

PUBLIC RECORDS LAW - BEST PRACTICES

January 2019

The “new” Public Records Law has been in effect since January 1, 2017. Municipalities have made great strides to implement the law, but challenges remain. Below are a few strategies that may be used to develop appropriate best practices.

- **Public Records Status of E-mail:** The Supervisor of Records has emphasized that the “use of personal email addresses by government officials, employees and/or board and commission members while conducting any day to day business of a government entity renders the emails and email addresses public records.” See SPR 17/1651.
 - As records requests often seek copies of e-mails, it is critical that all e-mails sent or received by employees, officials and volunteers, acting in their official capacities, be properly saved and stored, both to comply with records retention requirements (see below) and to facilitate efficient responses to requests.
 - Municipalities should consider providing all municipal employees, officials and volunteers with “official” municipal e-mail accounts, which, in turn, are backed up by appropriate municipal servers, to be used exclusively for public business.
 - If that goal is either technologically infeasible or financially impractical, we suggest that alternatives be explored, such as establishment of a policy whereby volunteers create private e-mail addresses to be used solely for government business purposes, with all official communications copied to a government e-mail address, thereby ensuring proper retention of all records subject to the PRL.
- **Retention of Public Records:** Municipal officials and staff should review records retention policies and practices to ensure that public records, including e-mails, are properly maintained in accordance with law. While most public records must be maintained for a period of no less than seven years, certain records, such as meeting minutes, are permanent records. The Municipal Records Retention Schedule, available online at https://www.sec.state.ma.us/arc/arcpdf/Municipal_Retention_Schedule_20161109.pdf, sets forth detailed records retention schedules for commonly used records, both generally and by department.
- **Personal Information:** Consideration should be given to review of existing forms to limit collection of personal information to that which is required by law, and further to adopting internal procedures to properly maintain the privacy of such information, including review and redaction of such information in response to a records request (for example, medical information, social security numbers, drivers’ license numbers and bank/financial account numbers, or information about the receipt of government assistance).

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- **Use of Municipal Website:** Where technological infrastructure permits, utilize the municipal website to post commonly requested records not generally subject to withholding or redaction under the exemptions to the PRL or the attorney-client privilege. Such records include but are not limited to: open session meeting agendas, packets and minutes; permit decisions; bylaws, charters, rules and regulations; executed contracts; operating and capital budget information; and other information of general interest. The municipality may even wish to post responses to public records requests to the website. It is faster, easier and less expensive to direct people to the municipal website than it is to locate and copy records.

Visit our Public Records Resources Page at <http://k-plaw.com/resources/public-records-law-resources/> for more on the Public Records Law.

Should you have any questions concerning Public Records Law best practices, please contact Attorneys Michele Randazzo (mrandazzo@k-plaw.com) and Janelle Austin (jaustin@k-plaw.com) or any of the attorneys in our Government Information and Access Group at 617.556.0007.

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