

	Department of Public Safety Standards and Training POLICY	Policy Number: 129
		Effective Date: 3/12/20
SUBJECT: Public Records		Supersedes: 4/5/19
SIGNATURE:	Signature on File Eriks Gabliks Director	Division(s): All

APPLICABILITY:

All Department of Public Safety Standards and Training (DPSST) employees.

PURPOSE:

The goal of this policy is to ensure public records are managed and maintained appropriately within DPSST and consistently across the enterprise of state government.

This DPSST Public Records Management Policy, adopted according to the requirements of DAS Statewide Policy 107-001-020 and ORS 192.018, addresses the following components:

- Public Records Maintenance;
- Roles and Responsibilities;
- Education and Training;
- Access and Ownership;
- Integrity;
- Retention Generally;
- Storage and Retrieval;
- Disposition and Destruction; and
- Public Records Requests.

AUTHORITY:

Director

REFERENCES:

ORS Chapter 192

ORS 703.480(2)(a)

OAR Chapter 166 Division 300

OAR 259-025-0000

Department of Administrative Services (DAS) Statewide Policy # 107-001-030 (Public Records Requests Fees and Charges, including the Statewide Standardized Fee Schedule)

DPSST Procedure #129a (Submitting a Records Request)

DPSST Business Continuity Plan

DPSST Policy #351 Social Media

DEFINITIONS:

“Authorized Retention Schedule” means either a General Schedule published by the State Archivist in the OAR in which certain common public records are described or listed by title and a retention period is established for each; or a Special Schedule approved by the State Archivist for the public records of a specific agency.

“Cloud-computing” has the meaning established in the National Institute of Standards and Technology (NIST) Special Publication 800-145.

“Custodian” means a public body mandated, directly or indirectly, to create, maintain, care for or control a public record. "Custodian" does not include a public body that has custody of a public record as an agent of another public body that is the custodian, unless the public record is not otherwise available.

“Instant Messaging” means real-time text communications between or among computers or mobile devices over the Internet or functionally similar communications networks.

“Metadata” means data that provides information about other data. Metadata assists in resource discovery by allowing resources to be found by relevant criteria, identifying resources, bringing similar resources together, distinguishing dissimilar resources and giving location information.

“Official Copy” or “Original Record” means the version of a public record that has been designated by DPSST as the record of a transaction or event, and which is subject to the requirements of laws, rules and the records retention schedule authorized by the State Archivist.

“Public Record” has the meaning established in ORS 192.005. In general it refers to information that is prepared, owned, used or retained by a state agency or political subdivision; relates to an activity, transaction or function of a state agency or political subdivision; and is necessary to satisfy the fiscal, legal, administrative or historical policies, requirements or needs of the state agency or political subdivision. Refer to the Secretary of State’s guide for determination of a public record:

<https://sos.oregon.gov/archives/Documents/recordsmgmt/train/brm/managingrecords.pdf>

“Social Media” means web-based and mobile communication technologies that allow the creation and exchange of user-generated content such as comments or responsive postings. Examples of social media include but are not limited to Twitter, Flickr, blogging sites, Facebook, YouTube and Instagram.

“Text Messaging” means messages exchanged between fixed-line phones or mobile phones and fixed or portable devices over a network. Excluded from the definition of “text messages” are electronic mail (“e-mail”) communications, whether such messages are exchanged among or between official state government e-mail accounts or e-mail accounts maintained by private entities.

“Unified Communications” means a service of IBM; the packaged services or user profiles available to agencies (e.g. instant messaging, video conferencing, telephony, call management and call control across multiple systems, etc.). Also known as IMB Unified Communications.

GENERAL:

PUBLIC RECORDS MAINTENANCE

Public records must be maintained and managed in a manner that protects the integrity of the records within DPSST without regard to the technology or medium used to create or communicate the record, from the time of creation of a public record to the time of final disposition of the public record as determined by their authorized records retention schedule.

ROLES AND RESPONSIBILITIES

Oregon law requires agencies to designate an Agency Records Officer “to coordinate its agency’s Record Management Program” (ORS 192.105(2)(a)). The DPSST records officer will

serve as primary liaison with the State Archivist and receive training from the State Archivist in performing their duties.

DPSST will ensure agency public records are managed in accordance with their authorized records retention schedules, from the time of creation to final disposition, by assigning designated staff/positions with the following responsibilities:

- The Professional Standards Division Director will serve as DPSST's official Records Officer.
- The Records Maintenance & Control Specialist will:
 - Regularly review records, regardless of format to determine if records should be retained or destroyed;
 - Identify and develop retention schedules for new records series;
 - Maintain a filing system of the agency's paper and electronic records, based on authorized retention schedules, which includes the description and location of public records, including records the agency is required to retain due to litigation and/or special audit;
 - Account for records that must be retained beyond their authorized retention period due to mitigating administrative need and submit written justification of the mitigating administrative need to the State Archivist for approval;
 - Develop and implement internal processes and procedures for the transfer, retrieval and destruction of records in accordance with authorized retention periods;
 - Ensure that records are destroyed according to their authorized retention period; and
 - Document the destruction of public records and retain that documentation according to the authorized records retention schedule found in OAR chapter 166 Division 300.
- The Director's Office will:
 - Coordinate and track employee completion of public records management training to ensure agency staff understand how records are properly managed in compliance with authorized records retention schedules;
 - Review and update internal public records management policies and procedures; and

- Obtain State Archivist approval of revisions to the agency public records management policy.

EDUCATION AND TRAINING

Basic public records training will be completed as a component of DPSST new employee orientation training; and incorporated as part of regular employee training, completed once a biennium.

ACCESS AND OWNERSHIP

Without regard to how public records are being stored, DPSST will have custody and control over public records. Through on-going review of technological advances, DPSST will ensure all public records are maintained and accessible for as long as required by authorized retention schedules or litigation holds.

DPSST's disaster mitigation processes are addressed in the DPSST Business Continuity Plan (BCP).

INTEGRITY

DPSST will ensure appropriate access and version controls are applied to all electronically stored records from record creation to final disposition.

The authenticity of each record can be demonstrated either by certified copy of paper records or via accompanying metadata for all electronic records.

RETENTION GENERALLY

DPSST will preserve and classify public records according to ORS Chapter 192, OAR Chapter 166 Division 300 and DAS Statewide Policy 107-004-050 regarding information Asset Classification.

DPSST will work with the Archives Division to establish retention practices to ensure compliance with ORS Chapter 192 and OAR Chapter 166 Division 300.

- **Cloud Computing:** DPSST practices and procedures, with respect to public records management in the Cloud, will comply with DAS Statewide Cloud-Computing Policy (DAS Policy 107-004-150) and OAR Chapter 166 Division 300.
- **Email:** When DPSST receives a public records request, all official email accounts and systems used for official state business are subject to search and production.

- **Official Email Accounts:** In most circumstances, emails sent to or from a state employee's official email account will meet the definition of a public record. Therefore, this policy requires that virtually all email messages composed or sent using employees' official equipment or official email addresses be for primarily business purposes.
- **Personal Email Accounts:** If employees must use personal email accounts to conduct state business, DPSST's requires that employees copy their official email accounts on all such outgoing communications, and forward any received messages on which their official email accounts are not copied immediately or as soon as practicably possible.
- **Instant Messaging:** DPSST's policy regarding Instant Messages is the same as that recited below regarding text messaging.
- **Social Media:** Any content placed on any social media platform must be an accurate copy of an official record that is retained elsewhere by DPSST per the authorized records retention schedules.
- DPSST will develop practices and procedures to manage agency use of social media to ensure public records are accurately captured and retained per authorized records retention schedules. Reference DPSST Policy 351 Social Media.
- **Text Messaging:** DPSST employees may use text messaging to communicate factual and logistical information related to official state business, only if that information has been documented elsewhere or will be documented and retained as a separate public record according to the agency's authorized records retention schedule.
- In the absence of separate documentation, DPSST employees are not to use text messages for official purposes other than for routine communications that do not meet the definition of a public record.

Examples of Acceptable Uses:

- Scheduling.
- Requesting a call or email on a matter, without substantive discussion.
- Requesting or offering logistical assistance (“Can you help me get these boxes to the Capitol?”)

- Forwarding a person’s contact information (“I’m at 503-378-6002.”).
- Explaining your current whereabouts, or inquiring about someone else’s (“We’re at the meeting discussing this morning’s announcement. Are you around?”)
- Describing facts or events that do not relate to the substance of the agency’s work (“Spilled coffee all over myself right before my presentation!”), or that have been or necessarily will be separately recorded (“Mr. Jones just testified to the committee that our bill would cost taxpayers \$3 million.”).
- Inquiring about events like those in the previous bullets (“Has Mr. Jones testified in committee yet?”).

Unacceptable Use:

- DPSST employees must avoid communicating official state business or engaging in discussions regarding primary business of their work over text message.
- As noted above, relevant facts pertaining to official state business may be reported only if they are already documented in separate public records or they necessarily will be documented in a separate public record.
- If, notwithstanding this policy, an employee uses text messages to communicate information (not otherwise documented) relating to official state business or the primary business of the employee’s work, such discussion is to be immediately converted and saved in a separate public record format (e.g., by forwarding the relevant text messages to their official state email).
- Because DPSST requires that no text message-based public records be created or if they are created, that they be converted and saved in an alternate format, which would serve as the official copy of the record - DPSST will not retain text messages.
- DPSST employees’ personal electronic devices should not be used to transmit text messages related to state business. Personal devices are subject to search if used to transmit text messages regarding official state business or information related to an employee’s work that rises to the level of creating a public record.
- **Unified Communications:** DPSST must identify public records created by use of active Unified Communications features and ensure those records are appropriately managed

according to authorized records retention schedules as well as other applicable state and federal policies and laws.

When a public record is created by the use of active Unified Communications features and that public record is not subject to a specific retention schedule, DPSST will maintain the public record in accordance with the email retention schedule.

- **Voicemail:** Unless otherwise required, DPSST will not retain messages on voicemail. Email transcriptions of voicemails that are determined to be public records must be retained according to authorized records retention schedules and may be subject to public disclosure upon request.

STORAGE AND RETRIEVAL

- **Paper Records:** DPSST will maintain a filing system of the agency's paper records based on authorized retention schedules. The filing system will include the location of records, retention periods and procedures for retrieval to ensure accessibility of agency records.
- **Electronic Records:** DPSST will maintain a filing system and naming conventions for all agency records stored in electronic format based on the agency's authorized retention schedules. The filing system and naming conventions will include the location of records in agency directories, retention periods, access controls and privacy conditions to support management of the agency's inventory of electronic records.

DPSST will work with the State Archivist to ensure the agency meets retention periods for all records before any data is destroyed and prior to deleting any large electronic record system.

DISPOSITION AND DESTRUCTION OF PUBLIC RECORDS

DPSST will dispose of or destroy public records according to the requirements of authorized records retention schedules and OAR Chapter 166, Division 300.

Pursuant to ORS 357.855, DPSST employees will consult the State Archivist for advice and assistance with determining the disposition of certain record types not accounted for in state Agency General or Special Retention Schedules, and reconciling unforeseen public records issues.

PUBLIC RECORDS REQUESTS

DPSST must manage public records requests in accordance with ORS Chapter 192 and the Attorney General's Public Records and Meeting Manual.

The following guidelines are established for DPSST's application of this policy:

- OAR 259-025-0000 has been adopted for the protection of DPSST's records and to prevent interference with the regular discharge of DPSST's duties.
- DPSST will require requests for records to be submitted in writing.
- DPSST will make a procedure available to the public for submitting a records request. The procedure must include DPSST's fee schedule. The procedure must be made available to the public on DPSST's website and upon request.
- DPSST will determine whether fees for public records are necessary to recover the actual costs for staff time or materials needed to complete a public records request. DPSST must calculate those fees in accordance with the DAS Statewide Policy # 107-001-030 for Public Records Requests Fees and Charges and the Statewide Standardized Fee Schedule.
- Whenever practicable, DPSST will provide a copy of the record in the form requested. If DPSST determines that the record cannot be provided in the form requested, then DPSST will make the record available in the form in which DPSST maintains the record after considering any steps necessary for the protection of the record and to prevent interference with the regular discharge of DPSST's duties.
- If the public records request is a request to inspect and examine the record instead of being furnished a copy of the requested record, DPSST will furnish reasonable opportunity for the inspection and examination of the record within DPSST's facilities during usual business hours. DPSST may require and designate a DPSST employee to supervise the inspection of requested records.
- DPSST will review all records prepared for release through a public records request for content contained in a record that is exempt from disclosure.
 - When a record is exempt from disclosure, DPSST will notify the requestor, identify the exemption and include direction on how to request review of DPSST's determination.

- When a portion of the content contained in a record is exempt from disclosure, DPSST must redact the exempt content and provide the requestor with access to or a copy of the redacted record including the process of identification of the exemption as noted above.
- A practicable and reasonable response or completion of a records request may be affected by, but is not limited to, factors such as interference with the Department's other duties, the volume of records requested, the staff available to respond to the request, and the time needed to assess the application of exemptions from disclosure.
- Whenever practicable, DPSST will respond to a public records request within five business days of receipt of the request.
 - The request will not be considered received if the designated staff member for processing a public records request is on leave or not scheduled to work.
 - Response means acknowledgement of receipt of the request that includes:
 - Completion of the records request;
 - Confirmation that DPSST is the custodian of the record;
 - Notice that DPSST is not the custodian of the record; or
 - Notice that DPSST must conduct more research to determine if DPSST is the custodian of the record.
- Whenever practicable, DPSST will complete a public records request within fifteen business days of the receipt of the request. If DPSST is unable to complete the records request within the fifteen business days, DPSST will inform the requestor that the records request is still being processed and provide an estimated date for the completion of the records request.
- The fifteen business days do not include any period of time following DPSST's notification and requirement of a fee charged for the completion of the public records request or DPSST's request for additional information or clarification of the records request.
- Completion of a records request occurs when DPSST has:
 - Provided the non-exempt records or the requestor has been directed to where the records are already publicly available; or
 - Asserted records exemptions.

- DPSST will close a public records request without completion of the records request under the following conditions:
 - 60 days have lapsed since DPSST requested additional information or clarification from the requestor and the requestor has not responded to DPSST's request;
 - 60 days have lapsed since DPSST provided the requestor with notice of fees required for completion of the public records and the requestor has not paid the fees; or
 - 60 days have lapsed since the requestor was informed of the denial of a fee waiver and the requestor has not paid the fees.
- DPSST may close a public records request after notifying the requestor that DPSST is unable to complete the records request after the requestor affirmatively declines to provide additional information or clarification requested by DPSST in order to process the records request.

**RECORDS RELATING TO ALLEGED VIOLATIONS OF ORS 703.401 TO 703.490
(PRIVATE INVESTIGATOR LICENSING).**

The DPSST interprets the public records exemption found in ORS 703.480(2)(a) to include allegations that the DPSST determines to be false, unfounded and invalid.