

**BE AWARE OF CERTAIN OF RISKS ASSOCIATED WITH DELETING  
ELECTRONIC RECORDS**

**TO: ICRMT MEMBERS**  
**FROM: O'Halloran Kosoff Geitner & Cook, LLC; Jane May**  
**DATE: December 10, 2020**  
**RE: Risks associated with deleting electronic records**

---

Increasingly today, communication takes place through electronic means like email and text messaging. Public officials and employees should be aware of their statutory obligation to preserve electronic records relating to public business. The Local Records Act (LRA) imposes certain requirements related to the preservation and destruction of qualifying public records and even provides criminal penalties for destroying public records without proper authorization. Therefore, electronic communications regarding public business should not be destroyed without proper approval and strict adherence to the LRA. Communications regarding public business on personal devices or accounts may also be subject to the preservation requirements if they constitute a public record.

The LRA regulates the preservation and disposal of public records for local government. 50 ILCS 205/1 *et. seq.* "Public record" is defined to include not only paper documents, but also digital or electronic records when they relate to "the organization, function, policies, decisions, procedures, or other activities" of the public body. 50 ILCS 205/3. The LRA implements a system for the disposal of public records. A public body must first submit an application with a proposed disposal schedule to the Local Records Commission. Once the Commission approves the application, the public entity must then submit a Disposal Certificate to the Commission when it intends to dispose of public records. When the Commission approves the Disposal Certificate, the records can be destroyed. More information from the Secretary of State can be found [here](#).

The LRA states that public records "shall not be mutilated, destroyed, transferred, removed or otherwise damaged or disposed of, in whole or in part, except as provided by law." Any person who "knowingly, without lawful authority and with the intent to defraud any party, public officer, or entity, alters, destroys, defaces, removes or conceals any public record commits a Class 4 felony." 50 ILCS 205/4(a).

Public officials and employees should be aware that public records in the form of text messages, email, and other digital communications must be preserved in accordance with the LRA. Employees and officials should not engage in public business through digital applications that automatically delete messages. Use of such technology could violate the preservation requirements of the LRA and expose the employee or official to criminal liability. Officials and employees should also be aware that communication on private devices and accounts may also be subject to the preservation requirements.

---

*This memorandum was prepared by O'Halloran Kosoff Geitner & Cook, LLC for ICRMT general informational purposes only. It is a brief summary of the Local Records Act and is not meant to be an exhaustive analysis of the LRA or requirements thereunder. This memo is not intended to provide legal advice to any public entity. Member entities and their officials and employees should consult their State's Attorney, Corporation Counsel, or other appropriate legal advisor on the subject matter of this memorandum before taking or refraining from taking any action or adopting any policy.*