Best Practices for Electronic Communications Usage in North Carolina:
Text and Instant Message

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Contents

1. PURPOSE

Mobile devices and instant messaging services provide a method of communication for employees to the workplace and workday. Direct communication is possible almost anywhere at any time, from short messages to long exchanges and can enhance employee productivity. Employees have a duty to manage records related to public business according to North Carolina statutes[1] and existing guidelines by the Department of Natural and Cultural Resources. This includes communication enabled by instant messaging and text messaging applications. Employees must also remember that these forms of communication, like e-mail or social media correspondence, may result in a record being hosted by a third-party service provider or forwarding service. These work-related communications are subject to the same rules and regulations as other public records, regardless of whether the employee uses a personal or workplace-issued device.

This document is intended to address what instant messaging (IM) and text messaging are and how they may be used in the workplace. It also addresses employee responsibilities according to general statutes and records retention and disposition schedules.

2. WHAT IS TEXT MESSAGING? WHAT IS INSTANT MESSAGING?

2.1 TEXT MESSAGING

Text messaging, sometimes called "texting," usually refers to the use of a "short message service" (SMS), to send an onscreen message to the recipient's phone. SMS messages are limited to 160 characters. A character is defined as any symbol that requires one byte of storage, including numbers, letters, symbols, spaces, and punctuation. Other forms of text messaging include multimedia message service (MMS), which allows users to send pictures, video, and other non-text media, and enhanced message service (EMS), which can include formatted text.

Text messages are exchanged by "piggy-backing" on small information transfers that regularly occur between a phone and a carrier's infrastructure. Messages are not sent directly from phone to phone but are stored and forwarded by phone networks using standard communication protocols. Text messages "wait" for the recipient to receive a signal if the phone is off or has no signal.

Every text message also contains data about the message, including the sender and recipient's phone number of the message, a time stamp, the destination phone number, and the format. This important information, which describes context and content of other data, is known as metadata.[2]

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[1] "North Carolina General Statutes." Chapter 132: Public Records. Accessed November 21, 2016. http://www.ncleg.net/gascripts/Statutes/StatutesTOC.pl?Chapter=0132.

[2] "Metadata as a Public Record in North Carolina: Best Practices Guidelines for Its Retention and Disposition" describes guidelines for metadata. **http://archives.ncdcr.gov/Portals/3/PDF/guidelines/Metadata_Guidelines.pdf**

E-mail software and online services can also send text messages to mobile devices. Text messages can also be sent from one source to many different recipients, allowing an office to quickly contact many of its employees or clients at once, such as during an emergency.[3]

2.2 INSTANT MESSAGING

Instant messaging (IM) is an online service where a user employs client software on a phone, personal computer (PC) or other device to communicate with someone using compatible software (e. g., iMessage™ service from Apple®, Skype for Business by Microsoft, or the Gchat™ service linked to Gmail® client from Google). Social media sites such as Facebook© also have the capability to allow instant messaging between two registered users.

Even basic mobile phones capable of sending and receiving data often feature pre-installed instant messaging software, allowing users to communicate with other users of these services from their mobile devices.

When a user logs on, the server loads a list of available recipients (a "friends list"). After connecting the users, the service allows each user's software to "talk" to software directly on the other end without further use of the server. This is the traditional model of instant messaging, but newer services sometimes save messages "in the cloud" for thirty days. The National Institute of Standards and Technology (NIST) defines cloud computing as a "model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction."[4] In the example mentioned previously, the cloud refers to servers provisioned by providers in order to transact business.

IM users must keep in mind that messages they send may be stored temporarily on a server, an application that until recently did not apply to user-to-user communication through instant messaging.

Employees must keep in mind the guidelines for using text/IM and for managing the messages when they constitute public records as defined by G.S. § 132.

2.3 CONVERSATIONS

While even single text messages and instant messages that concern public business are public records, communications on newer messaging services often result in *conversations*. These are a record of the messages exchanged between individuals, kept in chronological order, much like an e-mail exchange. Some devices display messages in conversation form automatically. Others include it as an optional setting. However, conversations addressing multiple topics can result in multiple retention periods within the same conversations; therefore, retention of the conversation will default to the longest retention.

3. GUIDELINES FOR USE OF MESSAGING TECHNOLOGIES

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[3] One example is Alert Carolina, a text-messaging service that notifies UNC-Chapel Hill students, faculty, and staff of emergency situations on campus. See **http://alertcarolina.unc.edu.**

[4] Peter Mell and Timothy Grance, *The NIST Definition of Cloud Computing (Draft)*, NIST, January 2011 **http://nvlpubs.nist.gov/nistpubs/Legacy/SP/nistspecialpublication800-145.pdf** , accessed November 3, 2016.

3.1 CONSIDERATIONS FOR USE OF MESSAGING TECHNOLOGIES IN PUBLIC BUSINESS

In implementing policies or allowing the use of text and instant messaging tools, agencies should plan for the use of tools for conducting public business. Each agency's officers and managers should be aware of the widespread use of these services and should notify employees of appropriate use of text/IM. Agency leaders should also consider the benefits of text/IM for their employees and work to retain these benefits or find alternatives while adhering to records retention and disposition responsibilities.

Questions to consider:
- How is text messaging/IM currently used in the office? How often?
- Are there any needs specific to your office that text messaging/IM helps to address -- administrative purposes or communication with other departments/third parties?
- Do employees or officers use workplace-issued devices for this type of communication? Personal devices? What platforms?
- How have employees been informed about managing electronic communications in accordance with the public records law and other records management responsibilities? How are text messages and instant messages stored and retained currently by your office?
- Is there an existing method for transcribing or storing text messages/IM? If not, how can existing practices be adapted? Or is a new method needed?
- How can office policy address the legal implications of e-discovery regarding the use of texting/instant messaging?

Agency leaders can use this information to help determine if and how their agencies should use these communication platforms in conducting public business. Communication about government business in *all* formats results in the creation of public records as defined by N.C. G. S. § 132.

3.2 APPROPRIATE USE

As with all records, text/IM logs relating to public business must be retained and managed in accordance with the requirements of state law. N.C.G.S. § 132 defines public records as "documents, papers, letters… *regardless of physical form or characteristics*, made or received . . . in connection with the transaction of public business. . ." (emphasis added).

3.2.1 PERSONAL USE

DNCR strongly encourages agencies to develop a policy regarding the use of employer-issued devices and personal use of workplace-issued equipment. At a minimum, employees shall not use workplace-issued mobile phones to send text messages for political purposes, to conduct private commercial transactions, or to engage in private business activities.

3.2.2 PROFESSIONAL USE

Employees should be professional in their communications. While text/IM allow for quicker response and rapid exchange of ideas, employees should
- keep personal and work-related messages separate,
- ensure that their messages are legible and concise,
- apply the same professional standards to these exchanges as they do to work-related electronic-mail (e-mail) or letters,

- be aware that messages related to public business can be disclosed under NC public records law.

If employees choose to use text or instant messaging technology, they must pay careful attention to their responsibilities for maintaining public records.

4. RECORDS AND RETENTION

G. S. § 132 defines public records by their *content*, not by their *media or format.* Both personal and workplace-issued devices, when used by employees to conduct public business, result in communications that constitute public records subject to the requirements of G.S. § 132, as further informed by guidance from the North Carolina Department of Natural and Cultural Resources.

Employees are responsible for understanding and following all applicable retention schedules which set out how long records should be retained and whether they are to be retained in office permanently, destroyed, or transferred to the custody of the State Archives. As noted above, records are defined by content and not the format of a given communication, so employees must appropriately identify the type of record.

Even though agency records retention schedules may not explicitly mention text or instant messaging, communications through these media are nevertheless covered. Records retention and disposition schedules include a variety of items that apply to text or instant messaging.

Often conversations can be retained all at once, in order to show the exchange from start to finish. Many mobile devices and instant messaging services and programs allow entire conversations to be saved and forwarded. Operating software from different platforms may have tools to retain messages or there may be third party applications that do this. Employees are responsible for ensuring the retention of messages so they can be produced when responsive to either a records request or litigation.

NOTE: Agencies and employees should not rely on service providers to provide records created by text/IM. Service providers may keep their own records of text and instant messages but they are not automatically obligated to provide a copy of those records to government entities.[5] Employees using personal devices are responsible for managing these records and ensuring that they are retained as required by the records retention and disposition schedule. Applications and tools developed for different platforms can potentially help employees in this matter.

Agencies who provide employees with work issued devices should be mindful of these issues and seek to address them in their contracts and or Service Level Agreements with service providers to ensure they can obtain copies of their public records.

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[5] For more information, please refer to the Federal Stored Communications Act. "18 USC Ch. 121: STORED WIRE AND ELECTRONIC COMMUNICATIONS AND TRANSACTIONAL RECORDS ACCESS." 18 USC Ch. 121: STORED WIRE AND ELECTRONIC COMMUNICATIONS AND TRANSACTIONAL RECORDS ACCESS. October 26, 1986. Accessed November 23, 2016. http://uscode.house.gov/view.xhtml?path=/prelim@title18/part1/chapter121&edition=prelim.

Following is model contract language for agencies and local governments for obtaining copies of public records from service providers on employer issued mobile devices:

"Service provider agrees to allow agency to collect all text messages from its electronic messaging system. Service provider agrees that agency has right to access all data, regardless of who created the content and for what purpose. Service provider will provide text messages by [specific procedures] according to the following timeline: [timeline]. The following positions within the agency are authorized to make such a request to [whom within the service provider]."[6]

5. SECURITY

All users should treat their devices as potential avenues for information theft. Those who use devices for public business should protect them as they would any point of access to secure information. Employees should comply with all statewide policies issued by the North Carolina Department of Information Technology.[7] Local agency employees are encouraged to follow these guidelines as best practice.

Users can protect themselves from security risks by following some simple rules:
- don't let strangers use a workplace-issued device,
- don't leave a device unattended, as this can provide an easy route for others to install software or steal information,
- don't use unsecured devices to send sensitive or confidential information about workplace business.

6. CONCLUSION

Text and instant messaging bring new functions to the workplace, with corresponding responsibilities. Employees are responsible for properly maintaining records according to statutes and guidelines regardless of their format. Users of these media must also be aware of security and productivity issues raised by text and instant messaging. As these media continue to grow within the workplace, employees must remain mindful of their duties regarding text/IM or similar-type communications that meet the definition of a public record as found in G.S. § 132.

As with any tool for communication, employees must balance the capabilities of these technologies with standards and guidelines for recordkeeping, transparency, security, and professionalism.

All agency communication tools and methods should be used in ways that maximize transparency, maintain the security of the network, and adhere to professional standards. This will help ensure that employees avoid potential problems with these new communication methods while still reaping the

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[6] Cloud Computing: Contracting Considerations for Inclusion, UNC School of Government, accessed Nov. 1, 2016

[7] "NC IT Policies." North Carolina Information Technologies Policies. Accessed December 12, 2016. **https://it.nc.gov/statewide-resources/policies** .

benefits. DNCR strongly encourages state agencies and local governments to assess the use of IM and text messaging communications and provide guidance to their employees regarding the retention and management of these messages.