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Municipal Technical Advisory Service
In cooperation with the Tennessee Municipal League

TECHNICAL bulletin

May 8, 2007

DEVELOPING YOUR CITY'S ARCHIVAL POLICY FOR ELECTRONICALLY STORED INFORMATION

Josh Jones, Legal Consultant, and Justin O'Hara, Information Technology Consultant

The use of e-mail in our society is overwhelmingly prevalent. Its use is also overwhelmingly informal. It takes only a cursory glance at the messages in one's inbox to see the casual, even sloppy, nature in which people use e-mail. Most rules of construction and punctuation are abandoned, and messages in this medium are often no more than strings of phrases. Unfortunately, such an informal attitude in writing often carries over to the retention of these communications. Such an approach to e-mail retention by city employees could prove disastrous for your city, especially in the unfortunate situation where litigation arises.

This publication is intended to provide guidance, especially to smaller cities, in the creation and implementation of a practical and cost-effective archiving policy for electronically stored information (ESI). Various state and federal laws require cities to retain certain records and communications for differing amounts of time. The fact that a document is in an electronic format in no way relieves such a responsibility. In fact, recent amendments to the Federal Rules of Civil Procedure (see MTAS Hot Topic #134) clearly stipulate that special procedures must be taken to protect electronic data. To ensure compliance with state and federal laws, every city should institute an ESI archiving policy, which, at a minimum:

1. Determines whether manual or automatic archiving is preferable to retain ESI;
2. Appoints someone to oversee and ensure compliance with this policy; and
3. Ensures that the retention archives are consistent throughout the organization so that retrieval, when necessary, can be timely and thorough.

A well-reasoned and thoughtfully implemented retention policy conveys an image of transparency, which is a benefit to any city. Such a policy can also save large amounts of time and money in the context of a discovery request. A policy for ESI retention should exist in conjunction with a more exhaustive records retention schedule. For an example see *Records Management for Municipal Governments*, also published by MTAS.

The aforementioned records manual provides a nearly comprehensive list of municipal records and the appropriate retention period for each class. Many of these classifications of records, such as warrants and other court documents, may not exist in electronic format. Other records, however, such as employment correspondence, citizen complaints, and other

vital information, are becoming increasingly common in electronic form. The overriding principle here is that record retention is subject based not medium based. Hence, a letter and an e-mail with the same content would require the same retention.

When managing your ESI there are two basic archiving methods: automatic and manual. Deciding which method will best suit the needs of your city is the first step in developing a sound ESI retention policy. Generally, automatic archiving systems are preferable for large organizations that generate large volumes of ESI. While these systems are very thorough, their expense may be cost prohibitive to many cities. Despite its potential for human error, manual archiving will be the likely choice for most Tennessee cities.

The first method is an automated system that would be managed by your Information Technology (IT) department. There are many such systems available through various vendors that will harvest, archive, and delete your ESI based on the rules that are implemented in the software. The rules that you implement are established by your written policy. The recommendation of a specific software product is outside the scope of this document, but a list of a few products and vendors is at the end of this publication. If you choose to employ this method MTAS will be happy to assist in the process of selecting a product for your municipality.

The second method is a manual process managed by the individual users in your municipality. This method is similar to the current approach with paper documents and can even mirror this process if you decide to print all ESI and file it with your current paper documents. Each user would be responsible for all the ESI that is created and received by that user. However, the municipality is responsible for training employees and for developing, maintaining, and auditing this method. If you would like to maintain your ESI in electronic form, consult with your IT department because electronic retention depends on the server resources and technologies available to you. The electronic method below should work even if you do not have an IT department or a server. One example of this method would be to create a filing structure that mirrors the subject guidelines established in the *Records Management for Municipal Government* reference guide. See figure below.

This structure can be established in your e-mail file, in a file server drive, or on the system drive for your specific computer. Please note that if you are keeping this data electronically, for retention purposes keep it in a location that is backed up to another medium on a regular basis. In the example above the retention period was added to the name of the folder to make management of the content easier for the user.

One final distinction to make concerning ESI archiving is that between archiving and backup software. While archiving makes content distinctions and saves ESI accordingly, backup software stores all ESI transmitted during a specified time frame. Hence, backups can be very large, unwieldy databases, and due to technological limitations in retrieval, such a system would not satisfy the requirements of an archive system. Backup systems are designed for disaster recovery situations, not record retention.

This is the time to ensure your city has an adequate archival system for its ESI. Waiting until you receive a subpoena duces tecum will certainly be too late. If you have any further questions or need specific advice in developing and implementing your ESI policy, please do not hesitate to contact your management consultant or the authors of this publication.

For more information, contact your MTAS municipal management consultant.

The following list of archival systems is provided as reference only. This is not a complete list of products and is not an endorsement by MTAS.

Symantec Enterprise Vault
http://www.symantec.com/enterprise/products/overview.jsp?pcid=1018&pvid=322_1

AXS-One Compliance Platform
http://www.axsone.com/products_platform.shtml

EMC Archiving Software
http://software.emc.com/products/archiving/archiving.htm

Ziplip Email Archival
http://www.ziplip.com/solutions.html

HP-Information Lifecycle Management Solutions
http://h71028.www7.hp.com/enterprise/cache/258941-0-0-225-121.html

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