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M E M O R A N D U M

Date: April 2, 2024
To: Board of Supervisors
From: William Carroll, Assistant County Counsel
Re: Proposed e-mail retention policy

The desire for an email retention policy arose over concern for the County's limited physical capacity to store emails indefinitely. The County's email system is not meant to be a long-term records retention system. One answer to this capacity issue is the development of a reasonable email retention and deletion policy that incorporates both automatic deletion and employee training on saving and archiving those emails that should be kept under the County's records retention policy or preserved when required for litigation.

Emails are a medium of communication that have largely taken the place of telephone calls and memoranda. An email message is sometimes just a transitory communication, and it may or may not constitute an "official record" that must be saved/retained pursuant to statutory laws and County policy.

Presently, the County does have a records retention policy (Resolution No. 20-37), but that policy pertains to identification of records that must be retained based on their content and does not explicitly address emails as a medium. Therefore, following discussions between County Counsel, the Information Technology Department and the County Administrator's Office, staff has developed the proposed policy to attempt to balance the practical necessities of reducing space upon the County's servers, with the need to retain emails for practical and legal purposes.

The proposed policy would generally result in the automatic deletion of any emails over the age of two years, unless an employee takes affirmative action to save the email. The retention period of two years was proposed because two years is the "catch all"

retention period for traditional paper records by law.¹ The policy would be prospective and thus systematic deletion would not begin to occur until two years after the effective date of the policy. If emails are automatically deleted after two years, that action should greatly reduce the future burden on the County's storage capacities and should lessen staff's burden of reviewing emails when responding to public records requests.

However, in some instances the law will require certain email records be retained beyond two years for such purposes as litigation (e.g., CEQA or civil lawsuits), a pending public records act request, or the email otherwise has fiscal, historical or administrative importance. In such cases, the burden will fall to the individual employee to take affirmative action to save and preserve such emails that must be retained beyond two years. And if an email is not set aside manually that was otherwise required to be saved beyond two years, that could result in the County facing legal consequences, such as court sanctions in a litigated matter, for the wrongful deletion or, more generally, simply not retaining the records it is supposed to retain.

For the above reasons, there are advantages and disadvantages to the proposed email retention policy where emails are automatically deleted. County employees will have to be aware and conscientious to retain emails that must be preserved beyond the two-year limit for whatever reason. It is expected that if the policy is adopted, it will take time to train the employees on the types of emails that need to be set aside so they are not automatically deleted. It is recommended that this policy become effective January 1, 2025 to allow time to develop training materials and to train employees.

¹ Government Code Section 26202.