*Executive Office of Health and Human Services*

*Department of Developmental Services*

**POLICY TITLE: E-mail Retention Policy & Procedure**

**DDS POLICY # 2010-1**

**DATE ISSUED: 4/13/10**

**EFFECTIVE DATE: 3/3/10**

**COMMISSIONER’S SIGNATURE: Elin M. Howe, Commissioner**

**Purpose:**

To establish consistent guidelines and policy for preserving electronic mail ("e-mail") records as required by the Public Records Law, the Massachusetts Statewide Records Retention Schedule and other applicable laws and to ensure that e-mails are accessible if subject to a public records request or a discovery request as part of a court action. The Massachusetts Executive Office of Health and Human Services ("EOHHS") distributed its e-mail retention policy to its constituent agencies on January 21, 2010. The DDS E-mail Retention Policy and Procedure is consistent with the purpose, policy and guidelines of the EOHHS Policy, and supplements the same with additional clarifications and advisory information specific to DDS.

**Policy:**

All e-mail records sent and received during the course of your responsibilities may, depending on their content, be Public Records as defined by M.G.L. c. 4, §7, cl. 26 th, and should not be deleted except in accordance with this policy. It is the policy of EOHHS and the Department that e-mails that are Public Records must be saved by the custodian or keeper of that Public Record to a permanent electronic record system (i.e., saved in an e-mail archive file) and preserved in accordance with the current Statewide Records Retention Schedule ( www.sec.state.ma.us/arc/arcpdf/0111.pdf.). The contextual or "envelope" information [metadata] included with an email, which contains the mailing address, date/time stamp, routing instructions and transmission and receipt information constitutes part of the email and must be retained as part of any printed or electronically stored version of the email.

It is the content of the e-mail and not the type of media on which it is stored that determines how long it must be retained.

If, under the guidelines published in this policy, you are the custodian or keeper of an e-mail, you must preserve that e-mail, unless it is not required to be preserved under the retention schedule. In general, you are the custodian of: (a) all business e-mails you send, and (b) business e-mails you receive if you are one of the primary recipients of the e-mail or you are the only one receiving it within your agency. If you are simply copied on an e-mail sent to another employee of your agency, you are not the custodian or keeper of that e-mail, and are not generally required to retain the e-mail. Exceptions may exist in connection with litigation or other legal disputes, where you should comply with any instructions you receive from agency counsel or the Attorney General's Office to retain records even if you are not the custodian or keeper of the e-mail under these guidelines.

The following guidelines are included to assist you in determining what must be retained.

**Guidelines:**

**What requirements are applicable to the retention of e-mail records?**

Dependent upon their "content," e-mail records are subject to the same records management principles as all other records of the agency. The Secretary of the Commonwealth and the Records Conservation Board ("RCB") identify e-mail as a transitory messaging system and not as a primary record keeping system; however, e-mails with business "content" that pertain to DDS operations must be retained as Public Records. Records retention standards issued by the Supervisor of Public Records and the RCB must be implemented for e-mail as well as for analogous paper records. Once the "content" or subject matter of a message is determined, the custodian of the e-mail must consult the Statewide Records Retention Schedule to determine how long the record must be preserved. A records custodian must obtain permission from the RCB before destroying records or transferring them to the State Records Center or State Archives.

**How do I know whether I am required to preserve a particular e-mail?**

If an e-mail is sent or received during the course of your responsibilities at DDS and pertains to the business of your office, it is likely to be a "Public Record," and therefore must be retained in accordance with the relevant retention schedule. You should consult with a DDS attorney if you have a question regarding the Public Records law.

If you are an executive, you have a greater obligation to preserve certain documents, as noted below. Executives are defined under the Statewide Records Retention Schedule as "elected officials, commissioners, agency heads, and the persons with delegated authority to act on their behalf."

Approval from the Records Conservation Board is required before any "Public Records" (including e-mail "Public Records") may be destroyed. There are some categories of e-mails that do not have to be retained under the Statewide Records Retention Schedule after their administrative use has ceased, and, if properly deleted, do not need to be produced as public records or in response to a discovery request. The following is a list of some of the types of e-mails that ordinarily do not need to be retained and can be deleted from your e-mail:

* Program transitory correspondence encountered in the daily administration of the unit and its programs, including acknowledgments, courtesy correspondence, declined invitations, meeting announcements, scheduling changes
* Documents scheduling meetings, travel, appointments and events, including calendars and related lists and postings unless they relate to activities of executives or persons in policy-making positions. The person responsible for arranging a work-related event or creating a policy should preserve the documents related to those actions.
* Out-of-office replies
* Thank you messages
* Personal messages unrelated to state agency business, including information regarding non-business related activities of the department
* Communications regarding routine office policies and procedures, such as handling mail, opening hours, storm coverage
* Duplicate messages/attachments, as described below
* Junk mail or spam
* Published reference materials collected from sources outside the agency
* Replies to routine questions and information requests - for example, address and hours open, requests for forms
* Incoming listserv messages
* Media advisories, news and press releases and web announcements sent for informational purposes unless you were involved in the drafting or review of these documents
* E-mails sent to another employee in your department, with a copy sent to you as long as you are not the custodian or keeper of that e-mail as described below.
* Reports, meeting minutes and publications that are distributed to you for your convenience as a member of a group or committee and are not needed to support other files. If the group has a secretary or record keeper maintaining copies, you do not need to keep an additional copy.

For all other e-mail or records pertaining to DDS business and operations not on this list, check with DDS counsel or consult the Statewide Records Retention Schedule. The Records Retention Schedule is available electronically at: www.sec.state.ma.us/arc/arcpdf/0111.pdf. Employees are encouraged to become familiar with the retention requirements that apply to their particular responsibilities. The schedule is arranged by subject matter and will tell you how long the e-mail should be kept, based on its content . If the schedule provides that the record may be destroyed "after administrative use ceases," the record may be deleted after that time. If the schedule requires a specific number of years for retention, the record cannot be destroyed until that time has elapsed and a written request is submitted to and approved by the RCB. Proper records management and maintenance, including e-mail management and maintenance, is an individual responsibility. Users of the Department's e-mail system should contact their supervisor if they have questions or concerns regarding proper records maintenance.

**How do I recognize a duplicate e-mail?**

An e-mail that is a copy of an original e-mail with the same message content and attachments is a duplicate that may be deleted. An e-mail in a multiple e-mail "thread," where participants have responded to each other several times with the previous messages included need not be kept as long as a later message in the same thread is retained and any relevant attachments in the e-mail thread are also retained.

**Which e-mails, for which I am the custodian or keeper, do I need to preserve?**

* Any e-mail record for which the Statewide Records Retention Schedule requires retention for an established time period (in general, e-mails concerning agency business) or about which you are unsure (that is, err on the side of retention if you are unsure);
* E-mails subject to or likely to be subject to a dispute, audit, investigation, litigation, or subject to other legal retention requirements, regardless of whether you think they are Public Records. You should consult with a DDS attorney if you have any question as to whether a particular e-mail is relevant to an ongoing dispute, investigation or litigation.

**Do I have to save the entire e-mail?**

Yes. E-mail Public Records must include the contextual "metadata" (sender, time sent, text, date sent, subject lines, recipients), the message, and any attachments. Saving your e-mail in the original Outlook format ("PST" format - that is, the same format the original e-mail is in) will preserve the original metadata.

**Where should I store my e-mails?**

Guidance from the Secretary of the Commonwealth and the Records Conservation Board provides that: E-mail systems, such as Mass Mail, **are not appropriate** record keeping systems. Your DDS Mass Mail Inbox is considered a transitory storage area and you should not retain e-mails in your regular Mass Mail Inbox as part of your record keeping system. Guidance from the Secretary and the RCB provide that if a paper copy of an e-mail is retained, you are not required to preserve the electronic copy; however, you must ensure that the metadata and any e-mail attachments are retained with the paper copy. See SPR Bulletin No. 1-99 (Revised - May 21, 2003). A records custodian must also ensure that all Public Records, regardless of format, are retained in accordance with the Statewide Records Retention Schedule.

EOHHS Information Technology ("IT") staff are in close consultation with staff from the Information Technology Division ("ITD") regarding the development of an automatic archiving function and additional storage capacity for the Department's Mass Mail electronic records. E-mail records must continue to be retained in accordance with the guidance of the Secretary of the Commonwealth and the RCB; however, the development of an automatic archiving function for electronic e-mail records will serve an administrative purpose; and will aid in the search and retrieval of e-mail documents notwithstanding whether the e-mail was also retained in the paper record file.

**Is there going to be more training and guidance regarding the development of and/or how to use Mass Mail's automatic administrative archiving function?**

Yes. Further information regarding Mass Mail's administrative archiving function will be issued by information technology staff as the procedures are finalized. Users of the DDS e-mail system are reminded that they must continue to manage the e-mails (and paper records) they generate and receive in accordance with the Public Records Law and applicable records retention timeframes.

**Whom do I call with questions?**

If, after reviewing the Statewide Records Retention Schedule, you have questions about whether an e-mail must be saved, ask your supervisor or contact a DDS attorney. If you have questions about using Outlook, contact the DDS Customer Service Center or an agency IT staff member.