kentucky? The answer is: Yes! According to KRS 171.410(1) public records include “all books, papers, maps, photographs, cards, tapes, disks, diskettes, recordings, and other documentary materials, **regardless of physical form or characteristics**, which are prepared, owned, used, in the possession of, or retained by a public agency.”

Permanent vs. Non-Permanent Records

Just like with paper, the same permanent and non-permanent retention period exists for electronic records. Electronic records may include Meeting Minutes (M0008) which are permanent, Routine Correspondence (M0002) which are retained up to two years, or may be Information and Reference Material (M0018) which are retained until no longer needed as determined by the agency. The format of the record does not tell you what kind of record it is. Rather, it is the content of the record that determines what kind of record it is (what we call the “record series”).

For non-permanent records, these can be maintained in whatever format the agency deems most useful. If the records come into the office in paper, they may keep it in paper or the agency may scan the documents, destroy the paper, and maintain the electronic scan as the only copy, now the official copy, for the duration of the record’s retention period.

For permanent records there are additional requirements. Records that were originally paper or in an eye-readable format (such as printed photos, film negatives, or microfilm) must stay in an eye-readable format. The agency may scan documents to create access copies to reduce handling of old or damaged records or simply to create easier access, but that physical original must be retained*. Permanent documents that originated in a digital format (“born-digital”) can be kept either electronically or can be printed or put on microfilm to be maintained physically for its permanent retention. The only recommendation here is that agencies choose to either keep these documents physical or digital and stay consistent with format and storage.

*An important note on permanent physical records: If it is burdensome for an agency to retain all its permanent documents in their physical format, the agency may apply to the Kentucky Department for Libraries and Archives for an “Eye-Readable Exemption” which, if granted, will allow the agency to scan

and maintain electronic copies of the records and destroy the physical originals. Contact your agency's KDLA State Analyst for more information.

Common Electronic Record Formats

Common types of electronic records you may work with in your day-to-day duties are email messages, Word documents, PDFs, digital photos, video, and audio, and agency websites or social media accounts. While these electronic records may look different than handwritten meeting minutes, printed photos, VHSs, and microfilm, they contain the same kind of agency-related business and need to be maintained and disposed of after they meet retention just like physical records.

Format Considerations

There are format considerations when choosing to keep your records physically or digitally. Physical Items can be "stored and ignored" under optimized conditions with the expectation that you can go back and access them at any time whereas digital Items cannot "store and ignore." Hardware and software become obsolete over time which may trap files in outdated formats. There is also a concern of de-contextualization or the loss that occurs due to a lack of descriptive metadata that would be needed to accurately retrieve information. After 20 years, is anyone going to understand the way John named his files? Will that match how Susan organized her folders 12 years ago? Digital files take more maintenance than physical files and agencies should plan to check on and migrate electronic records to newer formats every 10-15 years. These considerations are true for both born-digital and scanned or digitized records. Proper file naming and organization is key for records retrieval and destruction.

Disposition and Destruction

After electronic records have been maintained for their full life cycle (retention period), they should be destroyed. Destruction of records should only be suspended in the case of litigation, pending litigation, or an ongoing open records request. KDLA recommends that agencies dispose of their non-permanent electronic records on time and not hold on to them indefinitely. *If an agency has a record, they are obligated to produce it for an open records request or litigation even if it has met its retention.*

The benefits of disposition are that it frees up space on your agency's shared drives and cloud space, your personal computer, and any hard drives or flash drives where records may be stored. This reduces clutter and brings focus making it easier to find records for your daily work as well as producing records for requests. Paying for increased digital storage can be expensive and routinely disposing of records that have met retention is a great way to free up space and save money. Lastly, disposing of records on time reduces your agency's risk. You may avoid litigation, drawn-out open records requests for records past their retention, as well as reduce your risk of data leaks in the case of a data breach.

There are four general methods of disposition for electronic records. The easiest but least secure is deletion – that is, using the delete option on a file. This removes easy access to a file but does not immediately get rid of it. It marks the space as "usable" on the hard drive, but the file still exists until it is overwritten by new data. Files that contain personally identifiable information or other sensitive material should always go through one of the following methods to be disposed of properly. Overwriting is the process of replacing old information with new information. Overwriting occurs when unused or old space on a hard drive is written over with new data. This can be done manually to wipe out old data

you want to get rid of and make it unreadable. Some agencies have contracts with COT or other parties to overwrite for them. Contact your I.T. administrators for more information.

The final two methods of destruction are the most guaranteed and secure but should only be used as end-of-life options for computers or hard drives. Degaussing is using an incredibly strong magnet on a hard drive which permanently corrupts the data and makes the drive unusable. Similarly, physical destruction is an acceptable form of disposition but will leave the data and the computer unusable. This may include shredding a hard drive with an industrial metal shredder, drilling through a drive with an electric drill, or smashing it into pieces with a hammer or other force.

Questions?

If you have any questions about electronic records management, digitizing and scanning records, eye-readable exemptions, or anything else related to electronic records, please contact us at Electronic.Records@ky.gov.