

Memorandum

To: Agency General Counsels

From: Karen Geduldig, General Counsel, NYS Office of Information Technology Services

Date: June 18, 2013

Re: Email Consolidation and Email Management

Over the past year, the State, through the NYS Office of Information Technology Services (ITS), has been consolidating the State's disparate email systems to facilitate interoperability and enhance interagency communications. The next part of this process is standardization of email management. This is also important for the migration of current state agency email systems to the new cloud-based system. If your IT staff were consolidated within ITS effective November 22, 2012, ITS is responsible for all technical implementation of the steps detailed below. If your agency has its own IT staff, your agency staff is responsible for all technical implementation of the steps detailed below, although ITS is available for advice and guidance to support consistent technical implementations.

- The State is retaining enormous amounts of email data that is difficult to manage and interferes with operations.
- The State Archives has determined that most email communication does not constitute records that must be preserved under the law.
- Retaining only email that is directly relevant to operations and/or that is required by law to be retained will improve agency operations, knowledge transfer and succession planning. http://www.archives.nysed.gov/a/records/mr_pub_genschedule_accessible.html
- Federal agencies and corporations have implemented email management policies wherein email messages are purged from their systems 30, 60, or 90 days from the date sent or received, for example. Such a system will aid the State in improving its email management.
- **As of June 30, 2013, the State will be implementing a standard 90-day email management system for all State agencies.** Email sent and received on or after June 30, 2013, will be retained for 90 days after the date on which it was sent or received unless otherwise deleted. Thus, all email sent or received on June 30 will be purged from a user's mailbox automatically on September 29, all email from July 1 will be purged on September 30, and so on.
- **Under this new system, email that must be retained longer than 90 days can and will be saved.**
 - Litigation holds will remain in place.
 - Holds can be placed on accounts containing material potentially responsive to a FOIL request.
 - Users will be able to save email needed for more than 90 days, for example, for long-term projects.

- No agency will have to delete material necessary to conduct its business or to meet legal requirements.
- **Older email will not be purged immediately. Any email 60 days old or older on June 30 will be withheld from deletion until July 30, 2013,** 30 days after the 90-day schedule takes effect. This ensures that users will have at least 30 and up to 90 days to review everything already in their mailbox as of June 30. For example, emails sent or received:
 - on May 1 or earlier will be purged July 30
 - on May 2-June 29 will be purged as they reach 90 days old, July 31-September 28
 - on or after June 30 will be purged as they reach 90 days old

General Counsels should take the following steps to prepare for implementation of the new email management system.

- Determine what litigation holds are in place and whether any of them are no longer necessary and can be released. Your IT staff is responsible for taking the technical steps necessary to preserve or release holds.
- Compile a list of staff on medical, maternity, paternity, or other long-term formal leave to ensure that their email is not purged before they have an opportunity to review it. Your IT staff will handle the technical aspects of retaining email.
- Compile a list of dormant email accounts, such as accounts from employees now separated from the agency. Contents of some of the accounts may require review before the contents are purged.
- Compile a list of group email mailboxes. If you determine that a mailbox could be the exclusive storage location for records that must be retained, then it should be reviewed before the contents are purged.
- Consult your agency records retention schedule to determine which staff members might have records subject to retention requirements of the Arts and Cultural Affairs Law stored exclusively in their email boxes or archives.
- Using the model email management memo to staff provided, create guidance for your agency staff on the new email management system. **Please note: information in the model regarding appropriately saving email content or the process for litigation holds may not exactly match your agency's, depending on your agency's specific email systems and litigation hold procedures.** Your IT staff will be able to describe the saving mechanism for your agency, but please also be in touch with me (contact information below) for assistance with this project.

This new standard may change how some users manage their email. ITS staff will provide your agency staff with technical guidance specific to your agency's current email system and, upon consolidation, the new email program that will be used statewide.

I will be communicating with you to share specific guidance on the implementation of the email consolidation and standardization described here. If you have questions about the implementation of this standardized email process, please contact me.

Contact information: Karen Geduldig: (518) 474-3019, karen.geduldig@its.ny.gov
John Cody: (518) 473-5115 john.cody@its.ny.gov



MEMORANDUM

To: Agency General Counsels

From: Karen Geduldig, General Counsel, NYS Office of Information Technology Services

Date: July 25, 2013

Re: Email Consolidation and Email Management - Reminder

As we are getting closer to the July 30, 2013¹ implementation date of the 90-day email management and preservation policy, we wanted to make sure that you are prepared and that your IT staff, whether employees of the NYS Office of Information Technology Services (ITS) or not, have all of the information and documentation they need to ensure a smooth transition and the continuity of your entity's compliance with its legal obligations. **It is extremely important that no email or email box be subject to automatic deletion if no determination has been made about its proper disposition. Your agency should temporarily exclude such mailboxes from the email management and preservation policy until they have been reviewed. This exclusion should be short-term.**

In June, you received charts (copy attached) requesting information about your entity's legal or litigation holds, staff that are out on extended leave, dormant email accounts and group mailboxes. This is reminder that the information in these charts should be used as follows:

- **Legal Holds:** The ITS professional(s) that support your agency's email system must have from you, as General Counsel of your agency, a documented list of the email boxes (group mailboxes and individual mailboxes) that are to be preserved due to active or reasonably likely litigation. IT staff need the following information about the email boxes that must be preserved:
 - The address associated with the mailbox;
 - The matter associated with the mailboxes that are being preserved. The matter name is important because, for example, if six months from now you ask your IT staff to release the mailboxes associated with a specific matter, your IT staff will know exactly who is associated with that matter and, more importantly, if any of those people should continue to be held due to a different legal or litigation hold;
 - The time frame that each matter needs content held for.

¹ July 30, 2013 is the date of implementation for the large majority of agencies. If your agency has, in coordination with ITS, determined that special circumstances require that your implementation date be later than July 30, 2013, that determination has not changed, but these recommendations are relevant to your agency's transition as well.

If your agency is a NYSeMail customer, please send your documented list of email boxes (group mailboxes and individual mailboxes) that are to be preserved due to active or reasonably likely litigation to Kathy Shafer (Kathy.Shafer@its.ny.gov) and Moreen Petrella (Moreen.Petrella@its.ny.gov) from the ITS NYSeMail team with a copy to Deborah Snyder (Deborah.Snyder@its.ny.gov), ITS's Deputy Chief Information Security Officer and myself and John Cody (John.Cody@its.ny.gov) of ITS's Counsel's Office.

If your agency is not on NYSeMail but is supported by ITS, please send your documented list of email boxes (group mailboxes and individual mailboxes) that are to be preserved due to active or reasonably likely litigation to the ITS professional responsible for supporting your agency's email system with a copy to Deborah Snyder, myself and John Cody. If you are not sure who the ITS professional is that supports your agency's email system, contact your Cluster Chief Information Officer. If you do not know who your Cluster Chief Information Officer is, contact me.

If your agency's IT professionals have not been transferred to ITS, please send your documented list of email boxes (group mailboxes and individual mailboxes) that are to be preserved due to active or reasonably likely litigation to the IT professional responsible for supporting your agency's email system. You may provide a copy to me and John Cody if you would like.

- **People out on extended leave:** The IT professionals who support your agency's email system must have from you a documented list of people from your agency who are out on extended leave so that email will not be automatically purged from those employees' mailboxes until they have returned to work and had an appropriate amount of time to review their older email. You can find out who is on extended leave from your HR department if you have not already obtained that information. Please forward your lists of employees on extended leave to the persons identified above in the section on Legal Holds.
- **Group mailboxes:** Group mailboxes are subject to the 90-day email management and preservation policy. Your agency is obligated to identify group mailboxes, review their content and save what needs to be saved in the manner identified by your agency. The contents of these group mailboxes are to be managed accordingly going forward. If any group mailboxes are subject to legal holds, they should be identified in the documented list of legal holds. The IT professional(s) who support your agency's email system should be able to provide you a list of your agency's group mailboxes if you have not already obtained them.
- **Dormant Accounts:** Dormant accounts belong to people to have left the agency by retirement, separation, termination, etc. Like group mailboxes, these mailboxes need to be reviewed for content that needs to be saved for longer than 90 days.

If any mailboxes have not been reviewed, or you have not yet come to a conclusion about how to deal with the contents of a mailbox, that mailbox should be identified to the IT professionals who support your agency's email system so that content is not automatically purged from it.

- **NYSeMail FAQs:** For those agencies that utilize NYSeMail, the NYSeMail team has put together FAQs and a reminder about the 90-day email management and preservation policy. If you would like to issue it to your staff, please contact me and I will provide the documents to you. Please note that the NYSeMail team can also issue the information to your agency, however, NYSeMail will not do so without your express direction.
- **Sample employee reminder:** I recently issued a reminder email to ITS staff about the 90-day email management and preservation policy. It addresses some frequently asked questions from ITS staff related to .PSTs, employee use of third-party storage (third-party storage is not permitted, and employees can be subject to discipline and legal liability if they use third-party storage without authorization) and the System Cleanup Folder in NYSeMail. It is attached for your information. Please feel free to use it as a model for a reminder to your staff if you think doing so will be helpful, however, be mindful that it was written for ITS staff whose email is on the NYSeMail email system and archived in the Microsoft Exchange Hosted Archive (MEHA).
- **Executive Order 38:** For those agencies that are subject to Executive Order 38 (Agriculture and Markets; Division of Criminal Justice Services; Department of Corrections and Community Supervision; Department of Health; Department of State; Homes and Community Renewal; Office for the Aging; Office of Alcoholism and Substance Abuse Services; Office of Children and Family Services; Office of Mental Health; Office of People with Developmental Disabilities; Office of Temporary Disability Assistance; Office of Victim Services) please add to your documented list of mailboxes on legal or litigation hold the email box associated with Executive Order 38 waivers so that these mailboxes can be placed on legal hold. We are doing so in order to treat these like mailboxes consistently.

Thank you for your continued time, attention and patience as we move toward a consistent 90-day email management and preservation policy. Your questions, comments and insights have been extremely helpful and we appreciate your commitment and guidance.

E-mail Migration and Retention Schedule Changes
Mailboxes Requiring Special Review

Instructions:

- Please fill out and return this document to your Assistant Counsel by COB 6/12/13.
- Attach to this document any draft guidance you will be providing to staff on how to evaluate the contents of their e-mail for record retention purposes.
- Add rows to each section as needed.

Legal Holds

	Case/Subject Matter	Hold Start Date	Mailbox/Account Name	Custodian(s)
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				

Employees on Formal Leave

	Name	Expected Return Date	Mailbox/Account Name
1			
2			

3			
4			
5			
6			
7			
8			
9			
10			
11			
12			

Dormant E-mail Accounts

	Mailbox/Account Name	Date Account Became Dormant	Person Assigned to Review
1			
2			
3			
4			
5			
6			
7			
8			
9			

10			
11			
12			

Group Mailboxes

	Mailbox/Account Name	Person Assigned to Review
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		

TO: All ITS Staff
FROM: Karen Geduldig, General Counsel
DATE: June 18, 2013
RE: Email Management Policy

The State has been engaged in several initiatives to help government work more efficiently and consistently, including IT consolidation and transformation. A more efficient and consistent government means that we are more accountable, responsive and transparent to the public we serve. A next step in making government work better is standardizing how we, as a State, manage our email.

- At its current pace, the State is creating enormous amounts of email data that is difficult to manage and interferes with operations.
- The State Archives has determined that most email communication does not constitute records that must be preserved under the law.
- Retaining only email that is directly relevant to operations and/or that is required by law to be retained will improve agency operations, knowledge transfer and succession planning.
- Federal agencies and corporations have implemented email management policies wherein email messages are purged from their systems 30, 60, or 90 days from the date sent or received, for example. Such a system will aid the State in improving its email management.

Standard email management will also ease migration of State email systems to the cloud, something that, as you may know, will be taking place in the upcoming months. **Therefore, starting on June 30, 2013, email sent and received by persons working for State agencies, including ITS, will be subject to a 90-day preservation period.** As described in more detail below, you will have at least 30 days (at least until July 30) to review and appropriately save email sent or received prior to June 30, 2013.

Email boxes that are subject to a legal or litigation hold will not be subject to the 90-day email preservation period. You will never be required to delete email that you need to save.

How the 90-day Email Preservation Period Works:

- The 90-day email preservation period will be effective June 30, 2013.
- Any email that you send or receive on or after June 30, 2013 will automatically be purged 90 days after it is sent or received, EXCEPT
 - Email content in ITS email boxes that are subject to a litigation hold (see FAQ 3 below) or other legal hold, e.g., it may be responsive to a current FOIL request.
 - Email content that must be saved for longer than 90 days or is needed for ongoing operational purposes (it must be appropriately saved by the user,

otherwise the email will be subject to the 90-day email preservation period, see FAQs 2, 4 & 5).

- You may have a significant amount of email in your ITS active mailbox that pre-dates June 30, 2013. You will have at least 30 days to review old email in your active mailbox.

Date E-mail Received/Sent	Date Automatically Purged
On or before 5/1/13	7/30/13
After 5/1/13	90 days after email was sent or received. Example: Email received on 5/2/13, will be purged 7/31/13

- All email 60 or more days old on June 30, 2013 (i.e. all email from May 1, 2013, and earlier) will not be deleted until July 30, 2013, 30 days after the new schedule is implemented. This is also the date on which it will be 90 or more days old.
 - All email less than 60 days old on June 30 will be purged when it reaches 90 days old (i.e. email from May 30, 2013 will be purged on August 28, 2013).
- This means you have until July 30, 2013, to:
 - Review the email in your active mailbox that was sent or received by you on or before May 1, 2013;
 - Identify email that you are required to save and/or need to save for ongoing operational project purposes and appropriately save those emails.

FAQs:

- 1. What is the active mailbox?** Your active mailbox is what you would typically call your inbox and outbox or “sent mailbox,” as well as subfolders. It contains the email you send or receive until it is deleted from your active mailbox.
- 2. How do I identify email messages that are required to be saved for longer than 90 days?** In addition to legal or litigation holds (see FAQ 3), email content may be required to be retained for certain periods of time pursuant to existing agency records retention schedules. The records retention schedules applicable to you will not be changing at this time, so anything you would have saved pursuant to the schedule prior to implementation of the 90-day email preservation period should still be saved.

ITS records retention schedules are broken up by business function (finance, billing, procurement, IT systems, human resources, etc.). It is a good time to review the schedules and the types of records you create – both in email and otherwise – so that you can retain these records appropriately and consistently. ITS’s records retention

schedules are made up of two parts. The first part of ITS's records retention schedules are the same as NYS Archives' "General Retention and Disposition Schedule for New York State Government Records" and are available at http://www.archives.nysed.gov/a/records/mr_pub_genschedule_accessible.html. The second part of ITS's records retention schedules are attached to this memo. If you have questions about the application of ITS's records retention schedules to your records, please contact ITS's Records Access Officer or Counsel's Office.

According to NYS Archives, most email communications are not records that must be retained and are therefore suitable for immediate destruction. Some messages and attachments are records and should be maintained in appropriate electronic or paper files and disposed of consistent with applicable records retention schedules. NYS Archives has material, resources and guidelines, much of which is available online, to help individuals identify records that must be retained for records retention purposes. Visit NYS Archives' website for guidance and information on records retention: <http://www.archives.nysed.gov/a/records/index.shtml> and http://www.archives.nysed.gov/a/workshops/workshops_handouts_email.shtml

- 3. My email is subject to a legal or litigation hold. How will the 90-day email preservation period affect me?** The 90-day email preservation period does not apply to ITS email that is subject to a litigation hold. If an employee's email is on legal or litigation hold, none of his/her email will be purged until the legal or litigation hold is released by ITS Counsel. The 90-day email preservation period will go into effect for that email once the hold is released (the user will be given time to review contents), so it is still important that users retain any records received by email in an organized fashion in accordance with retention schedules. If the contents of an employee's email are potentially responsive to a FOIL request, the email account should be put on hold until all required documents have been produced to the FOIL officer.
- 4. How do I identify email messages that need to be saved for longer than 90-days for ongoing operational project purposes?** We recognize that some email is not required to be saved pursuant to records retention schedules but is highly relevant and useful to the execution and implementation of ongoing ITS work. Email content that will enable the furtherance of ITS work should be retained. Email content that is non-essential to ITS work, outdated or related to resolved matters and serves no further purpose should not be saved, unless the email content is required to be saved for legal reasons.
- 5. How do I appropriately save email content that is required or needs to be saved for longer than 90 days?** For ITS employees the appropriate way to save email content that must be saved for longer than 90 days is in a special type of folder within your active mailbox called "Retain." This folder will appear among the folders viewable in your ITS active mailbox and will be named in a way that reflects its purpose of saving email content for longer than 90 days. The folder will count toward your maximum email box size limit so should be used only to save what is required or truly needed; otherwise you

will reach your mailbox size limit and will not be able to send or receive email until you free up space in your mailbox by deleting appropriate email. You will be provided with more information about the Retain Folder shortly.

From: Herman, Lisa (ITS)
Sent: Thursday, July 25, 2013 12:17 PM
To: its.dl.agency
Subject: IMPORTANT -- Reminder on Email Management Policy
Importance: High

This Message is being sent on behalf of Karen Geduldig, General Counsel at ITS

Good afternoon:

This is a follow-up to the memo that you received on June 18, 2013 (attached) regarding the new 90 day email management and preservation policy. **This message contains important clarifying information based upon feedback and questions we have been receiving since the June 18th memo so please be sure to read this fully.**

As a reminder: Starting July 30, 2013 email will start to be automatically purged from your email box 90 days after the message was sent, received or, in the case of a DRAFT email, created with two important exceptions:

Exception 1: If your mailbox is subject to a legal or litigation hold, ITS will retain your email, however, will do so separate from your active mailbox. Therefore, you may see your email purged from your active mailbox, however, it is being otherwise retained in the Microsoft Exchange Hosted Archive ("MEHA") for legal hold purposes. Legal holds will be placed on mailboxes that are reasonably likely to be related to a litigation. Only ITS's General Counsel places and releases legal or litigation holds on ITS employees' mailboxes. In addition, ITS staff that are currently on extended leave (disability, maternity or paternity leave, etc.) will temporarily be excluded from the policy so that employees can review their mailboxes when they return to work.

Exception 2: Any email messages that you specifically save under the "Retain" folder within your mailbox will not be purged.

You should be in the process of reviewing your mailbox and saving, in the Retain folder, any email messages that (1) are records under an ITS record retention/disposition schedule and need to be saved for a period of time longer than 90 days; and/or (2) you deem necessary to your ongoing work. Starting on July 30, any other messages in your mailbox that are not moved to your Retain folder will be deleted 90 days after being sent, received or created.

Points of clarification:

- **.PST folders:** The automatic purging of unnecessary email that is older than 90 days only applies to email files contained in your active mailbox. .PST folders are NOT part of your active mailbox. This means that files, including email, currently stored in your "Personal Folders" in a .PST file will not automatically be purged 90 days after that message – now saved in a .PST file – was sent or received. We have been hearing that people are spending time moving their .PST

files from their Personal Folders into the Retain folder. That is unnecessary since, again, .PST folders and the files within them will not be automatically purged. People should, however, take the opportunity to review their existing .PST folders and only save data that is required or necessary to be saved as described in the June 18 memo.

- **Third party storage services:** We have also been hearing and receiving questions about employees independently using a third-party service provider to store older email. Your work email is the property of ITS and only ITS, as an agency, has the authority to move it to, or otherwise store it with, a third-party service provider. Employees are prohibited from moving or otherwise storing their email with a third-party service provider. Violating this prohibition may create security and other exposure and may leave you personally liable – including financially liable - for any issues that arise from your unauthorized storage of ITS data elsewhere. Additionally, employees who move work email to a third-party service provider without authorization may be subject to discipline.
- **Group Mailboxes:** Email content in group mailboxes is also subject to the 90 day email management and preservation policy. If the unit, group or division that you supervise has group mailbox(es), you are responsible for identifying an appropriate person to review the content of that group mailbox's active mailbox for email that must be retained for longer than 90 days due to records retention/disposition schedule(s) or for operational necessity.
- **People out on extended leave:** ITS can temporarily exclude email accounts belonging to people who are out for an extended period, either on extended leave or (appropriately) using accruals for long-term absence. If this exclusion is desired, supervisors of any such employees should advise ITS Counsel's Office so that the employee's account may be temporarily excluded. This exclusion will be removed shortly after their return.
- **The System Cleanup Folder:** Your Retain folder exists within the "Managed Folders" folder in your email box. Along with the Retain folder, we have created a "System Cleanup" Folder. The System Cleanup folder serves as an alert to an employee that emails are close to the 90 day purge date. All mail items located in your Inbox, Sent Items, Drafts, Junk E-mail, conversation history, RSS feeds and all other user created folders and subfolder that have reached 75 days old will be automatically moved to the "System Cleanup" folder to highlight those items that are designated to be purged within 15 days. Email will not be automatically moved into this folder until after the first email purge beginning on 7/30/13. Thereafter, it will be moved on a daily basis.

If you have questions about this policy, please feel free to contact Customer Relations Manager at 518-473-2658, or email Customer.Relations@its.ny.gov or me (518.408.2476) or John Cody (518.473.5115) from ITS Counsel's Office.

Thank you.

E-mails to or from attorneys in ITS's Counsel and Legal Services office are attorney-client privileged and should never be shared outside of the agency without prior approval. Thank you.