

**From:** [Mark Makler](#)  
**To:** [ORLawEnf Commission](#)  
**Subject:** 042822 Commissioner Makler Edits to LESC Records Policy  
**Date:** Thursday, April 28, 2022 3:38:05 PM  
**Attachments:** [042822.CommissionerMaklerEdits LESC RecordManagementPolicy\\_v2.docx](#)

---

**\*CAUTION EXTERNAL EMAIL\* This email originated from outside of DOJ. Treat attachments and links with caution. \*CAUTION EXTERNAL EMAIL\***

Fred et al:

Please see attached as edits to the Records Policy and comments for Commission discussion.

STAY HEALTHY and Regards,

\*\*\*\*\*

Mark J. Makler  
Code 3 Law  
515 NW Saltzman Rd. #811  
Portland, OR 97229  
503.329.2552  
[mark.code3law@gmail.com](mailto:mark.code3law@gmail.com)

Of Counsel to Public Safety Labor Group  
<https://www.pslglawyers.com/attorneys.html>

HIPAA Confidentiality Notice: HIPAA Protected Health Information (PHI) May Be Included in this Email which is personal and sensitive information related to a person's health care. If this email contains PHI, it is being sent to you after appropriate authorization or under circumstances that do not require authorization. You, the recipient, are also obligated to maintain PHI in a safe, secure and confidential manner. Re-disclosure of PHI without additional consent/authorization or as permitted by law is prohibited. Unauthorized re-disclosure or failure to maintain confidentiality of PHI could subject you to penalties described in federal and state law.

ATTORNEY-CLIENT Confidentiality: This is a confidential email communication intended for the addressee(s) only. If you have received this email in ERROR please contact **Mark Makler** ([mark.code3law@gmail.com](mailto:mark.code3law@gmail.com)) and delete and destroy any copies of this email. Metadata contained within this email or any attachment to this email is also confidential and covered by the attorney-client privilege and not intended for disclosure or use unless there is a specific written agreement related to such use.

On Apr 28, 2022, at 10:43, ORLawEnf Commission  
<[ORLawEnfCommission@doj.state.or.us](mailto:ORLawEnfCommission@doj.state.or.us)> wrote:

My apologies. I am resending with the addition of the Public Meeting Notice/Agenda. If you have any problems opening the attachments please let me know.

**Toni Kemple**  
Oregon Department of Justice  
971.673.1880

---

**From:** ORLawEnf Commmission  
**Sent:** Thursday, April 28, 2022 10:29 AM  
**To:** Angie Emmert <[angie.emmert@doj.state.or.us](mailto:angie.emmert@doj.state.or.us)>; Anil Karia <[anil@pslglawyers.com](mailto:anil@pslglawyers.com)>; Benny Williams <[bennycwilliams@yahoo.com](mailto:bennycwilliams@yahoo.com)>; Brian Henson <[brian.henson@dpsst.oregon.gov](mailto:brian.henson@dpsst.oregon.gov)>; Chief John Teague <[TeagueJ@keizer.org](mailto:TeagueJ@keizer.org)>; Chief Timothy Addleman (CTUIR) <[TimothyAddleman@ctuir.org](mailto:TimothyAddleman@ctuir.org)>; Frederick Boss <[fred.boss@doj.state.or.us](mailto:fred.boss@doj.state.or.us)>; Kristen Gilman <[kristen.a.gilman@doj.state.or.us](mailto:kristen.a.gilman@doj.state.or.us)>; Laura Fine <[attorneylaurafine@gmail.com](mailto:attorneylaurafine@gmail.com)>; Mark Makler <[mark.code3law@gmail.com](mailto:mark.code3law@gmail.com)>; Michael Slauson <[michael.slauson@doj.state.or.us](mailto:michael.slauson@doj.state.or.us)>; Michael Wu <[michael@michaelwulaw.com](mailto:michael@michaelwulaw.com)>; Representative Ron Noble <[Rep.RonNoble@oregonlegislature.gov](mailto:Rep.RonNoble@oregonlegislature.gov)>; Senator Floyd Prozanski <[Sen.FloydProzanski@OregonLegislature.gov](mailto:Sen.FloydProzanski@OregonLegislature.gov)>; Sheriff Angela Brandenburg <[angiebran@co.clackamas.or.us](mailto:angiebran@co.clackamas.or.us)>; Steven Schuback <[schuback@prhlaborlaw.com](mailto:schuback@prhlaborlaw.com)>; Tarron Anderson <[tarron.anderson@oregonstate.edu](mailto:tarron.anderson@oregonstate.edu)>; Umatilla County Commissioner John Shafer <[john.shafer@umatillacounty.net](mailto:john.shafer@umatillacounty.net)>  
**Subject:** Commission on Statewide Law Enforcement Standards of Conduct and Discipline - Public Meeting Notice/Agenda and meeting materials

Good Morning Commissioners,

Attached please find copies of the Public Meeting Notice/Agenda and the meeting materials. If you have any problems opening any of the attachments, please let me know.

**Toni Kemple**

Paralegal | Environmental & Cultural Resources Enforcement Unit | Criminal Justice Division  
Oregon Department of Justice  
100 SW Market Street, Portland, OR 97201-5702  
971.673.1880

\*\*\*\*\*CONFIDENTIALITY NOTICE\*\*\*\*\*

This e-mail may contain information that is privileged, confidential, or otherwise exempt from disclosure under applicable law. If you are not the addressee or it appears from the context or otherwise that you have received this e-mail in error, please advise me immediately by reply e-mail, keep the contents confidential, and immediately delete the message and any attachments from your system.

\*\*\*\*\*

<Mail Attachment.eml><Mail Attachment.eml><LESC\_RecordManagementPolicy\_v2.docx><LESC\_2022-04-

19\_Meeting\_Minutes.docx><LESC\_PublicMeetingNotice\_05042022\_v2.pdf>

Commission on Statewide Law Enforcement Standards of Conduct and Discipline	<b>POLICY NUMBER</b>
	<b>EFFECTIVE DATE</b>
<b>Public Records Management Policy</b>	

**POLICY**

ORS 192.018 requires every state agency to have a “written policy that sets forth the agency’s use, retention and ownership of public records” so that public records are maintained and managed appropriately across the enterprise of state government, from the time of creation of a public record to the time of final disposition of the public record.

Agencies are required to seek review and approval from the State Archivist, in accordance with ORS 192.018, prior to adopting an internal public records management policy.

Agencies must review and, if necessary, update their public records management policy at least once per biennium to reflect changes in applicable laws, policies and business needs, and to ensure ongoing access to agency records. Any updates or revisions must be submitted for review and approval by the State Archivist according to ORS 192.018, prior to adoption.

**SPECIAL SITUATIONS**

- Retained records may be subject to public disclosure upon request, even if their retention was not required by law. The statutes requiring public disclosure of records apply more broadly than the statutes requiring records to be retained.
- Agencies are not required to create public records that would not otherwise exist.
- Only the official copy of a public record must be retained. Stock of publications are not public records and may be preserved for convenience or destroyed.

**GENERAL INFORMATION**

The goal of this policy is to ensure public records are managed and maintained appropriately within Commission on Statewide Law Enforcement Standards of Conduct and Discipline (“LESC”) and consistently across the enterprise of state government.

This Public Records Management Policy, adopted according to the requirements of DAS Statewide Policy 107-011-020 and ORS 192.018, addresses the following components:

- I. Public Records Maintenance
- II. Roles and Responsibilities
- III. Education and Training
- IV. Access and Ownership
- V. Integrity
- VI. Retention, Generally
- VII. Storage and Retrieval
- VIII. Public Records Requests
- IX. Disposition and Destruction of Public Records

**COMPLIANCE**

LESC will develop and implement internal processes and procedures that support compliance, deter abuse and detect violations of this policy.

## **DEFINITIONS**

**Authorized Retention Schedule:** Either a General Schedule published by the State Archivist in the OAR in which certain common public records are described or listed by title and a retention period is established for each; or a Special Schedule approved by the State Archivist for the public records of a specific agency.

**Cloud-computing:** Has the meaning established in the National Institute of Standards and Technology (NIST) Special Publication 800-145.

**Commissioner:** Member of the commission established under ORS 243.812.

**Custodian:** A public body mandated, directly or indirectly, to create, maintain, care for or control a public record. "Custodian" does not include a public body that has custody of a public record as an agent of another public body that is the custodian, unless the public record is not otherwise available.

**Instant Messaging:** Real-time text communications between or among computers or mobile devices over the internet or functionally similar communications networks.

**Metadata:** Data that provides information about other data. Metadata assists in resource discovery by allowing resources to be found by relevant criteria, identifying resources, bringing similar resources together, distinguishing dissimilar resources and giving location information.

**Public Record:** Has the meaning established in ORS 192.005. In general it refers to information that is prepared, owned, used or retained by a state agency or political subdivision; relates to an activity, transaction or function of a state agency or political subdivision; and is necessary to satisfy the fiscal, legal, administrative or historical policies, requirements or needs of the state agency or political subdivision. Refer to the Secretary of State's guide for determination of a public record:

<https://sos.oregon.gov/archives/Documents/recordsmgmt/train/brm/managingrecords.pdf>.

**Social Media:** Web-based and mobile communication technologies that allow the creation and exchange of user-generated content such as comments or responsive postings. Examples of social media include but are not limited to Twitter, Flickr, blogging sites, Facebook, YouTube and Instagram.

**Staff:** Employee of the Department of Justice or Department of Public Safety Standards and Training who has been designated to provide administrative or legal support on behalf of the LESC.

**Text Messaging:** Messages exchanged between fixed-line phones or mobile phones and fixed or portable devices over a network. Excluded from the definition of text messages are electronic mail (email) communications, whether such messages are exchanged among or between official state government email accounts or email accounts maintained by private entities.

**Unified Communications:** A service of IBM; the packaged services or user profiles available to agencies (e.g., instant messaging, video conferencing, telephony, call management and call control across multiple systems, etc.). Also known as IBM Unified Communications.

## **POLICY GUIDELINES**

### **I. PUBLIC RECORDS MAINTENANCE**

Public records must be maintained and managed in a manner that protects the integrity of the records within LESC without regard to the technology or medium used to create or communicate the record, from the time of creation of a public record to the time of final disposition of the public record as determined by their authorized records retention schedule.

### **II. ROLES AND RESPONSIBILITIES**

Oregon law requires agencies to designate an Agency Records Officer “to coordinate its agency’s Records Management Program” (ORS 192.105(2)(a)). The LESC records officer will serve as primary liaison with the State Archivist and receive training from the State Archivist in performing their duties. LESC designates the Executive Director to serve as its records officer.

LESC will ensure agency public records are managed in accordance with their authorized records retention schedules, from the time of creation to final disposition, by assigning designated staff/positions with the following responsibilities:

- Regular review of records, regardless of format (electronic, paper, etc...) to determine if records should be retained or destroyed;
- Identify and develop retention schedules for new records series (groups of records);
- Maintain a filing system of the agency’s paper and electronic records based on authorized retention schedules. Agency filing systems must include the description and location of public records, including records the agency is required to retain due to litigation (active litigation hold) and/or special audit. (Records retained beyond their authorized retention period due to mitigating administrative need must also be accounted for in the filing system. Agencies are required to submit written justification of the mitigating administrative need to the State Archivist for approval.);
- Coordinate and track employee completion of public records management training to ensure agency staff understand how records are properly managed, in compliance with authorized records retention schedules;
- Review and update internal public records management policies and procedures. Obtain State Archivist approval of revisions to the agency public records management policy;
- Develop and implement internal processes and procedures for the transfer, retrieval and destruction of records in accordance with authorized retention periods;
- Ensure that records are destroyed according to their authorized retention period; and
- Document the destruction of public records and retain that documentation according to the authorized records retention schedule found in OAR chapter 166-350.

### **III. EDUCATION AND TRAINING**

Basic public records training will be completed as a component of LESC new employee and/or new Commissioner orientation training and incorporated as part of regular employee and Commissioner training, completed once a biennium.

LESC will utilize the statewide Workday learning training program to provide public records training to all new commissioners.

Commission staff who are employed by DOJ or DPSST will complete the training provided by their employing agency.

### **IV. ACCESS AND OWNERSHIP**

Without regard to how public records are being stored, LESC will have custody and control over public records. Through ongoing review of technological advances, LESC will ensure all public records are maintained and accessible for as long as required by authorized retention schedules or litigation holds.

The LESC has entered into an Interagency Agreement with the Oregon Department of Justice (“DOJ”) wherein DOJ has agreed to maintain records of the LESC in DOJ’s custody and control. DOJ has established a network storage location in its information systems solely for maintaining records of the LESC.

### **V. INTEGRITY**

LESC will ensure appropriate access and version controls are applied to all electronically stored records from record creation to final disposition.

The authenticity of each record can be demonstrated either by certified copy of paper records or via accompanying metadata for all electronic records.

## VI. **RETENTION, GENERALLY**

LESC will preserve and classify public records according to ORS chapter 192, OAR chapter 166-350 and DAS Statewide Policy 107-004-050 regarding Information Asset Classification.

LESC will work with the Archives Division to establish retention practices to ensure compliance with ORS chapter 192 and OAR chapter 166-350.

### a. **CLOUD COMPUTING**

LESC practices and procedures with respect to public records management in the Cloud will comply with the DAS Statewide Cloud Computing Policy 107-004-150 and OAR chapter 166-350.

### b. **EMAIL**

#### **Official Email Accounts**

LESC Commissioners do not have official email accounts. DOJ and DPSST employees who are staffing the commission have official email accounts and shall use those accounts for commission business.

#### **Personal Email Accounts**

When Commissioners must use personal email accounts to conduct state business, LESG requires that employees copy [orlawenfcommission@doj.state.or.us](mailto:orlawenfcommission@doj.state.or.us) on all such outgoing communications, and forward any received messages to [orlawenfcommission@doj.state.or.us](mailto:orlawenfcommission@doj.state.or.us), immediately or as soon as practicably possible.

### c. **INSTANT MESSAGING**

LESC policy regarding Instant Messages is the same as that recited below regarding TEXT MESSAGING.

### d. **SOCIAL MEDIA**

It is LESG policy that LESG commissioners and staff will not place official content on any social media platform.

### e. **TEXT MESSAGING**

Personal devices are subject to search if used to transmit text messages regarding official state business or information related to an employee's work that rises to the level of creating a public record.

#### **Acceptable Use:**

LESC commissioners and staff are not to use text messages for official purposes other than for routine communications that do not meet the definition of a public record.

#### **Examples of Acceptable Uses**

- Scheduling.
- Requesting a call or email on a matter, without substantive discussion.
- Requesting or offering logistical assistance ("Can you help me get these boxes to the Capitol?").
- Forwarding any person's contact information ("I'm at 503-378-6002.").
- Explaining your current whereabouts, or inquiring about someone else's ("We're at the meeting discussing this morning's announcement. Are you around?").
- Describing facts or events that do not relate to the substance of the agency's work ("Spilled coffee all over myself right before my presentation!"), or that have been or necessarily will be

separately recorded (“Mr. Jones just testified to the committee that our bill would cost taxpayers \$3 million.”).

- Inquiring about events like those in the previous bullet (“Has Mr. Jones testified in committee yet?”).

**Unacceptable Use:**

LESC commissioners and staff must avoid communicating official state business or engaging in discussions regarding the primary business of their work over text message.

f. **UNIFIED COMMUNICATIONS**

LESC does not capture or store unified communications data. If that policy decision changes in the future, the Department will identify public records created by actively using unified communications features and ensure those records are appropriately managed in accordance with authorized records retention schedules, as well as other applicable State and Federal policies and laws.

g. **VOICEMAIL**

LESC will not retain messages on voicemail.

**VII. STORAGE AND RETRIEVAL**

**Paper Records:**

LESC will maintain a filing system of the agency’s paper records based on authorized retention schedules. The filing system will include the location of records, retention periods and procedures for retrieval to ensure accessibility of agency records.

LESC commissioners and staff must deliver paper records to the Executive Director to ensure that records are stored consistent with this policy and the Oregon Public Records Law.

**Electronic Records:**

LESC will maintain a filing system and naming conventions for all agency records stored in electronic format based on the agency’s authorized retention schedules. The filing system and naming conventions will include the location of records in agency directories, retention periods, access controls and privacy conditions to support management of the agency’s inventory of electronic records.

LESC will work with the State Archivist to ensure the agency meets retention periods for all records before any data is destroyed and prior to deleting any large electronic record system.

LESC commissioners and staff must deliver electronic records to the Executive Director via [orlawenfcommission@doj.state.or.us](mailto:orlawenfcommission@doj.state.or.us).

**VIII. PUBLIC RECORDS REQUESTS**

LESC will respond to all official requests for public records as soon as practicable and without unreasonable delay, according to timelines outlined in ORS 192.324 and ORS 192.329.

LESC procedures for managing public records requests are set forth in **OAR 265-001-0010**.

**IX. DISPOSITION AND DESTRUCTION OF PUBLIC RECORDS**

LESC will dispose of or destroy public records according to the requirements of authorized records retention schedules and OAR chapter 166-350.

Pursuant to ORS 357.855, LESC commissioners and staff will consult the State Archivist for advice and assistance with determining the disposition of certain record types not accounted for in State Agency General or Special Retention Schedules and reconciling unforeseen public records issues.