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Email Records Guidance

Email is an integral part of how business is conducted every day at the Smithsonian Institution (SI). It has replaced phone conversations, regular mail, and even in-person interaction in many cases.

The Smithsonian Institution Archives (SIA) seeks to preserve email records in a digital records archive. In preparation for this undertaking, SIA and the Rockefeller Archives Center started the Collaborative Electronic Records Project in August 2005 to develop, test, and share the technology to preserve digital documents including email. The SIA digital archive will offer authorized employees and other researchers a trustworthy repository for electronic records with benefits that include retrieval of those records when needed and a reduced drain on computer storage/drives/disks.

All SI employees should be familiar with *SIA Guidance Update – Responsible Recordkeeping: Email Records* and OCIO policy in *Use of Computers and Networks (SI Directive 931)* and *Rules of the Road for Users of Smithsonian Computers and Networks*. This guidance should be used in conjunction with those documents. *SIA Guidance Update – Responsible Recordkeeping: Email Records* provides essential information that defines email records, outlines the importance of authenticity, gives direction on organizing email files, and offers examples of email messages that do not need to be retained. The OCIO documents offer information on proper use, security, and privacy for employees using SI computers and networks.

Importance of email

Email has been around for more than 30 years, and despite its sometimes informal nature, email messages can be **official records**. Electronic records are official records as defined by the *Federal Records Act of 1950*.¹

IDC, a global market intelligence and advisory firm for IT and telecommunications, predicted in a study that nearly 84 billion emails, more than 33 billion of which would be spam, would be sent daily worldwide in 2006.² In 1999, 2.2 billion emails were sent every

¹ 44 U.S.C. 3301. Available online at <http://www.law.cornell.edu/uscode/html/uscode44/usc_sec_44_00003301----000-.html> Accessed March 27, 2006.

² "IDC Examines the Future of Email As It Navigates Security Threats, Compliance Requirements, and Market Alternatives," *Business Wire*, 22 Dec. 2005. [ProQuest](#). Accessed February 3, 2006.

day.³ IDC also estimated that the volume of business email sent annually worldwide would exceed 3.5 exabytes in 2006, more than doubling the amount over the past two years (1 exabyte = 1 thousand petabytes = 1 million terabytes = 1 billion gigabytes).⁴

CERP testbed participants said email is an increasingly important tool in carrying out their duties. Email at the Smithsonian Institution is used for activities from event scheduling to contract review to official notification.

Email can “disappear” due to equipment malfunctions, backup failures, obsolete applications, and simple deletion. Obviously **all email cannot and should not be retained**. While it is hard to determine how much important email has been lost forever in terms of numbers, here are some cases of missing email and its consequences.

- Hundreds of thousands of Clinton administration email messages were not archived due to email system malfunctions and management weaknesses, according to a General Accounting Office Report in 2001. These problems essentially meant the messages were never reviewed by White House lawyers to determine if they were needed by investigators involved in the Monica Lewinsky scandal and the Whitewater case. The messages included emails to and from Vice President Al Gore’s office. More than \$11 million was reportedly spent to restore the records. A Congressional inquiry and a Justice Department criminal investigation also were launched.⁵
- Missing email at the White House was an issue again. According to a February 2006 Associated Press report, “The prosecutor in the criminal case against Vice President Dick Cheney’s former chief of staff said in a Jan. 23 letter that not all e-mail was archived in 2003, the year the Bush administration exposed the identity of undercover CIA officer Valerie Plame.”⁶ Later that month, it was reported that the White House had “recently located and turned over about 250 pages of e-mails from the vice president’s office.”⁷
- Lost email is even a problem at the National Archives and Records Administration (NARA). In 1999, approximately 43,000 email messages sent to and from NARA staff were deleted. In a press release, NARA said, “The electronic messages apparently had been deleted inadvertently. The far greater problem was that we could not restore the messages to the system because of incomplete

³ Sara Sklaroff and others, “E-MAIL NATION / Americans Are Connecting Online Like Never Before, and It’s Changing the Way We Live, Work, and Love,” *U.S. News & World Report*, 22 Mar. 1999. [ProQuest](#). Accessed February 3, 2006.

⁴ “IDC Examines ...” Accessed February 3, 2006.

⁵ United States General Accounting Office, *ELECTRONIC RECORDS Clinton Administration’s Management of Executive Office of the President’s E-Mail System / Report to the Chairman, Committee on Government Reform, House of Representatives*. Apr. 2001. Available online at <<http://www.egov.vic.gov.au/pdfs/gao-01-446.pdf>>. Accessed February 3, 2006. See also Dennis Blank, “GAO knocks Clinton administration’s e-mail recordkeeping,” *GCN*, 8 May 2001. [Proquest](#). Accessed February 3, 2006. See also Greg Toppo, The Associated Press, “Podesta Tells of Lost E-mail / Clinton Was Told Later of the Glitch, He Says,” *Pittsburgh Post-Gazette*, 11 Oct 2000, Region ed. [Proquest](#). Accessed February 3, 2006.

⁶ The Associated Press, “White House e-mail records missing? Possible computer glitch comes to light in CIA leak case,” *CNN.com* 2 Feb. 2006. Available online at <<http://www.cnn.com/2006/POLITICS/02/02/cia.leak.ap>>. Accessed February 3, 2006.

⁷ Toni Locy, “Update 4: Identity of Official to Be Kept From Libby,” *Forbes.com*, 24 February, 2006. Available at <<http://www.forbes.com/business/feeds/ap/2006/02/24/ap2552509.html>>. Accessed March 27, 2006.

backup tapes, which were to be maintained by the staff of the firm with which we contract to maintain our system” (This problem did not affect historical holdings.). Both the contractor and NARA conducted investigations, resulting in the contractor firing personnel and NARA changing backup procedures.⁸

- The private sector has not been immune to lost email issues either. Intel said it may have lost some email following the filing of an antitrust lawsuit by Advanced Micro Devices Inc. in 2005. According to The Associated Press, “Some 400 employees who were identified as having potentially relevant information were not instructed to retain those documents. The reason was a foul-up in checking the list of selected employees versus those who had received so-called retention notices.” There were other problems as well. Intel said some email might be recoverable on backup tapes or within messages with other employees and customers.⁹
- In 2002, *Newsday* reported that regulators fined Salomon Smith Barney, Morgan Stanley & Co., Deutsche Bank Securities Inc., U.S. Bancorp Piper Jaffray Inc., and Goldman, Sachs & Co. \$8.25 million for not preserving memoranda and emails.¹⁰ In 2005 Reuters news service reported that JPMorgan Chase was to pay \$2.1 million in fines to settle accusations over a lack of email retention.¹¹
- Morgan Stanley also agreed to pay \$15 million to the Securities and Exchange Commission in 2006. According to the *Washington Post*, “... The SEC alleges that Morgan Stanley delayed handing over emails, destroyed others and misled SEC investigators about the efforts the firm was making to comply with the government’s request for documents.” A \$1.57 billion judgment against Morgan Stanley also was issued in 2005 in a case where the firm failed to produce emails. A Florida appeals court has overturned that decision. A Florida appeals court overturned that decision in March 2007 and the plaintiff is expected to appeal.¹²

⁸ National Archives and Records Administration, “Statement by the National Archives and Records Administration on the Loss of Electronic Copies of Certain Internal E-Mail Messages.” 2000. Available online at <<http://www.archives.gov/press/press-releases/2000/nr00-22.html>>. Accessed February 8, 2006.

⁹ The Associated Press, “Intel says it lost some e-mails in rival AMD’s antitrust lawsuit,” *International Herald Tribune*, 5 March 2007. Available online at <<http://www.ihf.com/articles/ap/2007/03/06/business/NA-FIN-US-Intel-AMD-Lawsuit.php#top>>. Accessed March 7, 2007.

¹⁰ Combined News Services and Tami Luhby, “Firms Fined \$8.25M For Lost E-Mail,” *Newsday*, 4 Dec. 2002. *Proquest*. Accessed February 3, 2006.

¹¹ Reuters. “JPMorgan Chase fined \$2.1m in missing emails case / Wall Street reviews record-keeping procedures.” 16 Feb. 2005. Available at <<http://www.silicon.com/research/specialreports/compliance/0.3800003180.39127917.00.htm>>. Accessed February 2, 2006.

¹² Kathleen Day, “Morgan Stanley Will Pay Fine Over E-Mails,” *The Washington Post*, 11 May 2006. Available at <<http://www.washingtonpost.com/wp-dyn/content/article/2006/05/10/AR2006051002046.html>>. Accessed May 15, 2006. See also Susanne Craig, “Morgan Stanley Faces U.S. Threat Of Massive Fine,” *Asian Wall Street Journal*, 31 Aug. 2005. *Proquest*. Accessed February 3, 2006. See also Gregory Cresci, “Morgan Stanley to Pay \$15 Million for Failure to Save E-Mails,” *Bloomberg*, 14 February 2006. Available at <<http://www.bloomberg.com/apps/news?pid=10000103&sid=aBoVvwOm0l6l&refer=us>>. Accessed February 15, 2006. See also Jef Feeley and Phil Milford, “Morgan Stanley Wins on Perelman’s \$1.6 Billion Award,” *Bloomberg*, 21 March 2007. Available at <<http://www.bloomberg.com/apps/news?pid=20601087&sid=a5Wqdr7LmlL4&refer=home>>. Accessed March 21, 2007.

Your role

As stated in *SIA Guidance Update – Responsible Recordkeeping: Email Records*, “a record is any official recorded information, regardless of medium or characteristics, created, received, and maintained by a Smithsonian museum, office, or employee.”

SI Directive 501 establishes SIA as “the official repository of all permanently valuable records of the Institution and of documents and other materials collected to assure comprehensive historical evidence of the activities of the Institution.” *SD 501* also states that “all documents created or received by employees of the Smithsonian Institution in the course of official business are records of the Institution, and none may be disposed of except in accord with [*SD 501*] and records disposition schedules established by the Smithsonian Archivist.”

Besides the historical and business reasons for retaining email records in an archive, there are other issues as well. While the Smithsonian Institution is considered an independent trust entity, it generally follows National Archives and Records Administration (NARA) records guidance and does receive Freedom of Information Act requests. SI’s Office of the General Counsel answers the public’s Requests for Records in keeping with the mandate of the “increase and diffusion of knowledge.”

Having quick access to accurate, authentic email records can be critical. Email also can be subject to legal discovery at any business or organization. “Courts will not hesitate to sanction federal agencies for failing to think about and to take adequate steps to ensure the preservation of email (and e-records),” according to NARA’s Director of Litigation Jason R. Baron from a NARA email forum. Agencies also are expected to take appropriate measures to “preserve documents at the onset of litigation.”¹³

Other important reasons for properly managing email include:

- System backups are not the same as archiving
- Some attachments are only readable in electronic form
- Electronic files are vulnerable to loss/corruption
- Taking steps toward a paperless office or less paper

Retention and the digital archive

SI employees handle their email in a variety of ways. Some keep thousands of email in their Inbox, rarely deleting anything. Others have folders by subject, unit, etc., that correlate with the filing of their other electronic and paper documents. Some employees never empty Deleted Items/Trash nor delete Sent Items. Some staff members receive system messages instructing them to delete emails because the system is becoming overloaded.

Alternately there are people who do not save enough. A 2005 *New York Times* article found that some book publishers do not have email retention policies regarding author-

¹³ Jason R. Baron, "Email, Laws, and Backup Tapes: How Can My Agency Cope?", NARA Email Forum 2004. 24 Mar. 2004. Available at <<http://www.armamar.org/nova/Downloads/NARA%20Email%20Forum%202004.ppt#256.1.Email.Laws.and.Backup.Tapes:How.Can.My.Agency.Cope?>>. Accessed November 9, 2005.

publisher correspondence.¹⁴ Important material is lost or just simply deleted without even being printed.

Smithsonian employees need to ensure that email messages that are official business records are being handled and maintained correctly. Every employee also should be responsible for weeding their email. Items to weed include email on which the recipient was copied and general SI announcements. Please see Appendix I of *Responsible Recordkeeping: Email Records* for the complete list.

Email users need to manage not only their Inbox, but Deleted Items/Trash and Sent Items as well. A good folder system within the email application should mirror the employee's or office's paper filing system. Email messages should have clear and complete subject lines. Refer to *Responsible Recordkeeping: Email Records* for additional tips.

Lasting impressions

Email users are familiar with horror stories about inappropriate email messages in the workplace. These emails from former FEMA Director Michael Brown speak for themselves. Consider the ramifications of what you write in your email messages.¹⁵

From: Brown, Michael D
Sent: Friday, September 02, 2005 8:37 AM
To: 'guhman [REDACTED]'
Subject: Re: Still a star!

Last hurrah was supposed to have been Labor Day. I'm trapped now, please rescue me.

-----Original Message-----

From: guhman [REDACTED]
To: Brown, Michael D [REDACTED]
Sent: Thu Sep 01 16:48:39 2005
Subject: FW: Still a star!

I hit send too quickly! Nice to be able to see you again - even if on TV. You get lots of good comments around here - people on the street think you do a really good job of providing updates and other information. Patrick has been very helpful to us on several issues.

Asa's running crazy between DC and Arkansas. I've joined Hutchinson Group consulting firm. So far it's a really small group!

Is this your last hurrah? I'll be in DC end of next week and would love to see you. Suspect you might still be in LA/MS etc - especially knowing how much you love to hang around DC/DHS/NAC etc.

Take care!

--
Betty Guhman

[REDACTED]
cell [REDACTED]

¹⁴ Rachel Donadio, "Literary Letters, Lost in Cyberspace," *New York Times*, 4 Sept. 2005.

¹⁵ Staff Report, *Hurricane Katrina Document Analysis: The E-Mails of Michael Brown*, Rep. Charles Melancon. 2005. Available at <<http://www.melancon.house.gov/SupportingFiles/documents/AnalysisofBrownEmails.pdf>>. Accessed November 3, 2005.

[REDACTED]

From: Brown, Michael D
Sent: Wednesday, August 31, 2005 12:24 PM
To: 'Marty.Bahamonde@dhs.gov'
Subject: Re: New orleans

Thanks for update. Anything specific I need to do or tweak?

-----Original Message-----

From: Bahamonde, Marty <Marty.Bahamonde@dhs.gov>
To: 'michael.d.brown@dhs.gov' <Michael.D.Brown@dhs.gov>
Sent: Wed Aug 31 12:20:20 2005
Subject: New orleans

Sir, I know that you know the situation is past critical. Here some things you might not know. Hotels are kicking people out, thousands gathering in the streets with no food or water. Hundreds still being rescued from homes.

The dying patients at the DMAT tent being medivac. Estimates are many will die within hours. Evacuation in process. Plans developing for dome evacuation but hotel situation adding to problem. We are out of food and running out of water at the dome, plans in works to address the critical need.

FEMA staff is OK and holding own. DMAT staff working in deplorable conditions. The sooner we can get the medical patients out, the sooner we can get them out.

Phone connectivity impossible

More later

Sent from my BlackBerry Wireless Handheld

[REDACTED]

From: Brown, Michael D
Sent: Monday, August 29, 2005 7:52 AM
To: Taylor, Cindy
Cc: Widomski, Michael
Subject: Re: I know its early, but...

I got it at Nordsstroms. Email McBride and make sure she knows! Are you proud of me? Can I quit now? Can I go home?

-----Original Message-----

From: Taylor, Cindy [REDACTED]
To: Brown, Michael D [REDACTED]
Cc: Widomski, Michael [REDACTED]
Sent: Mon Aug 29 07:19:13 2005
Subject: I know its early, but...

My eyes must certainly be deceiving me. You look fabulous - and I'm not talking the makeup!

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