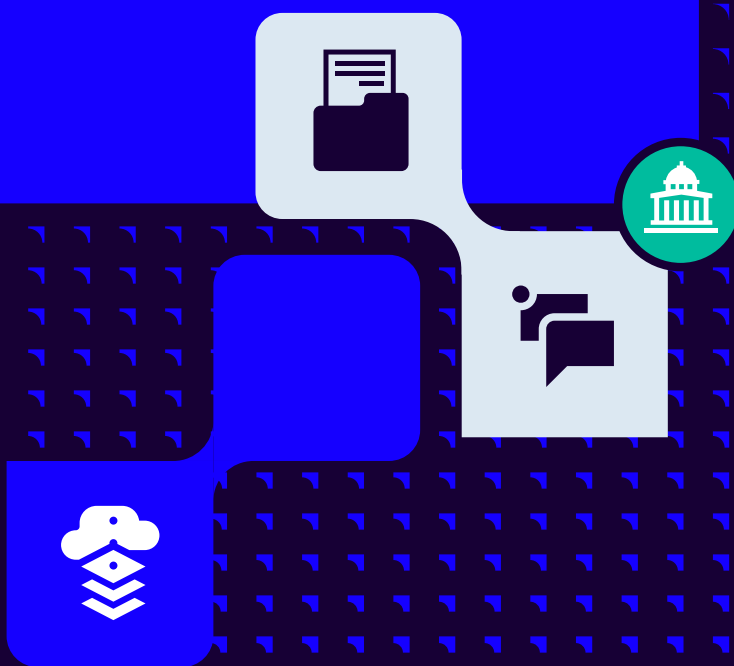


GUIDE

# Archiving Communications in the Face of Elections

Public sector best practices to  
modernize recordkeeping



Public records requests are nothing new. However, we're seeing a massive increase in both the quantity and backlog of those requests. This upward trend started during the pandemic and skyrocketed during recent contentious election cycles.

Complicating the recordkeeping requirement, the growing use of communication channels such as text messaging, social media and online collaboration tools led to a substantial rise in the complexity of fulfilling those requests.

Citizens, media and watchdog groups across the nation value government transparency and they are putting it to the test. For state and local governments, the stakes have never been higher. This puts significant pressure on these agencies to ensure they are well-prepared to respond to public records requests in accordance with state and federal laws. In an election year, this becomes even more critical. With some states opening elections as early as June, the race is officially on.

In this guide, we look at the fundamentals of records requests, explore how governments can modernize their records management, and discuss best practices to ensure your agency is prepared for records management in the face of upcoming and future elections.

## How are election officials handling the surge of records requests?

Public records requests are surging, but traditional systems weren't built for today's diverse communication landscape. Agencies face mounting pressure to deliver transparency while struggling to keep up with modern tools such as social media, instant messaging, texts, video town halls and more.

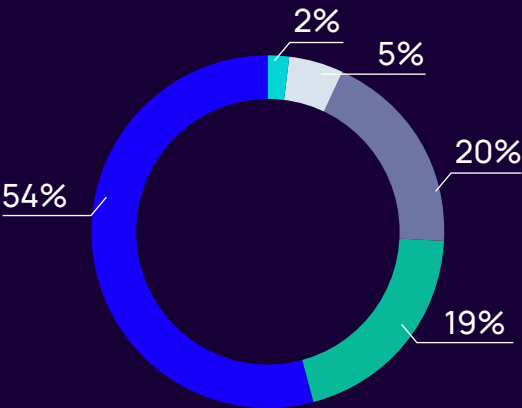
In a [GovQA survey](#), surveyed agencies noted that they've increased the time spent responding to public records requests, with dedicated hours rising from 438 to 1,658. Some [election officials have reported spending 25–70%](#) of their time on public records requests, which pulls resources away from core duties.

# The state of open records requests

In our [2024 State of Recordkeeping in Government](#) survey report, we examined the state of records management processes and the overall ability to respond to public records requests quickly and efficiently.

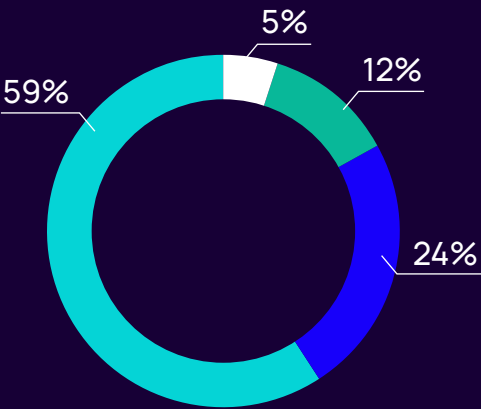
How would you rate your organizations recordkeeping capabilities?

- Needs major improvement
- Needs improving
- Decent
- Good
- Excellent



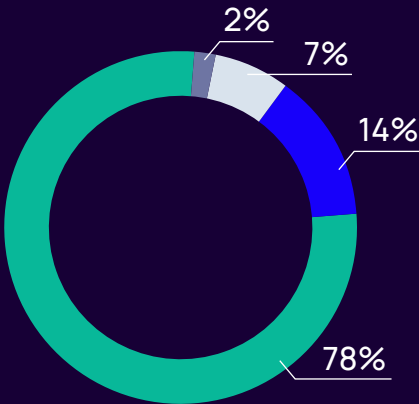
Records requests received per week

- 1-2
- 10-19
- 20+
- 3-9



Time spent per week fulfilling records requests

- 11-15 hrs
- 16+ hrs
- 6-10 hrs
- 1-5 hrs



In some cases, AI applications have been utilized to quickly generate higher volumes of FOIA requests, placing additional pressure on agencies to fulfill those requests.

In Washington state alone, requests related to the state's voter registration database grew so much that the [legislature changed the law](#), rerouting requests to the Secretary of State's office to relieve the burden on local agencies.

# Getting started with the basics

## Defining a record

Each government agency faces the challenge of identifying public records, especially as technology evolves and new communication channels emerge. What once centered on emails now includes additional text messaging, social media, instant messaging and collaboration applications.

When it comes to defining a record, agencies can take a page out of regulated organizations' playbooks. Robert Smallwood, CEO of Information Governance World Magazine, noted three general guidelines his team provides for what constitutes a business record:

- The content deals with regulatory, compliance or legal issues
- The content is related to a business transaction
- The content is something someone could dispute in the future



"We know that FOIA requests have been used in bad faith previously in a number of different contexts, not just elections, and that [large language models] are really good at doing stuff like writing FOIAs. At times, the point of the records requests themselves seem to have been that they require work to respond to. If someone is working to respond to a records request, they're not working to do other things like administering an election."

Zeve Sanderson, director of New York University's Center for Social Media and Politics



Federal and state freedom of information laws require public sector agencies to archive all business-related communications and to produce those records in response to public records requests.

However, the details around request processes and timelines vary from state to state.

## State public records laws

Public records laws can also vary significantly between states, so agencies must understand the full scope of their state's laws. Here's a quick rundown of some state public records laws and how they differ.

### Access to Public Records Act (APRA)

In Indiana and Rhode Island, public records related laws fall under the [APRA](#). This law applies to all three branches of government and requires a requester receive a response in a “reasonable amount of time.”

The permitted response time varies between the two states. For example, the required time can be extended in Rhode Island from 10 to 20 days for “good cause.”

### Data Practices Act

In Minnesota, the [Data Practices Act](#) offers guidance for public records requests. No specific response time is indicated; however, agencies must still respond within a “reasonable amount of time.”

### Freedom of Information Act (FOIA)

The [FOIA](#) gives any person the right to request access to records of the Executive Branch of the United States Government.

While FOIA is a federal law, many states have their own versions similar to FOIA; however, “reasonable time to respond” varies from state to state.

### Freedom of Information Law (FOIL)

The [FOIL](#) in New York gives the public the right to access records maintained by government agencies with certain exceptions. FOIL also differs in response time, providing up to five days for a “reasonable time to respond.”

### Freedom of Access Act

In Maine, the [Freedom of Access Act](#) guarantees the public access to “public records” and “public proceedings” of state and local government bodies and agencies. The Act also grants government offices up to five days to acknowledge a public records request and allows for collection of fees.

### Government Records Access and Management Act (GRAMA)

Utah has the [GRAMA](#), which applies to all three branches of government. It states who has access to records and how the law is enforced.

The GRAMA also allows state agencies to collect fees for duplication and labor over 15 minutes. Noncompliant agency employees can be charged with a Class B misdemeanor.

### Inspection of Public Records Act (IPRA)

The [IPRA](#) applies to all three branches of government in New Mexico and grants agencies up to 15 days to respond to records requests.

Additionally, New Mexico agencies face fines of up to \$100 per day for noncompliance.

### Open Public Records Act (OPRA)

The [OPRA](#) applies to all branches of government in New Jersey and allows up to seven days for response to requests. Notably, “unreasonable” noncompliance civil penalties include \$1,000 for the first offense, \$2,500 for a second offense, and \$5,000 for a third offense.

### Public Information Act (PIA)

Maryland and Texas each have their own Public Information Act. While Maryland state agencies have up to 30 days to fulfill public records requests, Texas law requires a response to requests within 10 days. Moreover, [PIA in Texas](#) specifies all government agencies may withhold records under certain circumstances.

### Right to Know Law

[New Hampshire](#) and [Pennsylvania](#) fall under the Right to Know law, which allows for up to five days to respond to public records requests in both states. All three branches of government are included under this law. These states do differ in penalties and fee waivers.

### Sunshine Law

The states of Florida, Missouri, South Dakota, and Wyoming fall under [Sunshine Law](#). The four states vary in required response times, fees and penalties, and the law's extension to different branches of government within each state.

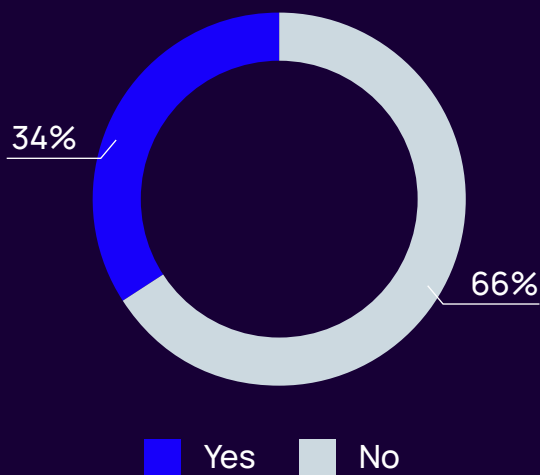
### Uniform Information Practices Act

Hawaii is one of the only states to create a government agency – the Office of Information Practices – to exclusively manage public records requests. Hawaii enforces the [Uniform Information Practices Act](#), which applies to all three branches of government.

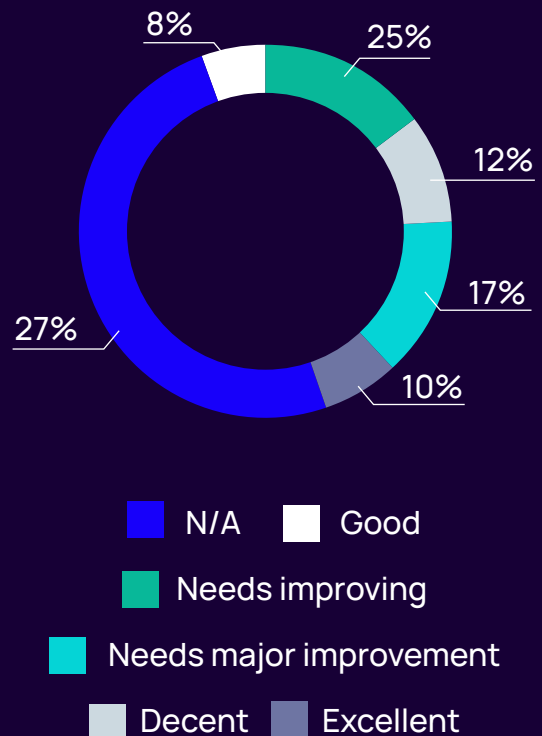
The Act allows agencies up to 10 days to respond to public records requests and permits agencies to collect fees related to request processing.

## Are text messages records?

Have you ever received a records request for employee text messages?



Rate your agency's ability to respond to records requests for text messages





# Meeting records requirements

## Agencies do not want to be on the wrong side of complying with records requirements

All signs point to the increasing volume of public records requests continuing. This means more agencies will also experience consequences if they fail to have modern records management systems, processes and technology in place to meet their records management requirements. In recent years, these consequences have included lawsuits, fines and reputational damages:

### **Louisville Metro Police Department's deletion of text messages may soon be a crime**

Top officers, including LMPD's former chief, used an encrypted messaging application configured to automatically delete messages, effectively shielding their communications from public inspection and [potentially committing a criminal offense](#) in the process.

### **Michigan clerks sued as activists seek voting records**

At least 18 clerks or local officeholders in Michigan have been sued over for [rejecting open records requests](#) for data on voters.

### **Portland paid \$167,000 to settle lawsuit over the mayor's text messages**

The Portland City Council [agreed to pay nearly \\$167,000](#) to settle a lawsuit that accused the city and Mayor Ted Wheeler of withholding thousands of text messages from a public records request.

### **Groups sue U.S. Senate candidate seeking correspondence about election and voter fraud**

The ACLU of Arizona and the nonpartisan watchdog group American Oversight are suing Pinal County sheriff and U.S. Senate candidate Mark Lamb over what they describe as Lamb's [failures to respond to records requests in violation of state law](#).

### **Anaheim called out for doing a bad job of keeping public records accessible**

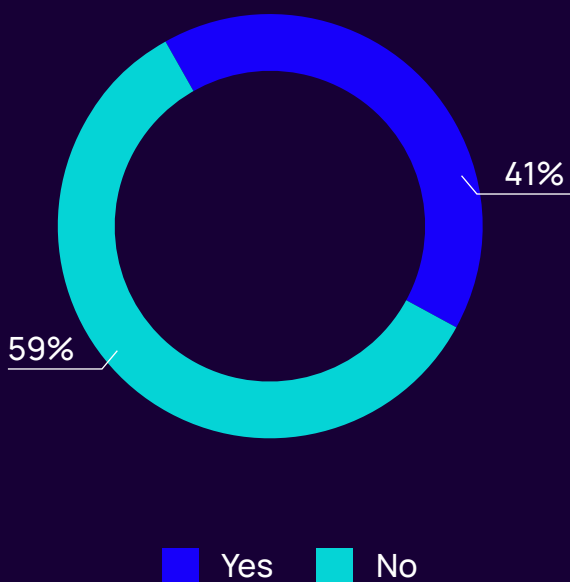
Independent investigators looking into alleged corruption and outsized corporate influence at Anaheim City Hall [called out city leaders and staff](#) for doing a "terrible job" tracking public records and messages.

### **Former Philadelphia mayor's deleted messages showcased archiving limitations**

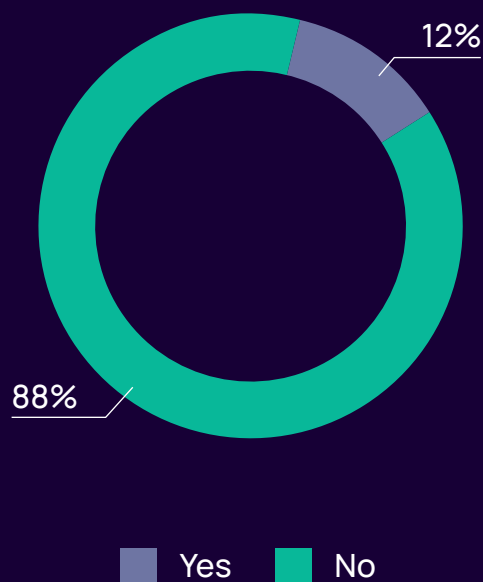
The Inquirer discovered Jim Kenney used a personal cell phone during his tenure as mayor of Philadelphia and [deleted all his messages, professional or otherwise](#). What became a right-to-know case shined a spotlight on Philadelphia's municipal records retention policy stemming from a lack of modern archiving capabilities.



Have you ever received a records request for employee communications that you couldn't fulfill?



Has an unfulfilled records request for employee communications resulted in legal action?



## Agencies desperately need modernization

It's critical to understand that "modernizing" is not an option; it's a necessity. Without the right policies, processes and archiving technology, agencies stand little to no chance of keeping up with the growing requests using outdated systems. Many state laws were created decades ago, and legislation will catch up. Public records no longer refer to email communications alone. Public records now cross email, text, messaging applications, and social media. Managing these records will only become more challenging, if not impossible, without updated systems.

These communications technologies are available – and everyone is using them. An [ArchiveSocial survey report](#) found that 91% of respondents working in the public sector are leveraging social media for citizen engagement, while 72.3% use it for critical response communications.

However, just because everyone is doing it does not mean it's easy. Regarding social media adoption by districts and agencies, 45.5% agreed on the challenge of meeting public record law requirements, a 20.5% increase from the year prior.

Government agencies can't afford to be left behind. However, modernization does not consist of technology adoption alone. Whether public agencies use social media to promote a candidate or streamline internal collaboration through messaging applications, they must also manage the use of the adopted technology and employee behavior.

### **Records management tips for newly elected officials and staff**

1. Keep public-facing communications accounts and personal accounts separate.
2. Archive all text messages – a screenshot is not enough.
3. Understand the full scope of using government-owned devices vs BYOD and set up the proper technology and guard rails to manage your approach.
4. Know when a message is a transitory record – and when it isn't.



## **Streamlining public record request processes**

With differing retention rules and permitted response times, each agency has slightly different needs to remain compliant with public records laws. However, all agencies risk litigation, fines, and reputational damage the longer it takes them to respond to requests or produce the requested records. The need for efficiency to save time and resources responding to requests is vital across all state and local governments.

With growing demands, agencies are turning to cloud-based archiving solutions that can simplify public records requests by storing every message and file in the same repository, regardless of the communication channel. Cloud solutions have reliable uptime and make it easier for agencies to capture, store, search and produce content.

# Smash for Government Agencies

A modern approach to electronic records management

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## Record fulfillment best practices

1

### **Establish policies and procedures**

First, an agency should have dedicated resources responsible for managing and retaining records. Then, the agency should establish policies and procedures to ensure organized and secure record capture, filing and storage.

Agencies should make their policies known and available for inspection. This helps funnel requests through the proper channels. The policies should include the times and places where records can be accessed or requested, the costs for obtaining records (if fees apply), methods for accessing copies, and records retention policies.

2

### **Train and keep training**

All individuals involved in public records requests should receive adequate training in managing and preserving the records they are responsible for. It is crucial that this training is ongoing and emphasizes the importance of proper records management. Educating staff about the uses, risks, and methods of communication is the most effective way to maintain order and avoid litigation.

3

### **Get more information from requesters**

In some cases, requester identification should be a requirement before granting access to certain records. An agency must be able to verify permission before releasing requested records. In most cases, the requester does not have to state a reason for the request. However, your policies may specify different rules for residents and non-residents of your state. Note that certain individuals may have special access rights to records pertaining to themselves.

When requesting information, an agency should ask for clear details about the subject matter and specific timeframe involved. This approach can help the agency save time and resources, especially when dealing with extensive requests requiring significant effort to understand and respond to. In these cases, an agency may be able to use a “burdensome request” exemption if applicable.

4

### **Know your mandatory timing requirements**

Different states have varying definitions for a “reasonable response time,” so an agency needs to be aware of the specific timing requirements and ensure compliance or deny requests within those limits. Utilizing modern software tools can be particularly useful for tracking response times, especially when dealing with multiple requests in a queue.

5

### **Understand your exemption codes**

Different states have varying definitions for a “reasonable response time,” so an agency needs to be aware of the specific timing requirements and ensure compliance or deny requests within those limits. Utilizing modern software tools can be particularly useful for tracking response times, especially when dealing with multiple requests in a queue.

6

### **Don't forget your fees**

Your state may allow your agency to impose fees for inspecting and duplicating records. These fees allow agencies to recoup some of the costs associated with fulfilling public records requests. Additionally, your agency may provide an estimate of these fees before performing the work.

# 7

## Properly capture and store your records

Your agency should have complete control over its records management. This means that staff know what records are in the system, where they are located, and in what format they are stored. The best way to maintain order over sizable volumes of records is to implement an electronic records management solution.

The ideal solution should include electronic communications data capture, archival and search.

This includes:

- Capturing all electronic communications data
- Storing all data in a unified archive
- Enabling advanced search and record discovery
- Fast, easy data exports to fulfill records requests
- Flexible deployment to adhere to existing and future data storage requirements

## E-Discovery 101:

Supercharge your Government  
Discovery and Records  
Management

[WATCH ON-DEMAND](#)

# Prepare for the future

Public agencies must ensure they are prepared with a modern archiving system, particularly during an election year when public interest and scrutiny from media and oversight groups intensify. A robust archiving system simplifies the management and access of public records, ensuring communications data is accurately recorded and preserved.

Implementing a comprehensive archiving system can streamline the process, reduce costs, and cut down the time needed to respond to public records requests. The system allows for the automatic capture, storage, and retrieval of records and enables recordkeeping managers and staff to address public concerns promptly and accurately.

Adapting to a modern archiving approach not only enhances the efficiency and transparency of government operations but also plays a critical role in maintaining public trust and integrity during the highly scrutinized period of an election year.



Smarsh® enables companies to transform oversight into foresight by surfacing business-critical signals from the most in-demand communications channels. Regulated organizations of all sizes rely upon the Smarsh portfolio of cloud-native digital communications capture, retention and oversight solutions to help them identify regulatory and reputational risks within their communications data before those risks become fines or headlines.

Smarsh serves a global client base spanning the top banks in North America, Europe and Asia, along with leading brokerage firms, insurers, and registered investment advisors and U.S. state and local government agencies. To discover more about the future of communications capture, archiving and oversight, visit [www.smarsh.com](http://www.smarsh.com)

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