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ADVISORY MEMORANDUM  
**May 7, 2007**

To: Departments, Offices, Agencies, Commissions, Boards, Bureaus, and Institutions

From: R. Steve Edmonson, Director / State Chief Information Officer

Re: Electronic Communication and Public Records

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Electronic communication is becoming the communication method of choice for many state employees both in their personal and professional lives. In the course of a typical day state employees may use a number of products and devices to conduct personal and official state business. This creates the potential for commingling personal and public electronic records. Recent news stories highlight some of the confusion regarding the retention of electronic communication records that document public business when the record is created using a private e-mail account or a privately-owned portable computing device. What is important to recognize is that it is the content of the message that decides whether a particular communication is a public record, not the account or device it was sent from.

Any communication that documents your organization itself and/or functions, policies, decisions, procedures, operations or other activities of your office, is a public record. This applies whether your communication is from a personal e-mail account (ex: yahoo, hotmail), personal instant message account (ex: AIM), personal Internet chat room, text message from your personal cell phone, or other means. Similarly, it applies whether you are sending the communication from a personal laptop, cell phone, Blackberry, PDA, or similar device.

If a state agency authorizes the use of privately-owned e-mail accounts or privately-owned portable computing devices to conduct state business, it has a responsibility to ensure that electronic communication records documenting state business are retained in accordance with the agency's records retention schedule.

Section 149.011(G) of the Ohio Revised Code provides the following definition of a record:

"Records" includes any document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in section 1306.01 of the Revised Code, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.

All electronic communications that meet the criteria of the definition of a record must be retained for the appropriate time period before disposition regardless of the medium used to create, transmit or store the record. In addition, electronic records may be public records as defined by Ohio Revised Code 149.43 and are subject to the public access provisions of Ohio Revised Code 149.43(B).

Ohio IT Bulletin ITB-2007.01, "Electronic Communication and Public Records," provides additional guidance to state agencies. The bulletin and associated state information technology policies are available online at the Office of Information Technology Statewide IT Policy Web site at [www.ohio.gov/itp](http://www.ohio.gov/itp).