

## INFORMATION & OVERVIEW

# EMAIL GUIDELINES FOR LEGISLATORS

### LEGISLATIVE SERVICES DIVISION EMAIL SERVICES

The Legislative Branch offers legislators the ability to conduct legislative business with the use of an email account administered by the Office of Legislative Information Systems (OLIS).

As a citizen legislator, there is no prohibition on use of public facilities for private business purposes as there are for other public officers and state employees. However, state guidelines provide that state-provided email services are not to be used for “for-profit” or “non-profit” activities; as a legislator, a branch-provided email account should be used primarily for legislative business.

The provided email account enables the Legislative Service Division OLIS staff to assist with “right to know” requests for public information. Since this account is a publicly assigned email address, the legislator should conduct legislative business with this account and treat emails sent or received as public information.

### USING AN OLIS-ADMINISTERED EMAIL ACCOUNT

Access to email can be done from **any device** (laptop, tablet, smartphone, or web-based browser).

Email accounts come with **plenty of storage** (100 GB) to allow legislators to send and receive emails without worrying about managing mailbox capacity.

Each mailbox will be set up with an **archive** to aid in “right to know” requests for public information. This archive will retain emails for five years after the end of a legislator’s term per branch retention guidelines.

An  
OLIS-  
administered  
email account  
should be used  
primarily for  
legislative  
business.

Legislator  
email  
addresses will be  
**Firstname.  
Lastname@  
legmt.gov**

*Continued >*

For security reasons, Legislators will be required to change their password every 180 days to create a **strong password** that:

- Is 12 characters or longer
- Includes upper and lowercase letters
- Includes numbers (0 – 9) and/or special characters  
(~!@#\$%^&\*\_-+=`|\(){}[];:'"<>.,?/)

The password may not contain a Legislator's name or username and must not have been used before up to six times previous.

## WHAT CONSTITUTES PUBLIC INFORMATION?

Many legislator emails are considered public information, and must be managed in compliance with state law and branch policy. These guidelines are designed to assist legislators in anticipation of fulfilling public right-to-know requests and also protect the legislator's individual privacy. These guidelines are general in nature. For more specific information, please refer to the legislative website.

Whether an email constitutes public information depends on the content, not the format or where it resides. Emails may also include any attachment and transmission data (To, Sent, From) that provides context for the record. The public's right to know is not about whom the request is from or the purpose for which it is sought. The public's right to know applies to certain emails involving official legislative business in both a legislator's private and public email accounts. The Montana Constitution guarantees that "no person" may be deprived of the right to examine such documents. (Art. II, Sec. 9, Mont. Const.) A person from outside the state can make a request directly of a legislator or the public body without regard to residence.

This guidance will assist legislators in retaining and managing emails as public records according to branch retention schedules. The decision tree will assist in determining whether a right to individual privacy exists that may outweigh the public's right to know.

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an email  
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USE THE FOLLOWING TO HELP YOU MANAGE, ARCHIVE, AND DELETE EMAILS APPROPRIATELY.

Is the email considered Public Information?

2-6-1002(11): Public information is "information relating to the transaction of official business, regardless of form, except for confidential information that must be protected against public disclosure under applicable law"

Yes

THE CONTENT OF THE EMAIL RELATES TO YOUR DUTIES OR YOUR POSITION AS A LEGISLATOR

As a member of the Montana State Legislature, some of your emails may be subject to disclosure under the provisions of the Montana Public Records Act, beginning at § 2-6-1001, MCA.

No

THE CONTENT OF THE EMAIL RELATES TO NON-LEGISLATIVE BUSINESS

### RETENTION POLICY

Emails distributing **official committee** documents such as agendas, reports, or committee bill drafts are retained and maintained by legislative branch staff so they can be **deleted** by a legislator

Emails that are **tangentially related** to your duties or position as a legislator, such as a newsletter from NCSL, are transitory records and can be **deleted**

Emails containing discussions about legislative business **must be kept for 5 years** following the conclusion of the legislation cycle in which they were sent or received (see next page for further explanation).

DELETE DELETE 5 YEARS

Examples may include communications related to:

- Personal business
- Political activity
- Your non-legislative employment

Since these are **nonrecords**, you can **delete** these emails as soon as you are done with them

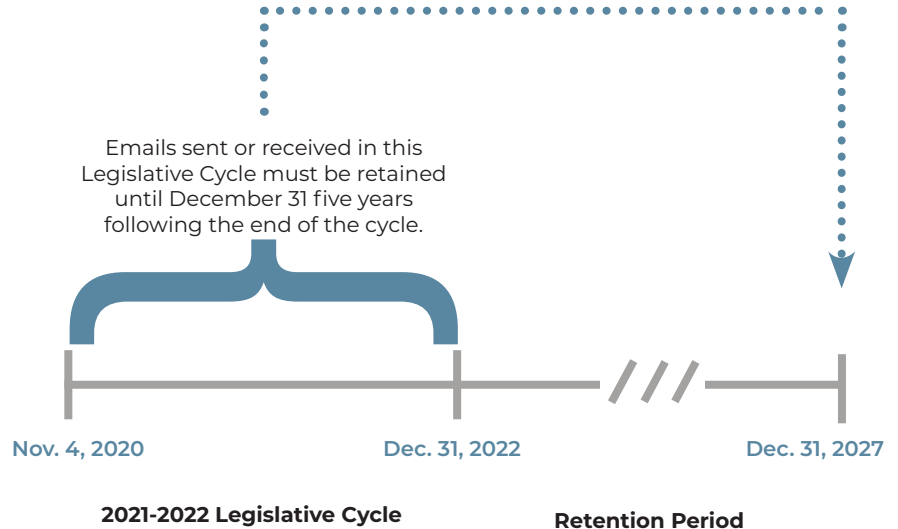
DELETE

This guidance reflects legislator email retention policy adopted by the Legislative Council March 15, 2018.

## ABOUT THE RETENTION POLICY

Emails containing discussions about legislative business must be retained as public records. The retention period for these emails is based on the 2-year legislative cycle beginning and ending with the November general election in even-numbered years. Emails must be retained until December 31, 5 years following the conclusion of the legislative cycle in which they were sent or received.

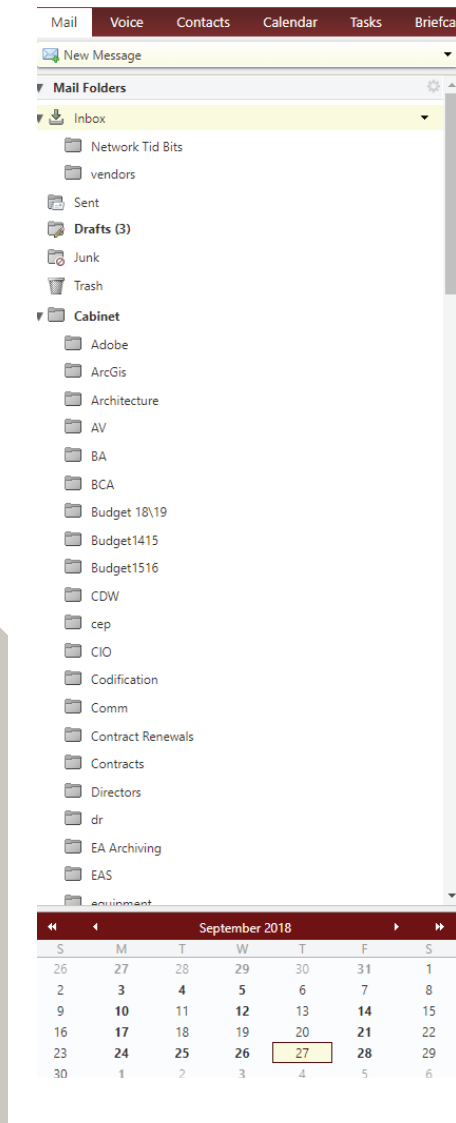
**For example:** For example: an email sent on October 31, 2020 would be part of the 2019-2020 legislative cycle and would need to be retained until December 31, 2025. An email sent on November 16, 2020 would be part of the 2021-2022 legislative cycle and could be deleted December 31, 2027.



## LEGISLATIVE BRANCH PROCEDURE FOR ANSWERING PUBLIC INFORMATION REQUESTS FOR LEGISLATOR EMAILS

- 1** Policy, procedure, and request forms will be easily accessible via the legislative website.
- 2** A member of the public may direct a request for public information to the executive director or legal services director in the Legislative Services Division (LSD). If a legislator receives a request directly, the legislator may refer the request to the executive director or legal director for assistance and provide the necessary information from the legislator to fulfill a request.
- 3** The LSD will inform legislator(s) if a request is received directly and determine whether the requested emails are on an OLIS-administered account or a private account.
- 4** The LSD will review the request and if necessary, contact the requester for clarification or greater specificity.
- 5** If the requested emails are on a private account, LSD will forward the request to the legislator. The legislator will be responsible for fulfilling the request pursuant to 2-6-1006, MCA. The legislator may seek legal advice or other assistance from the legislative legal services office. The attorneys are able to assist a legislator in deciding whether an email is public or if a privacy right may exist.
- 6** If the requested emails are on an OLIS-managed email account, the director will work with the legislator(s) and legislative services staff to fulfill the request pursuant to 2-6-1006, MCA. This may include consulting with an attorney for questions regarding whether information is public or private, or by request of the legislator, performing an electronic search of the account.
- 7** The legal services office will review emails with the legislator as necessary prior to delivering the email to the requester. Upon request, a copy of all materials supplied to the requester will be sent to the legislator.

# RECOMMENDATIONS



**1** Use the OLIS-provided email account for legislative business and limit that account use to official business.

**2** Inform correspondents that emails related to official business ARE public records and may be subject to release if requested. This disclaimer will be attached to all outgoing emails from this account; *"Emails to and from legislators involving legislative business may be subject to public disclosure under the Right to Know provision of the Montana Constitution and Title 2, Chapter 6, part 10, MCA. This may include the sender, recipient, content, and attachments."*

**3** Practice good records management by deleting nonrecords regularly. Consider creating folders by session, committee, bill draft, etc. and moving email from your inbox into folders regularly. Retain emails regarding legislative business for 5 years following the end of the legislative cycle in which the email was sent or received.

**(406) 444-0912  
FOR MORE  
INFORMATION OR  
TO SET UP AN  
EMAIL ACCOUNT.**