




HOW TO PAY FOR A DIGITAL ARCHIVING SOLUTION

A RESOURCE FOR PUBLIC AGENCIES



Agencies at all levels of government are required by state law to produce digital communications data promptly and comprehensively, when requested.

For many public agencies, open records requests can come at any time, from constituents of all kinds — news reporters, insurance companies, legal representatives, business owners or everyday citizens. At one time, those requests may have been relatively simple to deliver. Methods for collecting, preserving and producing an agency's communications information might have required some photocopying or a point solution for archiving emails.

Today, public agencies have to contend with the meteoric rise of collaborative technologies, social media, mobile devices and other new ways to communicate in the workplace and with the public. All these new and efficient channels generate multitudes more content to govern, manage and produce for records requests. And agencies require more people and resources in the process.

This increased volume and variety of communications data has made it challenging for government agencies to stay compliant with state and local open records laws. They're finding it hard to:

- Keep up with applicable records management requirements
- Collect and preserve all types of digital communications for records requests
- Complete requests within the specified time constraints, due to outdated, incomplete or disparate methods of retention

An open public records system is a necessary instrument of a transparent government and an informed constituency. In a modern organization — where people communicate across multiple applications and devices — managing all that content and context can be overwhelming. Processes, policies and all stakeholders must be aligned.

In this guide...

Agencies can replace inefficient, paper-based and manual records processes with comprehensive, easy-to-use archiving technology. This enables them to find and produce the information they need more easily and to reduce overhead costs. But the million-dollar question for a budget-conscious government organization is: how do you pay for it?

How can you afford not to? More full-time employees, fines for non-compliance, exorbitant legal fees and other expended resources could likely be foregone with the right archiving solution.

This guide will help you focus on where your budget inefficiencies exist, how to get creative about shoring up the resources you need, and how to outline cost-effective options for a unified communications data archive.



WHAT ARE YOU PAYING FOR TODAY?

Inefficient methods and technology

Some government agencies are trying to use old methods in a new paradigm. It may seem less expensive to stick with the status quo, but inefficiencies add up:

- Photocopying text messages on mobile devices
- Forwarding screen shots and emails to be archived
- Relying on mobile carriers to provide text messages
- Deleting text message records before they can be requested
- Printing and filing emails, texts or social media messages

These cumbersome processes too often result in organizations expending more time, people and money to find and respond to requests for public records. And manual processes are vulnerable to human error. They often yield incomplete, unreliable records that don't meet legal requirements.

Instead, agencies could be addressing the underlying need for new tools and technology. Without a modern archiving solution that centralizes data and offers user-friendly search capabilities, governments can put their organizations in financial, reputational and legal jeopardy.

Staffing and resources

It may seem like the only option is to hire more clerks or records managers. But a full-time salary can be a strain on an agency's budget and may be a non-starter. If the number of records requests exceeds your current team's capacity, it may be time to rethink your processes.

It's common for government agencies to use a patchwork of standalone archives for each type of content storage. In that case, the data is difficult to extract, which puts extra burden on IT teams to hunt down information from multiple locations and sort through large databases to find what they're after. And the amount of data you're producing isn't likely to decrease.

If you step back and consider how much time you spend on requests each week or month, and how many people are involved, is it possible that a more efficient technology solution can save enough time to make up for those hours?

In the news

Maryland lawmakers are pushing to revise Maryland's public records **laws to more clearly include digital communications**. This came about after the governor was found to be using a messaging app — that destroys messages after 24 hours — to communicate with state employees.¹

1) <https://www.washingtonpost.com/dc-md-va/2021/12/30/hogan-wickr-messages-disappear/>

Fines and legal fees

Financial penalties for public records violations vary widely from jurisdiction to jurisdiction.² They can range anywhere from hundreds to thousands — and in some cases hundreds of thousands — of dollars. Some agencies choose to incur these costs, withhold information or ignore public records requests entirely because they just don't have the time or resources.

But if a public agency faces legal repercussions for non-compliance or a more serious violation, the cost to obtain/retain counsel, legal fees and potential damages can be massive. There have also been cases of bad faith actors, banking on the agency's inability to respond quickly or thoroughly enough to a request, for the explicit purpose of seeking damages.

In the news

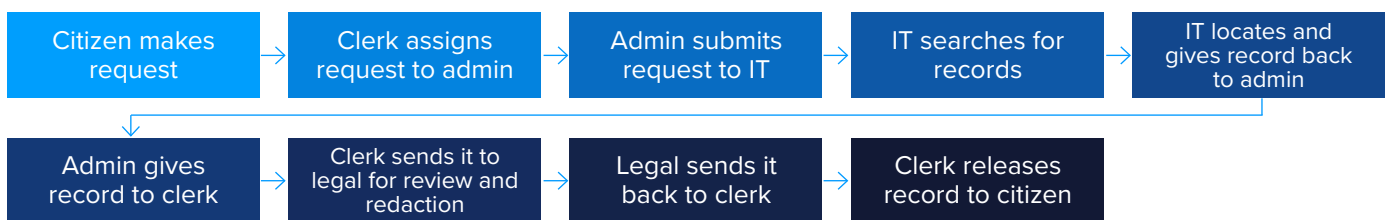
In 2016, the Washington Supreme Court upheld a \$502,000 penalty for Public Records Act violations by the State Department of Labor and Industries. The ruling determined that the department had unlawfully withheld certain records, and the judgment was calculated based on fines for each page of the record that was withheld.³

Why you need an archive

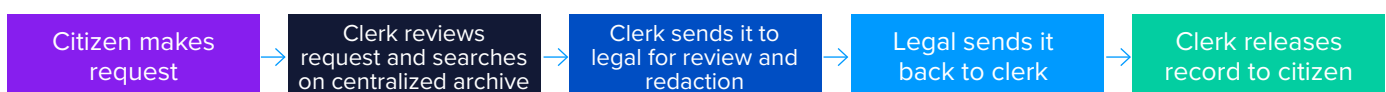
A digital communications archive is a key tool for helping public agencies avoid the fines, legal fees and intangible costs of the reputational damage caused by public records non-compliance. By implementing a user-friendly archive, agencies can adopt a financially sustainable solution to public records compliance for the near and long-term future.

Hiring more staff wouldn't be necessary. Those in charge of records management could stay focused on their primary responsibilities, and the IT team could be relieved from the process. Not to mention, a comprehensive solution means one vendor and one bill to budget.

Imagine the time and resources you'll save when you turn your content retrieval process from this:



to this:



2) <https://www.rcfp.org/open-government-sections/f-are-there-sanctions-for-noncompliance/>

3) <https://www.spokesman.com/stories/2016/mar/24/justices-uphold-502000-public-records-fine-against/>

DO MORE WITH LESS

Legal teams can take advantage of the visibility a complete communications archive offers. They can:

- Leverage sophisticated e-discovery, case management and legal hold capabilities for all archived content
- Prepare for and respond to public records requests, litigation and audits without relying on manual processes
- Implement policies, search across all archived content, and easily review and retrieve messages as part of investigations into employee misconduct or other disputes, from a centralized platform

IT personnel can be more strategic about technology and:

- Implement an effective archiving strategy for email, text messages, social media and internal IM and collaboration platform data in one database
- Reduce disparate collections of records data and eliminate tiresome content search processes
- Quickly and accurately search and review complex communications stored with metadata in native formats

Records managers can have peace of mind, and:

- Store and manage all content types including email, instant messaging/collaboration, social media and text messages
- Reduce the risk of fines due to inability to produce records on time and with complete data
- Track public records requests and manage compliance policies across departments
- Retain communications data in accordance with regulations, and respond to public records requests thoroughly and easily





HOW TO PAY FOR A MODERN ARCHIVING SOLUTION

Update your organization's mobile policies and determine a cost-effective strategy

Prohibition policies for mobile phones—as a way to avoid tracking those communications — are unrealistic in this day and age. They also hold employees back from getting their jobs done efficiently. It's best to decide on a mobile use policy and enforce it, to reduce the operational costs of scrambling to fulfill records requests when the time comes. The good news is you have options for the retention and oversight of mobile communications:

- Agency-issued devices: If security is a concern, offering agency-issued phones has the benefit of allowing you to mandate passcodes, install your own firewall or anti-virus software, and safely transfer devices when someone leaves.
- Bring your own device (BYOD): In this case, employees use their own phones, and you can install containerization or Electronic Device Management solutions over the top, to capture only business-related communications.

Do a cost-benefit analysis to decide which option, or a combination of both, works for your agency. The right technology partner can help you capture and archive communications data. Whatever policy you choose, make sure to train employees on your mobile policies to ensure compliance and avoid headaches when information is requested.

Charge for requests

Most state and local government agencies are permitted to charge a reasonable fee to recoup the costs of providing public records.⁴ For example, the Oregon Public Records Law, "...allows agencies to recover their actual costs in fulfilling a public records request, including actual costs for supplies, research, compilation, postage/shipping and staff time." If the estimated fee is larger than \$25 the law requires agencies to notify requesters in writing beforehand.⁵

These rules vary widely from state to state. Whether you are authorized to charge fees for public records requests, and how that might be calculated, will have to depend on your state's laws. If you're unsure about official policies in your area, check in with your management and governing bodies to see if this is something you have the authority to do, or can potentially implement.

4) <https://www.governing.com/topics/politics/gov-public-records-tennessee-charges.html>

5) <https://www.oregon.gov/osmb/info/Documents/PublicRecordsRequestProcedures.pdf>

Apply for grants

If you're really struggling to find the funds, your agency may be eligible for a federal grant.⁶ If accepted, a federally issued grant can provide the cloud cover your agency needs to research, implement and optimize an archiving solution while you consider how to save money in other ways. Here is a list of potentially eligible organizations:

- State governments
- County governments
- City or township governments
- Special district governments
- Native American tribal governments (federally recognized)
- Native American tribal governments (other than federally recognized)
- Independent school districts
- Public and state-controlled institutions of higher education

Request additional budget approval

It's understandable that on a shoestring budget adding additional technology solutions may seem daunting. But the costs you may incur down the line could have devastating effects for your team or agency. By making the case for archiving as an insurance policy, public agencies can stay ahead of potential monetary risks.

Put together a plan that outlines cost and resource savings and additional benefits for efficiency. You can even use this guide to help make your case!

HOW SMARSH CAN HELP

Smarsh enables state and local government agencies to quickly and thoroughly respond to public records requests. Smarsh archiving solutions support over 80 different communications channels across email, SMS/text, social media, IM/collaboration, voice and web. We partner with many industry carriers for direct capture of all mobile content from your employees' devices.

Additionally, through a strategic partnership with NextRequest, Smarsh offers an end-to-end solution that features a specialized online portal for accepting, managing and responding to public records requests, complete with functionality for legal teams to perform redaction prior to publishing the messages extracted from the archive.

- Modernize records management and production
- Automate forms and hard-copy handling
- Free IT from continuous search and triage of information
- Spare your legal team the toil of manual redaction
- Reduce risk of fines from delays or incomplete information
- Build public trust and transparency

6) <https://www.grants.gov/web/grants/learn-grants/grant-eligibility.html>



Smarsh enables companies to transform oversight into foresight by surfacing business-critical signals in more than 80 digital 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.

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