Policy Type:   Board

Category:   Legal

Policy Name:   Santa Clara County Record Retention and Destruction Policy - Board Policy 3.57

Policy Owner:   County Counsel

3.57 SANTA CLARA COUNTY RECORD RETENTION AND DESTRUCTION POLICY

3.57.1 Purpose

This document sets forth a Record Retention and Destruction Policy (Policy) for the County of Santa Clara, its departments, agencies, offices, officers and employees as defined in sections A1-17 and A1-18 of the Santa Clara County Ordinance Code (County). The Policy sets forth mandatory procedures to properly and lawfully retain and destroy “Records,” defined in Section 3.57.2.

The Policy is intended to: (1) establish consistent procedures throughout the County for the management, retention, and destruction of Records; and (2) ensure compliance with laws that govern the retention and destruction of those Records that qualify as “Official Records,” defined in Section 3.57.2.
3.57.2 Definitions

(A) Records

Records are synonymous with documents and include—but are not limited to—any handwriting, typewriting, printing, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing; any form of written communication or representation, including letters, words, pictures, symbols, or combinations thereof; and any record thereby created, regardless of the manner in which the record has been stored or its physical form or characteristics. Records include “Electronically-Stored Information,” defined in this Section 3.57.2.

(B) Electronically-Stored Information

Electronically-Stored Information consists of Records stored on a computer or created by using a computer, or any other electronic medium or device for electronic processing, which requires a computer or other electronic medium or device to display or process the Records.

Electronically-Stored Information includes—but is not limited to—e-mails, text messages, instant messages, digital images, voicemail, photographs, sound recordings, compact disks, audiotapes, videotapes, spreadsheets and other data or data compilations stored in any electronic medium from which information can be obtained. Electronically-Stored Information also includes electronic information created through the use of, and contained in, Social Media Applications, as defined in the County’s Social Media Application Policy.
(C) Official Records

An Official Record is a Record in the custody of the County that meets any of the following criteria: (1) the Record was prepared to disseminate information to the public; (2) the Record was prepared and retained to memorialize an official transaction; (3) the Record is required by law or regulation to be retained; or (4) the Record is necessary to the discharge of a County employee's official duties and was made or retained for the purpose of preserving its informational content.

Official Records do not usually include preliminary drafts, notes, or memoranda. But preliminary drafts, notes, or memoranda used in the preparation of Official Records may themselves be Official Records when their retention is necessary to disseminate information to the public, to memorialize an official transaction, or to the discharge of a County employee's official duties and was made to preserve their informational content. Official Records also do not include personal communications that do not meet one of the criteria above.

An email may or may not constitute an Official Record. When an email is sent to others simply to communicate messages, and not for one of the purposes described above (e.g., to disseminate information to the public), the email likely is not an “Official Record.”

(D) Record Retention and Destruction Schedules

Record Retention and Destruction Schedules are written statements of retention and destruction requirements that apply to County Records. The schedules specify the length of time that Official Records must be maintained before destruction. The Countywide Retention and Destruction Schedule (the Countywide Schedule) reflects retention
and destruction requirements for general categories of Official Records pertaining to multiple County departments, agencies and offices (Departments). Departmental Record Retention and Destruction Schedules (Departmental Schedules) are prepared by County Departments and include retention and destruction requirements with respect to specific Official Records that Departments prepare, own, receive, use, or retain. Whether a Record constitutes an Official Record is a determination made by the Department(s) with custody of the Record.

3.57.3 Background

The County generates, receives, handles, and maintains many Records in the performance of its business activities as a public entity. There are at least four reasons why the County must effectively manage and ensure the proper retention and destruction of Records. First, the efficient, effective, and economical management of Records in a regulated environment will ensure the availability of information in the conduct of County business and will allow the County to establish and maintain control over its information flow.

Second, the law requires that certain types of Official Records must be retained for specified time periods. To comply with these laws, it is essential that Official Records are properly managed and retained during the mandated retention period, and then timely destroyed.

Third, the California Public Records Act (CPRA) is intended to increase freedom of information by giving the public access to certain information in the possession of public agencies. (Govt. Code §§ 6250-6270.) The CPRA gives members of the public the right to inspect public records that are not exempt from disclosure. (Govt. Code § 6253.) To ensure public access to
Records, it is essential that all Records are properly managed to comply with the law.

Fourth, the law imposes an obligation on the County to preserve relevant evidence as soon as the County reasonably anticipates litigation against or by the County. The duty to preserve evidence includes an obligation to identify, locate, and maintain Records that are relevant to specific, predictable, and identifiable litigation. Once the obligation to preserve Records has been triggered, record retention and destruction policies must be suspended and Litigation Holds implemented to ensure the preservation of relevant Records. (See Board Policy 3.56, Litigation Hold Policy.) Appropriate policies for the management of Records enable the County to properly implement Litigation Holds.

3.57.4 Scope of Policy

This Policy applies to all Records generated, prepared, authored, produced, owned, used, created, retained, or received by the County during the ordinary course of County business, provided those Records are within the possession, custody, or control of the County.

This Policy is distinct from—and in addition to—the requirements of the CPRA, which gives members of the public the right to inspect “public records.” The term “public records” is defined more broadly in the CPRA (Govt. Code § 6252(e)) than the term “Official Records” is defined in this Policy. The CPRA defines “public records” to “include [] any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.” Govt. Code § 6252(e). Accordingly, a document that is not an Official Record may still qualify as a public record. Thus, compliance with this Policy does not ensure compliance with the
CPRA; County employees must separately adhere to both this Policy and the CPRA.

**3.57.5 Policy**

(A) Departmental Record Retention and Destruction Policies and Retention Schedules

The development of Departmental Record Retention and Destruction Policies (Departmental Policies) consists of four primary steps. First, Departments must prepare an inventory of their Records by identifying and cataloguing the types, classes, and categories of existing Records, where and how those Records are kept, the volume of those Records, and the uses of each type, class, and category of Records.

Second, Departments must appraise the catalogued Records by: (1) identifying Official Records and separating them from non-Official Records; and (2) identifying Records that can be destroyed immediately and the appropriate method of destruction.

Third, upon completion of Departmental Record inventories and appraisals, Departments must prepare Departmental Schedules, which must be consistent with the Countywide Schedule. To prepare these schedules, Departments must determine the retention period for each type, class, or category of Official Records as described in Section V. B. below. Also, Departments must determine whether Official Records have specifically-articulated vital, administrative, legal, fiscal, or research/historical/archival value, as defined in Section 3.57.5(B). Departmental Schedules must contain the title of each category of Official Records; a description of those Official Records; applicable retention periods; and applicable laws, regulations, and/or policies.
mandating or warranting the stated retention periods. Departmental Schedules must also identify Records with specifically-articulated vital, administrative, legal, fiscal, or research/historical/archival value, as defined in Section 3.57.5(B), and list the extended retention periods for those Records. The Offices of the Board of Supervisors are not required under this Policy to prepare or maintain Departmental Schedules.

Departments must review their Departmental Schedules with County Counsel at least every five years to ensure that the schedules comply with the law and properly reflect Departmental record retention and destruction practices. Whenever there is a change in the legal requirements for record-retention periods or a significant change in Departmental recordkeeping practices, Departmental Schedules must be amended immediately. Departments should consult with County Counsel to determine whether any changes in Departmental recordkeeping practices are significant under this Policy. Departmental changes of mission, added functions, or new programs can require amendments to Departmental Schedules.

And finally, upon completion of the Departmental Schedules, Departments must prepare their own Departmental Policies, which must be consistent with this Santa Clara County Record Retention and Destruction Policy. Departmental Policies must define internal processes for the management, retention, and destruction of Departmental Records. Departmental Policies must be prepared in consultation with County Counsel to ensure compliance with the law. Departmental Schedules must be attached to Departmental Policies and be incorporated therein by reference. The Offices of the Board of Supervisors are not required under this Policy to prepare or maintain Departmental Policies.
Departments must include in their Departmental Policies procedures to manage, retain, audit and destroy Electronically-Stored Information commensurate with that accorded other forms of Records. Except as otherwise provided below, emails and other Electronically-Stored Information require the same degree of management, retention, and destruction as hard-copy Records and other physical media. To ensure its integrity and availability, Electronically-Stored Information must be maintained in a reliable electronic recordkeeping system that makes it readily accessible.

(B) Record Retention and Destruction Periods

As described in more detail below, record retention and destruction periods are determined as follows:

(1) General retention requirements

(a) All Official Records, including emails and other Electronically-Stored Information, must be retained for a legally-mandated minimum period of at least two years (very limited exceptions to this two-year minimum period are provided by statute);

(b) The law requires that certain types of Official Records must be retained more than two years. In these instances, the retention periods generally range between three and twenty years. When the law provides for a retention period of more than two years for specified types of Official Records, Departments must retain the Official Records for the legally-mandated period; and
(c) Official Records that have specifically-articulated vital, administrative, legal, fiscal, or research/historical/archival value may be retained longer than the legally-mandated period. The specific retention period applicable to such Official Records must be specified in the Departmental Schedules.

(2) Minimum two-year retention period

If the law does not provide a mandatory retention period for specific types of Official Records, the minimum retention period for Official Records is two years. (Govt. Code § 26202.) In such cases, all Official Records—including emails or other Electronically-Stored Information—must be retained for two years after preparation or receipt thereof.

Official Records should be destroyed after the two-year period has expired, unless (1) Department Heads determine that they have specifically-articulated vital, administrative, legal, fiscal, or research/historical/archival value justifying a longer retention period; (2) there is a pending CPRA request; or (3) there is a Litigation Hold.

The two-year minimum retention period does not apply to non-Official Records.

(3) Specific retention periods greater than two years

The law provides mandatory retention periods for certain types of Official Records. When the law provides a specified retention period for Official Records of more than two years, they must be retained for the specified period.
Official Records should be destroyed after the legally-mandated period has expired, unless (1) Department Heads determine that they have specifically-articulated vital, administrative, legal, fiscal, or research/historical/archival value justifying a longer retention period; (2) there is a pending CPRA request; or (3) there is a Litigation Hold.

(4) Retention periods for Official Records that have vital, administrative, fiscal, legal, and research/historical/archival value

Official Records may be retained for longer than the legally-mandated period only when Department Heads determine that the Records have a specifically-articulated vital, administrative, fiscal, legal, or research/historical/archival value that justifies a retention period longer than the legally-mandated period. In determining whether to retain Official Records for more than the legally-mandated retention period, Department Heads must consider the Official Records’ vital, administrative, fiscal, legal, and research/historical/archival value, defined as follows:

(a) Vital Value: Records generally have vital value when they are essential for the reconstruction and continuation of operations if a disaster or an emergency negatively impacts the County’s business.

(b) Administrative Value: Records generally have administrative value as long as they can be shown to significantly assist the County in performing current or future public-entity business.
(c) **Legal Value:** Records generally have legal value if they contain evidence of the County’s legally-enforceable rights or obligations.

(d) **Fiscal Value:** Records generally have fiscal value if they pertain to financial transactions.

(e) **Research/Historical/Archival Value:** Records generally have enduring research/historical/archival value if they reflect significant historical events or document a significant aspect of Departmental history or development.

If Department Heads determine that certain types of Official Records must be retained permanently or for a period exceeding the legally-mandated period, Department Heads must specify the extended retention period and the reason justifying the extended retention period. The extended retention period must be included in Departmental Schedules. These Official Records should be destroyed once the extended retention period has expired or they no longer serve a vital, administrative, legal, fiscal, or research/historical/archival purpose—whichever comes first—unless (1) the Department Head determines that the Official Records must be retained for a longer period of time; (2) there is a pending CPRA request; or (3) there is a Litigation Hold.

Department Heads may further extend an extended retention period if they determine that the Records continue to have a specifically-articulated vital, administrative, legal, fiscal, or research/historical/archival value. Department Heads must specify the duration of the further extended period and the
reason justifying the further extended retention period, which should be included in the Departmental Schedules.

(5) Retention of non-Official Records

Non-Official Records should be deleted or destroyed immediately or as soon as reasonably practicable unless they are subject to a Litigation Hold (See Litigation Hold Policy) or pending CPRA request.

(6) Deletion of electronic mail (emails) more than two years old

If an email is not an Official Record, the email does not have to be preserved and should be deleted.

If an email constitutes an Official Record, the user must take affirmative steps to retain the email. All emails that constitute Official Records must be retained for a minimum period of at least two years. Emails that constitute Official Records should be permanently deleted after two years from preparation or receipt unless they are subject to a legally-mandated period exceeding two years. If the emails are subject to a legally-mandated retention period exceeding two years, steps must be taken to ensure that they are not prematurely deleted after two years.

The same steps must be taken for Official Records that serve a specifically-articulated vital, administrative, legal, fiscal, or research/historical/archival purpose. Failure to take such steps may result in the inappropriate deletion of Official Records. Official Records and Non-Official Records that are subject to a pending litigation hold and/or a pending CPRA request must
not be deleted without prior approval by the Office of County Counsel.

(C) Duplicates and Reproductions

In determining whether, when, and how to manage, preserve, and destroy Official Records, including emails and other Electronically-Stored Information, the following guidelines must be considered:

(1) A duplicate copy of an Official Record may be destroyed before the expiration of any minimum retention period, provided the original Official Record or a true and accurate digital reproduction of the original Official Record is preserved throughout the minimum retention period. (Govt. Code §§ 26201, 26206.7.) This provision applies to both hard-copy and digital Official Records.

(2) An original Official Record, whether in digital or hard-copy (e.g., paper) form, may be destroyed before the expiration of the applicable retention period if:

(a) No law expressly requires that the original Record be maintained in its original form;

(b) The original Official Record is reproduced and stored using a reliable system of digital reproduction and storage that does not permit additions, deletions, or changes to the original Record. Best practices require a combination of techniques, policies, and procedures for which there is no plausible scenario in which a document retrieved from or reproduced by the system could differ substantially
(c) The reproduction is available for public use.

(D) Destruction of Records

(1) Destruction of Official Records, including emails

Official Records, including emails, should be destroyed after the following determinations have been made:

(a) The Official Records have been retained for the legally-mandated period specified in the Countywide Schedule and the Departmental Schedules; and

(b) If no such legally-mandated retention period exists, the Official Records have been retained for the minimum two-year retention period; and

(c) The Official Records have been retained for the period, if any, determined by Department Heads and set forth in the Departmental Schedules specifying that the Official Records have vital, administrative, fiscal, legal, or research/historical/archival value; and

(d) The Official Records are not subject to a Litigation Hold (See Litigation Hold Policy) or pending CPRA request.
(2) Destruction of non-Official Records, including emails

Non-Official Records, including emails, should be destroyed after the person or Department in possession of the Official Records has determined that the Records are not subject to a Litigation Hold (See Litigation Hold Policy) or pending CPRA request.

(3) Destruction methods

(a) Non-confidential Records must be recycled if possible.

(b) Confidential Records must be destroyed pursuant to Board Policy 3.25, Policy Relating to Confidentiality of Documents.

(c) Non-confidential and confidential Records in the form of emails or Electronically-Stored Information must be permanently deleted.

(E) Department Head Responsibilities

(1) Department Heads or their specifically-appointed designees will be responsible for the preparation and implementation of Departmental Policies and Departmental Schedules, and will appoint a specific person responsible for the preparation and implementation thereof.

(2) Department Heads or their specifically-appointed designees must update the Departmental Schedules immediately upon legal changes pertaining to retention periods or significant Departmental changes. Regardless of any amendments,
Departments must review their Departmental Schedules with County Counsel at least every five years to ensure the Departmental Schedules accurately and completely reflect the Departments’ records retention and destruction policies.

(3) Department Heads or their specifically-appointed designees must communicate Departmental Policies, Departmental Schedules and the Countywide Schedule to all employees; ensure that all Department employees receive training regarding the provisions, application, and implementation of Departmental Policies and Departmental Schedules; and ensure compliance with Departmental Policies, Departmental Schedules and the Countywide Schedule.

(4) Department Heads or their specifically-appointed designees must appoint individuals to act as records-management program coordinators to assist employees in records-management functions and to coordinate records management with other Departments, when appropriate.

(5) Department Heads must be familiar with other statutes bearing on destruction of records.

(F) Approval of Departmental Schedules

The Board of Supervisors must authorize the destruction of specific categories of Official Records by approving the Countywide Schedule and the Departmental Schedules. Each Department shall submit to the Board for its approval a Departmental Schedule that sets forth the specific retention period for each category of Official Records in the Departmental Schedule. County Counsel must approve each Departmental Schedule and the Countywide Schedule before it is
submitted to the Board. When a Department revises a Departmental Schedule, it must—before implementation—submit the revised Departmental Schedule first to County Counsel for review and then to the Board for approval.

**Related Policies**

- Disclosure of Public Officials’ Calendars – Board Policy 2.4 – [https://connect.sccgov.org/sites/policies/policypages/Pages/Board-Policy-2.4-Disclosure-of-Public-Officials-Calendars.aspx](https://connect.sccgov.org/sites/policies/policypages/Pages/Board-Policy-2.4-Disclosure-of-Public-Officials-Calendars.aspx)


**Related Forms and Information**

- County Counsel’s Memo re: Overview of Record Retention and Destruction Policy -
Email Record Compliance – Record Retention & Destruction -  

Email Retention Resources -  

How To Retain Your Email – O365 Guide -  

**Departmental Record Retention and Destruction Schedules**

- **Countywide** Record Retention and Destruction Schedule –  

- **Alternate Defender’s Office** –  

- **Assessor’s Office** –  
● Department of **Child Support Services** –

● **Clerk of the Board** –

● Consumer and Environmental Protection Agency – **Agriculture and Environmental Management Department** –

● Consumer and Environmental Protection Agency – **Department of Environmental Health** –

● Consumer and Environmental Protection Agency – **Vector Control** –

● Department of **Correction** –

● **County Communications** –
● Office of the **County Counsel** –

● Office of the **County Executive** –

● Office of the **District Attorney** –

● **Employee Services Agency** –

● Employee Services Agency – **Workers’ Compensation** –

● **Facilities and Fleet** Department –

● **Finance Agency** – **Clerk-Recorder’s Office** –
rd-Retention/FIN-Clerk-Recorder-Record-Retention-Destruction-Schedule.pdf

• Finance Agency – **Controller-Treasurer Department** –

• Finance Agency – **Department of Revenue** –

• Finance Agency – **Tax Collector’s Office** –

• Office of **Human Relations** –

• **Information Services Department** –

• **Medical Examiner-Coroner’s Office** –

• Department of **Parks and Recreation** –
● Department of Planning and Development –

● Office of Pretrial Services –

● Probation Department –

● Procurement Department –

● Public Administrator/Guardian/Conservator –

● Office of the Public Defender –

● Registrar of Voters –

● Roads and Airports Department –
Santa Clara Valley Health and Hospital System –

Office of the Sheriff –

Social Services Agency –

Office of Veterans’ Services –

Office of Women’s Policy –

**History**

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<tr>
<th>Date</th>
<th>Changes Made</th>
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<tr>
<td>10/19/2017</td>
<td>Departmental Record Retention and Destruction Schedule for County Communications Updated.</td>
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<tr>
<td>9/14/2017</td>
<td>Links Updated. (Kyle Larson)</td>
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<tr>
<td>3/10/2015</td>
<td>Policy Uploaded. (John Myers)</td>
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