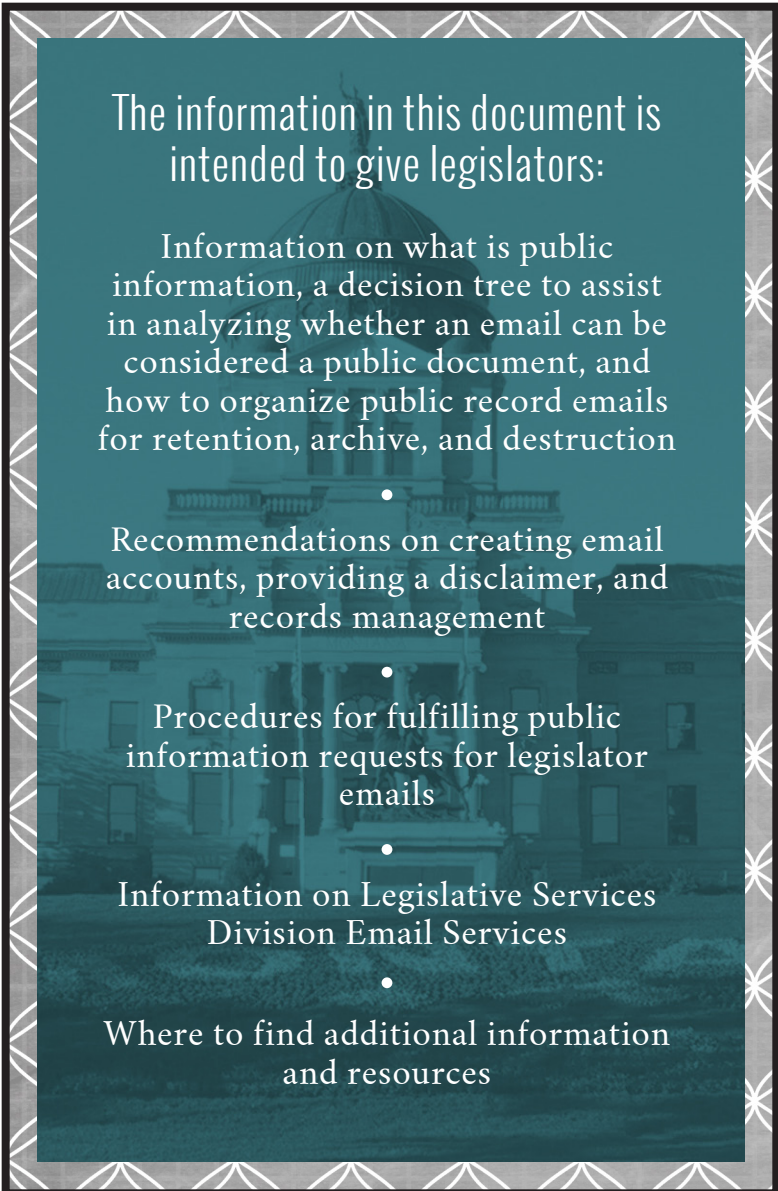




E-mail Guidelines for Legislators

**Prepared for
Legislative Council**
August 2016



The information in this document is intended to give legislators:

Information on what is public information, a decision tree to assist in analyzing whether an email can be considered a public document, and how to organize public record emails for retention, archive, and destruction



Recommendations on creating email accounts, providing a disclaimer, and records management



Procedures for fulfilling public information requests for legislator emails



Information on Legislative Services Division Email Services



Where to find additional information and resources

LEGISLATIVE SERVICES DIVISION EMAIL SERVICES

As a citizen legislator, there is no prohibition on use of public facilities for private business purposes as there are for other public officers and state employees. However, state email use guidelines state that state-provided email services are not to be used for “for-profit” or “non-profit” activities; as a legislator, a state email account should be used primarily for state legislative business.

The Legislative Branch offers legislators the ability to conduct legislative business with the use of a state administered email account. This account will be set up at the request of the legislator.

The mt.gov email account enables the Legislative Services Division IT staff, when requested, to perform a “public right to know” search of your state owned email account for requested information. Since this account is a publicly assigned email address, the legislator should conduct legislative business with this account and treat it as public information (see privacy guidance above).

The state administers the mt.gov email accounts, and as a condition of use, the account will be governed by the Executive Branch’s policy. If you, as legislator, would like to have one of these accounts for your legislative use, you should be aware of some distinct differences between a personal email account such as Gmail, Yahoo, or Outlook.com and this enterprise based email service.



A state email account
should be used primarily
for **state legislative
business.**

Policy Issues when Using a State Administered Email Account

Access to email through the mt.gov accounts is intended to be through a web based browser. These accounts can also be set up to sync with your smartphone or tablet by signing the Mobile Device Management (MDM) policy.

Mt.gov email accounts come with a size restriction of 250MB of stored email and will need to be proactively monitored. If your mailbox reaches this limit, it will no longer send or receive emails until the mailbox has been reduced to under this 250MB limitation.

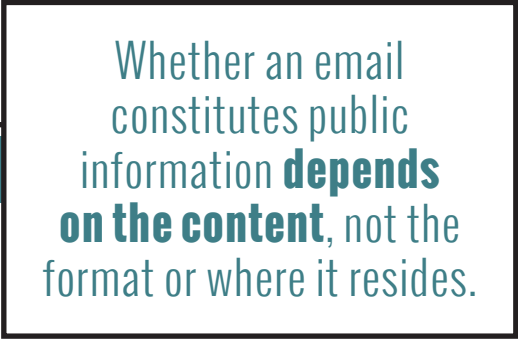
There will be an archive directory set up for your use, and this directory will allow you to store up to 20 Gigabytes of email.

Legislator email addresses will be either Rep.First-name.Lastname@mt.gov or Sen.FirstName.LastName@mt.gov.

Passwords will expire every 60 days and will require you to change it in order to access the account. Password requirements are: a minimum of 8 characters, at least one upper case letter, at least one lower case letter, and at least one number. If your password does not meet these minimum requirements, it will not be accepted.

WHAT CONSTITUTES PUBLIC INFORMATION?

Many legislator emails are considered public records, and these guidelines are designed to assist legislators in anticipation of fulfilling public right-to-know requests and also protect the legislator's individual privacy. These guidelines are general in nature. For more specific information, please refer to the legislative website.



Whether an email
constitutes public
information **depends**
on the content, not the
format or where it resides.

Whether an email constitutes public information depends on the content, not the format or where it resides. Emails may also include any attachment and transmission data (To, Sent, From) that provides context for the record. The public's right to know is not about whom the request is from or the purpose for which it is sought. The public's right to know applies to certain emails involving official legislative business in both a legislator's private and public email accounts. The Montana Constitution guarantees that "no person" may be deprived of the right to examine such documents. (Art. II, Sec. 9, Mont. Const.) A person from outside the state can make a request directly of a legislator or the public body without regard to residence.

This guidance will assist legislators in retaining emails as public records according to branch retention schedules. The decision tree will assist in determining whether there a right to individual privacy that may outweigh the public's right to know.

USE THE FOLLOWING TO HELP YOU MANAGE, ARCHIVE, AND DELETE EMAILS APPROPRIATELY.

IS THE EMAIL CONSIDERED PUBLIC INFORMATION?

2-6-1002(11): Public information is “information relating to the transaction of official business, regardless of form, except for confidential information that must be protected against public disclosure under applicable law”

No

THE CONTENT OF THE EMAIL RELATES TO **NONLEGISLATIVE** BUSINESS

Examples may include communications related to:

- Personal business
- Political activity
- Your non-legislative employment

Since these are **nonrecords**, you can **delete** these emails as soon as you are done with them

DELETE

As a member of the Montana State Legislature, some of your emails may be subject to disclosure under the provisions of the **Montana Public Records Act**, beginning at § 2-6-1001, MCA.

Yes

THE CONTENT OF THE EMAIL RELATES TO **YOUR DUTIES** OR YOUR POSITION AS A LEGISLATOR

Emails distributing **official committee documents** such as agendas, reports, or committee bill drafts are retained and maintained by legislative branch staff so can be **deleted** by a legislator

Emails that are **tangentially related** to your duties or position as a legislator, such as a newsletter from NCSL, are transitory records and can be **deleted**

Emails containing **discussion about legislative business** to and from your colleagues, stakeholders, constituents, and staff should be retained for a period of **2 years**

Emails containing **legislative administrative documents** such as documents related to bill drafts should be retained for **4 years** before deleting

DELETE

DELETE

2 YEARS

4 YEARS

Legislative Branch Procedure for Answering Public Information Requests for Legislator Emails

1 Policy, procedure, and request forms will be easily accessible via the legislative website.

2 A member of the public may direct a request for public information to the executive director or legal services director in the Legislative Services Division (LSD). If a legislator receives a request directly, the legislator may refer the request to the executive director or legal director for assistance and provide the necessary information from the legislator to fulfill a request.

3 The LSD will inform legislator(s) if a request is received directly and determine whether the requested emails are on a state mt.gov account or a private account.

4 The LSD will review request and if necessary, contact requestor for clarification or greater specificity.

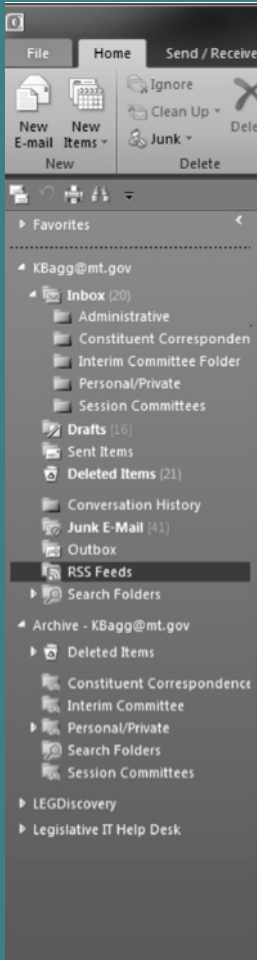
5 If the requested emails are on a private account, LSD will forward the request to the legislator. The legislator will be responsible for fulfilling the request pursuant to 2-6-1006, MCA. The legislator may seek legal advice or other assistance from the legislative legal services office. The attorneys are able to assist a legislator in deciding whether an email is public or if a privacy right may exist.

6 If the requested emails are on an mt.gov email account, the director will work with the legislator(s) and legislative services staff to fulfill the request pursuant to 2-6-1006, MCA. This may include consulting with an attorney for questions regarding whether information is public or private, or by request of the legislator, performing an electronic search of the mt.gov account (see more below).

7 The legal services office will review emails with the legislator as necessary prior to delivering the email to the requestor. Upon request, a copy of all materials supplied to the requestor will be sent to the legislator.

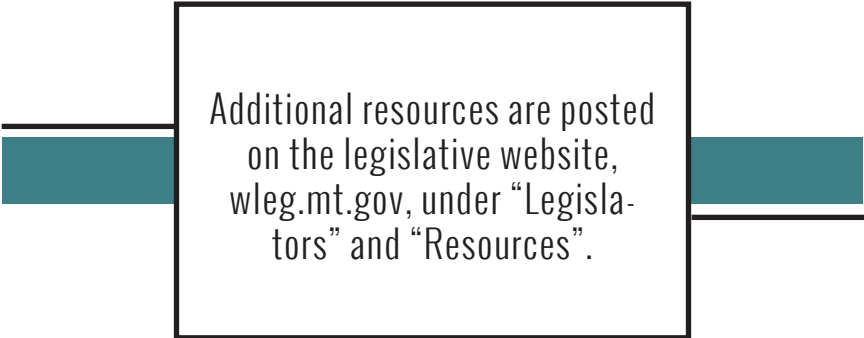
RECOMMENDATIONS

1 Create an email account for legislative business, whether a private one (gmail, yahoo, etc.) or ask for a state “mt.gov” account through Legislative Services (see Email Services below). With a mt.gov email accounts, limit that account use to official business as much as possible.



2 Inform correspondents that emails related to official business ARE public records and may be subject to release if requested. Sample disclaimer: *"Legislators are publicly elected officials. Legislator emails sent or received involving legislative business may be subject to the Right to Know provisions of the Montana Constitution and may be considered a "public record" pursuant to Montana law. As such, email, sent or received, its sender and receiver, and the email contents, may be subject to public disclosure, except as otherwise provided by Montana law."*

3 Practice good records management by deleting nonrecords and archiving records regularly. To make that easier, set up folders in your inbox and in archive for different categories that correspond with retention schedules. One example of email set up to manage records is captured to the left. As you receive emails, you can place them in the respective Inbox folders. Nonrecord emails (could be administrative) may be moved to a folder that autodeletes after 3 months. Emails that qualify as records are moved from the inbox to “Archives” folders regularly and retained (this keeps “Inbox” below the 250KB limit). Sent items may be managed similarly.



Additional resources are posted on the legislative website, wleg.mt.gov, under “Legislators” and “Resources”.



For more information:
Contact Legislative Services Division
at (406) 444-0912
to set up an email account.