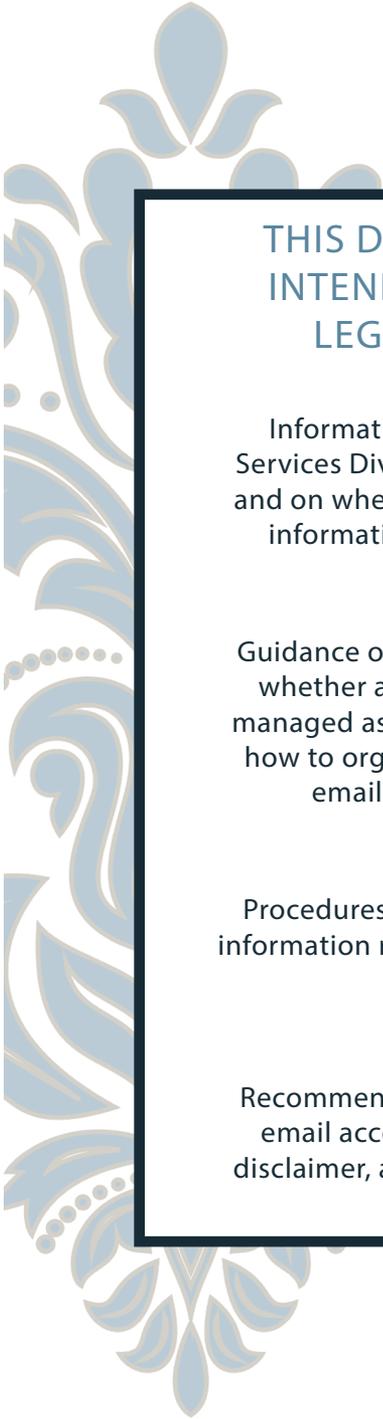


EMAIL
GUIDELINES FOR
LEGISLATORS

Prepared for
Legislator Orientation

November 2018



THIS DOCUMENT IS
INTENDED TO GIVE
LEGISLATORS:

Information on Legislative
Services Division email services
and on where to find additional
information and resources

Guidance on how to determine
whether an email should be
managed as a public record and
how to organize public record
emails for retention

Procedures for fulfilling public
information requests for legislator
emails

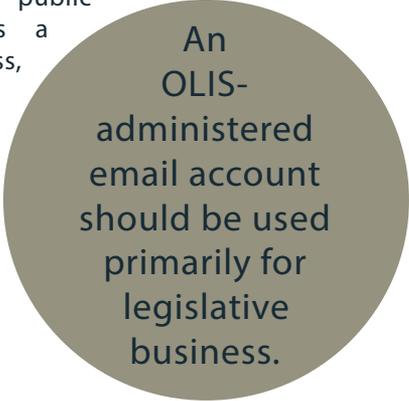
Recommendations on creating
email accounts, providing a
disclaimer, and managing email
records

LEGISLATIVE SERVICES DIVISION EMAIL SERVICES

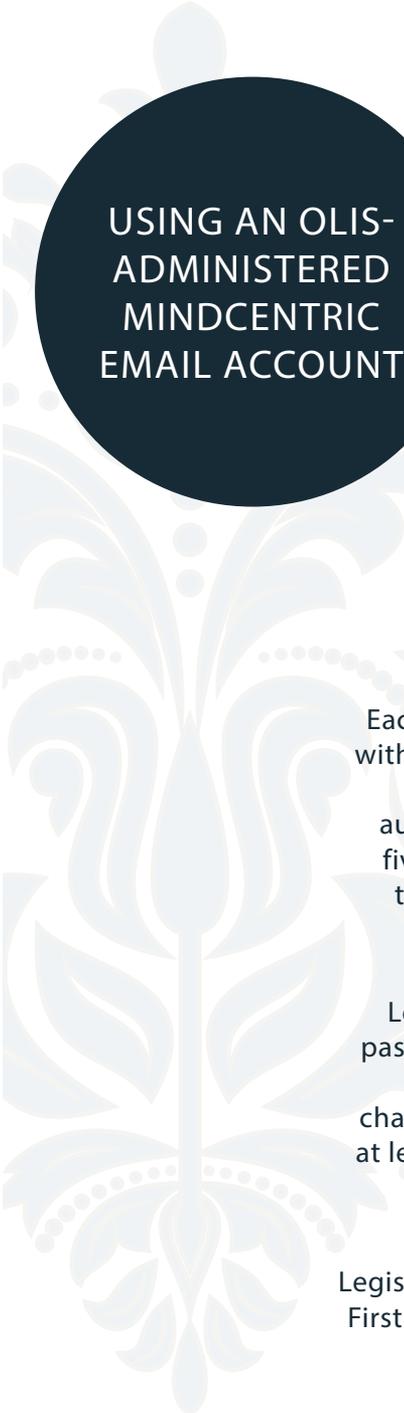
The Legislative Branch offers legislators the ability to conduct legislative business with the use of a Mindcentric email account administered by the Office of Legislative Information Systems (OLIS). This account will be set up only at the request of the legislator.

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 Mindcentric email account should be used primarily for legislative business.

When requested, the Mindcentric email account enables the Legislative Service Division OLIS staff to work with Mindcentric 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.



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



USING AN OLIS- ADMINISTERED MINDCENTRIC EMAIL ACCOUNT

Access to email through the Mindcentric accounts is intended to be through any device (laptop, tablet, smartphone, or web-based browser).

Mindcentric email accounts come with plenty of storage (25 GB) to allow legislators to send and receive emails without worrying about managing mailbox capacity.

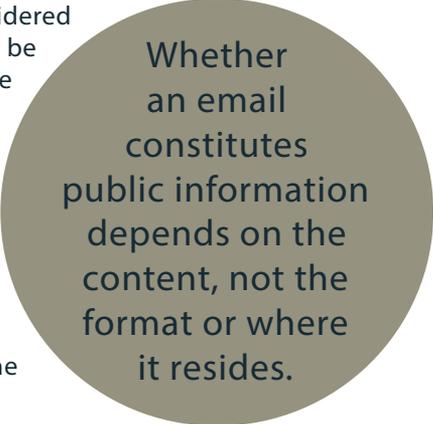
Each Mindcentric account will be set up with an archive to aide in “right to know” requests for public information. This automatic archive will retain emails for five years after the end of a legislator's term per branch retention guidelines.

Legislators are not required to change passwords on the Mindcentric accounts, but a strong password of at least 8 characters, at least one uppercase letter, at least one lowercase letter, and at least one number is recommended when creating a password.

Legislator email addresses will be
Firstname.Lastname@mtleg.gov

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.

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.

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”

No

THE CONTENT OF THE EMAIL RELATES TO NONLEGISLATIVE BUSINESS

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

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.

Yes

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

RETENTION POLICY

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

DELETE

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

DELETE

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 page 7 for further explanation).

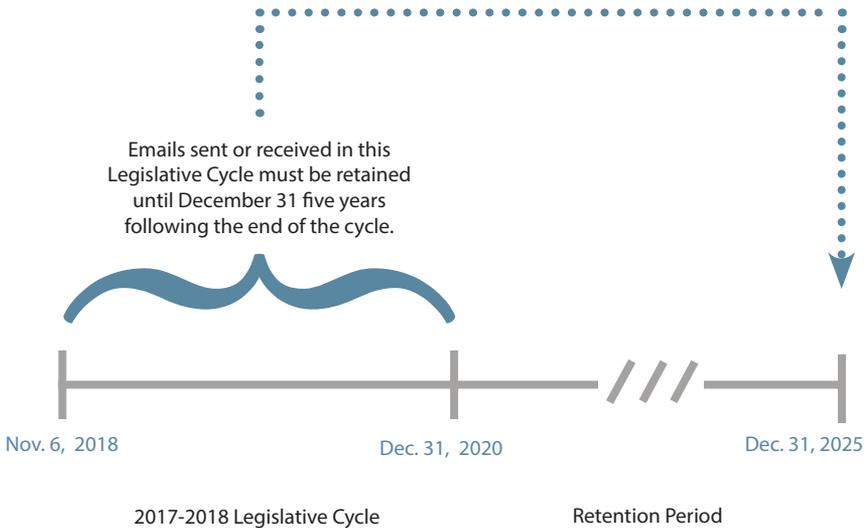
5 YEARS

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: an email sent on October 31, 2018 would be part of the 2017-2018 legislative cycle and would need to be retained until December 31, 2023. An email sent on November 16, 2018 would be part of the 2019-2020 legislative cycle and could be deleted December 31, 2025.



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 Mindcentric account or a private account.

4 The LSD will review request and if necessary, contact requestor for clarification or greater specificity.

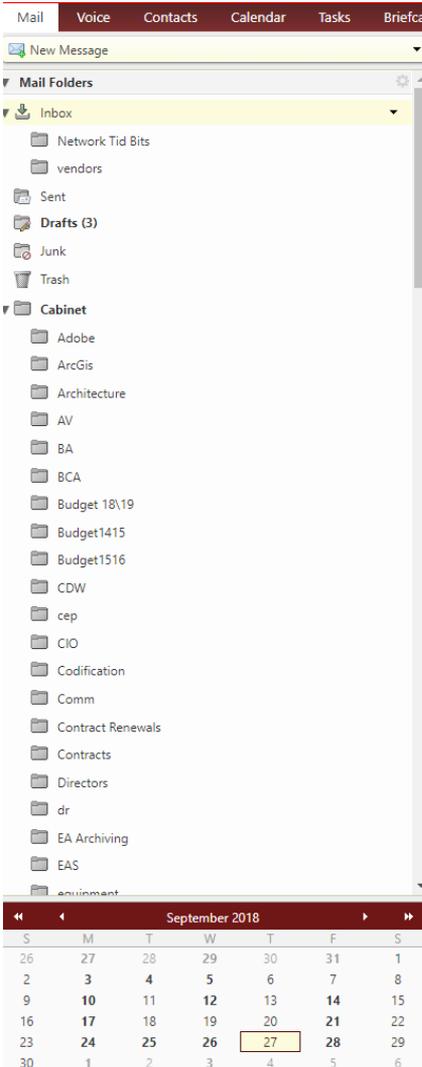
5 If the requested emails are on a private account, LSD will forward the request to the legislator. The legislator will be responsible for fulfilling the request pursuant to 2-6-1006, MCA. The legislator may seek legal advice or other assistance from the legislative legal services office. The attorneys are able to assist a legislator in deciding whether an email is public or if a privacy right may exist.

LEGISLATIVE BRANCH PROCEDURE FOR ANSWERING PUBLIC INFORMATION REQUESTS FOR LEGISLATOR EMAILS

6 If the requested emails are on an Mindcentric 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 Mindcentric account.

7 The legal services office will review emails with the legislator as necessary prior to delivering the email to the requestor. Upon request, a copy of all materials supplied to the requestor will be sent to the legislator.

RECOMMENDATIONS



1 Create an email account for legislative business, whether a private one (gmail, yahoo, etc.) or ask for a Mindcentric account through Legislative Services (see Email Services below). With a Mindcentric email account, limit that account use to official business as much as possible.

2 Inform correspondents that emails related to official business ARE public records and may be subject to release if requested. Sample disclaimer: "Legislators are publicly elected officials. Legislator emails sent or received involving legislative business may be subject to the Right to Know provisions of the Montana Constitution and may be considered a "public record" pursuant to Montana law. As such, email, sent or received, its sender and receiver, and the email contents, may be subject to public disclosure, except as otherwise provided by Montana law."

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.

For more information:
Contact Legislative Services Division
at (406) 444-0912
to set up an email account.