

Marin Emergency Radio Authority

Use and Retention of Electronic Communications and Private Email Accounts Policy for MERA Business

Purpose: To establish the appropriate use and retention of private electronic mail (“email”) and other private technology resources for written communications used in carrying out MERA functions, activities and other business, and the retention of such emails and other electronic communications that are made public records.

Applicability: This Policy applies to all appointed officials, consultants, and employees, if any, utilizing email and other technology resources for the purpose of conducting MERA business, regardless of the location or ownership of such resources or the user’s location when accessing the email system, network or other technology resource.

MERA does not own, provide, operate or maintain email accounts, addresses, services or any other messaging technology (collectively, “Technology Resources”) used by appointed officials, contractors, consultants or agents. MERA does not specify standards for use of these Technology Resources. In the case of appointed officials and public agency employees who provide services to MERA and who use other public agency Technology Resources for the conduct of MERA business, that public agency’s electronic communications use and retention policies will apply to the use of such Technology Resources, except that such policies must be applied in accordance with MERA’s Public Records Administrative Policy and Records Retention Schedule.

Policy: The Governing Board affirms the public’s right to access public records created by Technology Resources and the right to set forth the procedures by which such MERA records will be made available to the public. The Governing Board is mindful of the constitutional right of privacy afforded to individuals and it is the intent of the Governing Board to promulgate a process that strikes an appropriate balance between the objectives of open government, the individual’s right of privacy, and MERA’s legitimate interest in maintaining the confidentiality of certain public records in private accounts. This Policy shall be applied in accordance with MERA’s Public Records Administrative Policy and adopted Records Retention Schedule.

Email messages and other electronic messages relating to MERA business are temporary communications unless retention is required by policy, law, or where retention of a particular message would serve a useful purpose for MERA. Emails and other electronic messages do not become public records under the Public Records Act when they are intended for a temporary purpose unless they are subject to a litigation hold letter from MERA General Counsel or a pending request made pursuant to the Public Records Act.

Emails and other electronic messages, which are not temporary communications, should be filed as such and kept pursuant to MERA’s records retention policy, either electronically or in hard copy, to signify the permanent or long-term status of the record. However, temporary communications, drafts, and intra-agency notes and memoranda are not public records.

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Emails and other electronic messages requiring retention and which should be filed as records either electronically or in hard copy, include, but are not limited to:

- General correspondence and/or inter-party messages regarding management, financial projects, operating procedures, or policy matters;
- Messages regarding MERA policy or the policy process;
- Messages regarding vital public information (for example, critical environmental data and reports); and,
- Messages that otherwise are necessary to conduct MERA's business.

Appointed officials, contractors, consultants, or agents who use personal Technology Resources, are solely responsible for the management of their electronic mailboxes and other technology resource accounts and shall take appropriate action to store necessary emails and other electronic messages, which constitute public records, in a separate email folder or network location, or printed out and filed in an appropriate subject file to ensure the content of the email or electronic message is preserved. Such stored emails or other electronic messages constitute public records unless otherwise exempt under the Public Records Act. When in doubt as to if an email or other electronic message should be made an official public record and retained, consult the Executive Officer or MERA General Counsel.

In the case of a Public Records Act request or subpoena for emails or other electronic messages in the personal account or other personal Technology Resource of an appointed official, employee or consultant, the Executive Officer or MERA General Counsel will request in writing that the user search that user's personal accounts, devices and other Technology Resources for any responsive MERA records. Upon such request, and in full compliance with the Public Records Act, each person is required to turn over all potentially responsive communications and other MERA records in his/her possession or in any personal email account or on any other personal Technology Resource generated during their term(s) of service or performance of contract services with the MERA. The response to a request for records from the Executive Officer or MERA General Counsel shall include a written statement that the search has been made and the records located and/or withheld, and the basis for withholding. Any determination regarding privilege or exemption, as well as the final determination of responsiveness, shall be made by MERA General Counsel.

Upon receipt of a public records request for records that relate to a former MERA official, employee or consultant, the Executive Officer shall make reasonable efforts to obtain any responsive records from the former official, employee and/or consultant. The Executive Officer shall contact the former MERA official, employee or consultant, to request that such person conduct a search of his/her personal email account and other personal Technology Resources to determine if he/she has any MERA records responsive to the public records request, and to submit any responsive records to MERA to facilitate MERA's response to the public records request.

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Acknowledgment: By signing the acknowledgment below, the undersigned agrees and understands his/her obligation to comply with all provisions of this Policy.

By: _____

Printed Name: _____

Date: _____