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June 5, 2017

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TO: Local Agency Formation Commission

FROM: Executive Officer

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**Executive Officer**

Michael D. Ott

SUBJECT: Public Records Archive Email Address Policy

At the May 1<sup>st</sup> LAFCO meeting, the Commission received a report on a recent State of California Supreme Court decision [City of San Jose v. Superior Court (March 2, 2017, S218066) \_\_Cal.5<sup>th</sup>\_\_] that necessitated the adoption of a LAFCO policy covering the retention of public records for certain specified time periods. One of the provisions of the policy encourages Commissioners, when conducting LAFCO business on private servers, to copy LAFCO staff or forward email messages to an email address designated for preservation. Following the May 1<sup>st</sup> meeting, LAFCO established an archival email address that will be used for preservation of emails not received via the LAFCO server nor copied to LAFCO staff. The archival email address is: [sdlafco@sdcounty.ca.gov](mailto:sdlafco@sdcounty.ca.gov)

LAFCO staff is also in the process of establishing certain rules and restrictions for usage of this new account by LAFCO staff. For example, it will only be accessible to the Executive Officer and one other staff member for purposes of responding to public records requests. Therefore, effective June 5, 2017, any communications that Commissioners have when conducting LAFCO business that are not copied to LAFCO staff should be sent to [sdlafco@sdcounty.ca.gov](mailto:sdlafco@sdcounty.ca.gov). These emails will be made available for public inspection in accordance with the adopted LAFCO policy.

A copy of LAFCO's adopted Electronic Document Retention Policy that was adopted on May 1<sup>st</sup> is attached for the Commission's reference.

Respectfully submitted,



MICHAEL D. OTT  
Executive Officer

**Legal Counsel**

Michael G. Colantuono

MDO:eb

**Attachment**

LAFCO Policy A-105

**Subject****9**

## RETENTION OF ELECTRONIC DOCUMENTS

**Purpose**

To comply with the Public Records Act by establishing provisions for retention of and access to electronic communications, including text messages, voicemail messages, social media posts, and email messages sent or received in the conduct of LAFCO business.

**Background**

On March 2, 2017, the California Supreme Court published its decision in the case, *City of San Jose v. Superior Court*, concluding that the California Public Records Act applies to electronic communications that local government officials and employees send on private devices from private accounts. On May 1, 2017, the San Diego LAFCO determined that a local policy would be necessary to carry out the intent of this court decision. A number of different policy options were considered by the Commission prior to adopting a final policy, ranging from: (1) prohibiting the use of personal accounts for the conduct of LAFCO business -- as the federal government does; (2) allowing the use of personal accounts, but advising users of such accounts that copies of electronic communications should be sent to LAFCO's server -- so records requests can be honored without resort to private devices and accounts; or (3) allowing the use of personal accounts only if the electronic communications are stored for a minimum of two years and are searchable. After a thorough review and analysis of these available policy options, the San Diego LAFCO decided to combine options 2 and 3 above into one comprehensive policy on May 1, 2017. For further background on this policy, refer to the San Diego LAFCO's action on May 1, 2017 (Minute Item No. 8), and the Supreme Court decision, *City of San Jose v. Superior Court (March 2, 2017, S218066)* \_\_\_ Cal.5th \_\_\_.

The following definitions apply to the San Diego LAFCO's Policy A-105 regarding the retention of and access to electronic documents:

*Email Message:* An electronic communication sent and received via web mail or email client.

*Social Media:* Information posted to websites and applications that enable users to create and share content or to participate in social networking, including Facebook, Twitter, Instagram, Snapchat, and LinkedIn.

*Text Message:* An electronic, written communication sent and received via telephone or Internet connection.

*Voicemail Message:* An electronic, aural communication sent or received via telephone or Internet connection.

### **Policy**

It is the policy of the San Diego Local Agency Formation to follow the below provisions for the retention of text messages, voicemail messages, social media posts, and email messages sent or received in the conduct of LAFCO business:

1. Text messages, voicemail messages, and social media posts not saved to an archive or a more permanent medium are intended to be ephemeral documents, not preserved in the ordinary course of business. Accordingly, they do not constitute disclosable public records, as that term is defined by Government Code Section 6252, subdivision (e). LAFCO officials and employees are not required to retain these electronic documents. Business done on behalf of LAFCO that requires the creation and preservation of records should be conducted in other media.
2. The San Diego LAFCO has an email server account with the County of San Diego for purposes of sending and receiving email messages. LAFCO email messages are accordingly subject to LAFCO's and the County of San Diego's email retention policies and procedures. The County of San Diego currently retains emails that are sent and received by LAFCO for a period of 60-days and then they are automatically deleted from the server. Therefore, email messages sent or received by the San Diego LAFCO from and after May 1, 2017 will be preserved for a period of 60-days and will be made available for public inspection on the same terms as other LAFCO records. Exceptions to this 60-day retention provision will be emails that are preserved on paper or electronic archives. Emails that are preserved electronically or on paper will be retained and made available for a period of two years.

3. Except as provided in point 4 below, LAFCO officials and employees should use (or copy to an address on) the LAFCO email account with the County of San Diego for all email messages regarding matters of LAFCO business. Such email messages that fall within point 2 above will be preserved pursuant to point 2 and will be made available for public inspection on the same terms as other LAFCO records.
4. Commissioners (but not LAFCO staff) need not use the LAFCO's server account with the County of Diego for email messages to and from residents, business owners and property owners within the LAFCO's jurisdiction that are not addressed or copied to any other LAFCO officials and employees, and these email messages fall outside points 2 and 3 above. Nor need these officials use the LAFCO server account for email traffic in their personal, political and professional lives unrelated to LAFCO business. These email messages, too, fall outside points 2 and 3 above.
5. LAFCO will continue to comply with Government Code § 54957.5 which deems to be a public record any document communicated to a majority of officials, whether at the same time or seriatim, with respect to an item of LAFCO business regardless of the means of that communication, including via non-LAFCO email accounts. Commissioners are encouraged to forward such email messages not received via the LAFCO server account nor copied to LAFCO staff or to an email address designated for that purpose so they can be preserved in the LAFCO's email retention system, relieving individual Commissioners of any duty to preserve such email messages or make them available for public inspection.

This policy applies only to the conduct of LAFCO business. It has no application to communications to or from Commissioners in their other public and private capacities nor to communications to or from LAFCO staff that are personal, private or otherwise not LAFCO business.

Adopted: May 1, 2017