

AGO POLICY

II.04

ELECTRONIC MAIL USE

Contact: Information Services Division
Manager; AGO Information Technology
Security Director

Cross References: Ch. 40.14 RCW; RCW 42.52.160; *Discrimination Complaint Policy & Procedure*; *Internet Use Policy*; *Records Retention Policy*; *Sexual Harassment Policy*; *Use of State Resources Policy*

Approved: 12/19/05 (rev. 06/15/06)

I. POLICY STATEMENT:

The AGO will maximize email systems to make the work of the office more efficient while ensuring appropriate use and security of state resources.

A. Overview:

This policy was developed in order to maximize legitimate use of electronic mail (E-mail) systems. Since the Office of the Attorney General is a government entity, several factors must be considered when using E-mail. They include the Governor's Policy on Electronic Message Systems, public disclosure, privacy, and retention of public records, ethics, business needs, and common sense. This will be a "dynamic policy," which will undergo review and enhancement as technology and laws change.

The policy statements that follow fall into six categories: privacy, records retention, acceptable uses, security, monitoring/access, and external E-mail systems.

B. Privacy:

All E-mail is the property of the AGO. Employees should have no expectations of privacy in the use of this form of communication, except for attorney-client privileged material. The federal Electronic Communications Privacy Act of 1986 prohibits interception of messages from groups outside the office, but the Act does not apply to interoffice and "stored" electronic messages. Legal precedent has been established which supports an employer's right to access electronic mail, because the employer *owns* the electronic mail systems.

E-mail shall not be used to distribute attorney/client privileged material beyond the intended recipients.

C. Records Retention:

Electronic mail messages are considered "public records" and are subject to public disclosure. They are subject to preservation requirements under *RCW 40.14.060*. It is the employee's responsibility to manage all E-mail correspondence subject to the Office policy on *Records Retention and Destruction*. Employees may save E-Mail messages electronically in E-Mail folders (MS Outlook) per the Records Retention policy. Information Systems Division (ISD) will copy all E-Mail folders (MS Outlook) to backup media daily but backups will only be retained for 30 days

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and they are for disaster recovery purposes only. Electronic mail messages constitute public records and are subject to public disclosure through public information requests. E-mail messages can and will be accessible within the boundaries of the Public Records Act, which also specifies limitations and exceptions to public disclosure.

D. Acceptable Uses:

Electronic mail, including attachments, should be used in lieu of hard copy memoranda and other documents whenever possible in order to conserve resources and reduce costs.

Agency electronic mail systems shall not be used for transmission of information that promotes any unlawful or prohibited activity, including the following examples:

- Discrimination on the basis of sex, race, creed, color, gender, religion, age, marital status, national origin, sensory, mental, or physical disability, sexual orientation or veteran status;
- Sexual harassment or sites containing sexual content;
- Transmission of obscene materials;
- Infringement on any copyright;
- Expression of any campaign, political, or religious beliefs;
- A personal, outside business, or other financial benefit or gain.

Employees shall use agency electronic mail systems primarily to conduct agency business. Employees may use electronic mail systems to conduct other business within the scope of their employment, such as providing periodic pro bono legal services in accordance with the *AGO Pro Bono Policy* on providing such services, work on bar association activities or other public service work.

Employees may send personal messages only in accordance with the limited conditions listed in the *Use of State Resources Policy*.

E-mail communications shall be professional in content. The message sent may be printed and sent, or forwarded to others outside the office. The content and tone of a message reflects on the AGO and the Attorney General.

E. Security:

Employees shall take precautions to prevent unauthorized use of their electronic mailboxes. Precautions include:

- Logging out of the AGO Network before leaving the office for extended periods of time;
- Not leaving E-mail displayed on monitors while away from the office;
- Periodically changing passwords and not disclosing them to others;
- Using extreme caution when sending personal, confidential, or sensitive information via E-mail.

Employees shall not read the E-mail of an employee where there is no substantial business purpose for obtaining access to the communication of that employee. This also includes disclosure of other employees' messages, internally or externally, solely for the purpose of embarrassing the sender or receiver.

Employees shall not send E-mail under another employee's name without that employee's authorization ("masquerading"). Authorization must be expressed and subsequent access

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permissions granted to a delegate who can then access and send on behalf of the employee. Accessing a current employee's E-Mail without express authorization is subject to Section II of this policy.

F. Monitoring/Access:

Other than normal audit trail activities, E-mail monitoring or access shall not take place except when conducted as part of:

- An authorized training program or planned application design;
- An investigation into suspected misuse or unlawful activities;
- Network trouble shooting procedures (and where affected employees are knowledgeable of the activity).
- Follow up to an employee's departure from the agency, where files couldn't be reassigned to another employee.

G. External E-mail Systems:

All E-mail generated by employees of the AGO is the property of the Office. Therefore, all E-mail communication must be generated using the Office's E-mail system, Microsoft Exchange/Outlook. Use of other E-mail systems while on the AGO network is prohibited. This includes all Internet-based E-mail systems accessed through the employee's Internet browser such as Hotmail, AOL, Earthlink, etc.

Employees are allowed to route messages and attachments to and from their home E-mail accounts. If employees require routing messages to external E-mail systems while away from the office system, then a delegate is to be assigned and granted appropriate permission to access and forward messages on behalf of the employee.

II. RESPONSIBILITIES:

All employees shall understand and follow the policy and manage E-mail messages in accordance with this policy, as well as the policy on *Records Retention and Destruction*, the *Discrimination Complaint Policy & Procedure*, and the *Sexual Harassment Policy*. Violation, as with any policy, may result in disciplinary action, up to and including termination.

If the *supervisor* believes that there is a need to access the employee's E-mail, he or she shall submit a written request (memo or E-mail) to the Division Chief for approval with copies to the appropriate Deputy Attorney General and the personnel office. If responding to a request from a law enforcement agency, a prosecutor should be consulted to determine the need for a search warrant. The supervisor shall notify the employee within 48 hours after access to his or her E-mail messages, unless there is a need for security because of a criminal investigation. The *Division Chief* shall provide a copy of the request to the Information Services Director. The *Information Services Director* shall make arrangements for the viewing of the employee's E-mail messages by the supervisor and shall notify the Chief of Staff.

Attorneys who include a blanket attorney/client privilege or work product claim statement in each of their outgoing emails should ensure that the statement is appropriate and accurate. Since not all emails contain information that is protected by attorney/client privilege or work product claims, an appropriate statement might be, for example: "The material contained herein may be subject to the attorney/client or work product privilege."

An employee who is leaving the agency or is going on extended leave shall export E-Mail messages to a file that can be copied by another employee, in accordance with the *Records*

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Retention Policy and Desktop Guide for Records Retention. If the employee has left the agency, the **supervisor** shall notify the Division Chief of the need to access E-mail messages if case related correspondence is to be transferred to another employee. The **supervisor** shall also submit an access request memo or E-mail to the Information Services Customer Support Center (a.k.a. "Help Desk"). For questions, contact *ISD customer support*.

/s/ Rob McKenna

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