



WHAT A DEAN NEEDS TO KNOW ABOUT... *PUBLIC RECORDS AND EMAIL*

THE LAW

Montana Constitution

Article 2, Section 9. Right to know. No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

Article 2, Section 10. Right of privacy. The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

Montana Statutes:

2-6-1002. Definitions. As used in this chapter, the following definitions apply:

(1) **"Confidential information"** means information that is accorded confidential status or is prohibited from disclosure as provided by applicable law. The term includes information that is:

- (a) constitutionally protected from disclosure because an individual privacy interest clearly exceeds the merits of public disclosure;
- (b) related to judicial deliberations in adversarial proceedings;
- (c) necessary to maintain the security and integrity of secure facilities or information systems owned by or serving the state; and
- (d) designated as confidential by statute or through judicial decisions, findings, or orders.

...

(11) **"Public information"** means information prepared, owned, used, or retained by any public agency relating to the transaction of official business, regardless of form, except for confidential information that must be protected against public disclosure under applicable law.

...

(13) **"Public record"** means public information that is:

- (a) fixed in any medium and is retrievable in usable form for future reference; and
- (b) designated for retention by the state records committee, judicial branch, legislative branch, or local government records committee.

UNIVERSITY POLICIES

MUS Retention Schedule: <http://mus.edu/che/directives/GeneralRecordRetentionSchedule.pdf>

There is no specific guideline for retention of email, rather the nature of the communication determines the retention timeline. For example, records of a search are to be kept for the duration of the search plus three years, but records of employee discipline are to be kept through the end of employment plus 10 years. Evidence of both actions may be kept in email, but the length of retention is significantly different.

BOR Policy 1303.1-User Responsibilities: <http://www.mus.edu/borpol/bor1300/1303-1.pdf>

BOR Policy 1303.3-Electronic Mail: <http://www.mus.edu/borpol/bor1300/1303-3.pdf>

MUS Public Records Guidelines: <http://www.mus.edu/che/PublicRecordsGuidelines.pdf>

WHAT DOES THIS MEAN FOR YOU?

- Assume that every document you create could be subject to public disclosure.
 - Avoid discussions of personal topics;
 - Use the “Front Page” test: How would this look in the Chronicle?;
 - Be accurate and clear in your requests and directions.
- Maintain records of final actions and important decision points.
- Avoid using personal email for University business; it could open your personal email to inspection.
- If you get a public records request (also referred to as “open records” “right to know” and FOIA):
 - Contact Legal Counsel for assistance;
 - Don’t delete records that have been requested;
 - Notify record holders of the need to gather and preserve records.

WHO TO CONTACT SHOULD AN ISSUE ARISE:

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