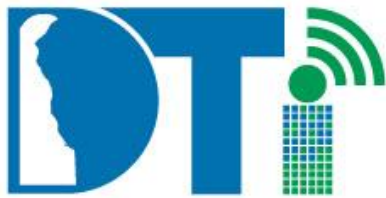


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| Synopsis: | Users of the State’s Communications and Computing resources can expect that their transactions are treated confidentially because DTI does not monitor e-mail transactions. However, e-mail messages, web access, mainframe and server access are all electronic records that could be subject to review with just cause. This policy provides a controlled process for obtaining access to individual e-resource records. |
| Authority: | Title 29 Chapter 90C Delaware Code, §9004C – General Powers, duties and functions of DTI “2) Create, implement and enforce statewide and agency technology solutions, policies, standards and guidelines, including as recommended by the Technology Investment Council on an ongoing basis and the CIO” |
| Applicability: | <p>This policy is applicable to all users of the State of Delaware communications and computing resources. The Department of Technology and Information (DTI) is an Executive Branch Agency and has no authority over the customers in Legislative and Judicial Branches, as well as Local Education Agencies, and other Federal and Local Government entities that use these resources. However, all users, including these entities, must agree to abide by all policies, standards promulgated by DTI as a condition of access and continued use of these resources.</p> <p>** noted exception: As it pertains to email sent from a State, Legislative Hall email account, the following epilogue restrictions will be applied.</p> <p><i>Notwithstanding any provisions of the Delaware Code to the contrary, the Delaware Department of Technology and Information is hereby prohibited from accessing or providing a legislator’s e-mails or phone calls upon the request of another state department or agency, or branch of state government, except pursuant to the consent of the legislator, an Attorney General subpoena or a search warrant or other court order.</i></p> |
| Effective: | 3/22/2005 |
| Reviewed: | 3/6/2023 |
| Approved By: | Chief Information Officer |
| Sponsor: | Chief of Staff |





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I. POLICY

POLICY STATEMENT

1. This State Policy provides a controlled process for obtaining access to individual e-resource records that do not leverage Consensual Access Permission processes.
2. 29 Delaware Code §502(8) defines the use of these e-resources as “public records.” The state, through its “Acceptable Use Policy” (Appendix 1), makes it clear that any use of these e-resources are public records with no guarantee of privacy.
3. In order to comply with the Delaware Public Records Law (29 Delaware Code §501-526), DTI makes and retains copies of these transactions for the appropriate retention schedules. [See GAR-002 Administrative Support Records, Delaware Public Archives General Retention Schedule For State Agencies, available at [Delaware Agency General Retention Schedule](#)]





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4. DTI will cooperate with any agency/organization, as users of these resources, should they have a need to have access to these records in cases where the agency/organization needs to comply with the Freedom of Information Act, a legal hold, a court order, a valid subpoena, or a request to meet a legitimate Organizational Need. *Please see exceptions under the **Applicability** section on page one (1) of this policy.*
5. Only Authorizing Officials (see definitions) may request access and forwarding of electronic communication records. An alternative, high-level permission must be obtained for individuals with a direct reporting relationship to an Authorizing Official to act as a designee. Agency Authorizing Officials are responsible for notifying DTI when they leave the agency or stepdown from the e-Resource Records role. In addition, the Agency/Organization is responsible for notifying DTI when the Agency/Organization seeks to designate a new Authorizing Official (Appendix 3).
6. Such requests will be in writing and must be made only (a) when required by and consistent with law, (b) when there is substantiated reason to believe that violations of policy or law have taken place, or (c) when required to meet time-dependent, critical Organizational Needs. Written requests must be submitted using the "Request to Disclose Individual User e-Resource Records" form (Appendix 2).
 - A) Delaware Attorney General Subpoenas or Court Orders - If DTI is compelled, under law, to disclose, copy, or transmit any agency information, DTI shall, prior to making such disclosure, reproduction, or transmittal, require that the requesting agency notify and obtain approval from the Data Steward. In such situations, unless notice to the Data Steward is precluded by the terms of the AG subpoena or court order, DTI will not release any records until such approval is obtained.
 - B) Litigation Holds - If the requesting agency seeks a litigation hold, DTI requires that the agency update DTI as to the status of the need for the hold within one (1) year of the request. Should a requesting agency not pursue the hold as required by this policy, DTI cannot guarantee that the requested data will be maintained beyond one (1) year.
7. Upon receipt of a request, DTI will conduct a policy compliance review to ensure that the requesting agency's request meets the requirements of this policy. If DTI determines that the request is non-compliant, DTI will decline the request and return it to the requesting agency. Requests may then be resubmitted once policy compliance is achieved. Any requests not approved by the agency's Authorizing Official will be declined and returned.

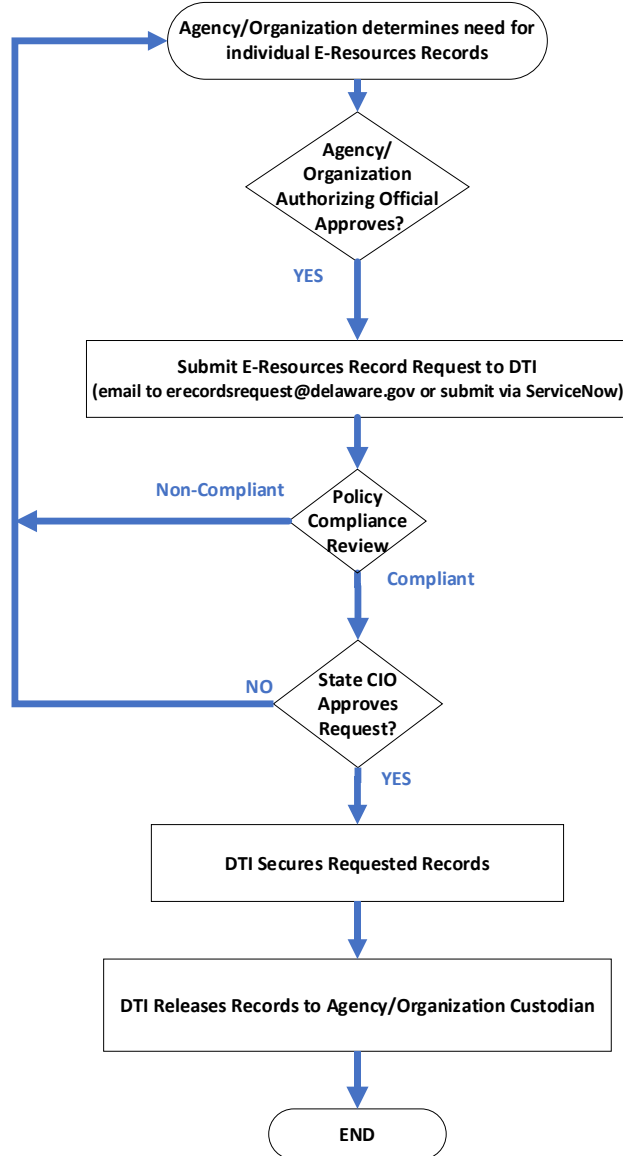




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Request to Disclose Individual User e-Resource Records Work Flow



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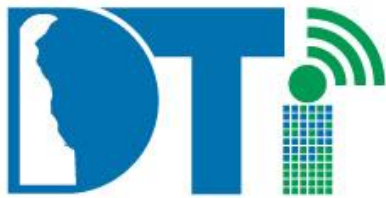
II. DEFINITIONS

1. **Public Record** - 29 Delaware Code §502(8) defines a “public record” as “any document, book, photographic image, electronic data recording, paper, sound recording or other material regardless of physical form or characteristics, including electronic records created or maintained in electronic information systems, made, used, produced, composed, drafted or otherwise compiled or collected or received in connection with the transaction of public business or in any way related to public purposes by any officer or employee of this State or any political subdivision thereof.”

Email messages and website source files meet the definition of a record as they are “made or received pursuant to the law or ordinance in connection with the transaction of public business.” Therefore, all provisions of the Delaware Public Records Law (29 Delaware Code §501-526) apply.

2. **FOIA** - Email messages (unless specifically prohibited by law) are subject to provisions of the Delaware Freedom of Information Act (FOIA) found in 29 Delaware Code §10001-10007 and the requirement of 29 Delaware Code §504 that public officials and employees “adequately document the transaction of public business” and “retain and adequately protect all public records in their custody.”
3. **Delaware Public Records Law (29 Delaware Code §501-526)** DTI follows the Delaware Public Records Law’s requirements for records retention and disposition schedules and uses the procedures of the Delaware Public Archives (DPA) for authorizing records disposition.
4. **e-Resource Records** – Records of usage of all state communications and computing systems.
5. **Acceptable Use Policy** – The Acceptable Use Policy provides guidelines for the appropriate use of the state’s communications and computing systems. “State Communications and Computer Systems, including, but not limited to, computer networks, data files, e-mail, voice mail, and substance of dialogue found within collaborative communication tools, may be monitored and/or accessed by the State of Delaware to ensure the integrity of the technology, protect against fraud and abuse, detect unauthorized access or use, and for other business purposes. Although DTI does





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not randomly monitor message or network transactions, DTI may without notification or approval, monitor, access, and review any and all communications originating from the State of Delaware or delivered to the State of Delaware. Employees should have no expectation of privacy in regard to use of these services. This is in accordance with 19 Del. C. chapter 7.”

6. **Authorizing Officials:**

- Cabinet Secretaries – Executive Branch
- Controller General, Speaker of the House, Senate Pro Tempore - Legislative Branch
- Chief Justice – Judicial Branch
- School Superintendents (users of the state education network)
- Federal, State, and Local Government Agencies – These would require signatures from the highest-ranking member of the organization.

An Agency/Organization head may designate a direct report of their organization to fulfill the obligations of the policy by completing the “Electronic Records (Resources) Request Form” (Appendix 3).

7. **Requestor** - Select individuals within the requesting organization who would ensure their organization follows this policy and associated processes when requesting information. In most cases it will be the organization's Information Resource Manager (IRM), or Director Level and above who will coordinate this request.
8. **Organizational Need** - This is a non-consensual access of individual records to meet operational or legitimate management purposes, including an audit.
9. **Data Steward** - The agency whose data is being requested.
10. **Consensual Access Permission** - This permission or delegation occurs when a user grants access to their mailbox for a business purpose, i.e. Outlook delegation, or to another digital record or file maintained on the State’s network. This type of consensual access permission does not require an eRecords Request and should be handled by an agency’s IT team or by contacting the DTI Service Desk.

III. DEVELOPMENT AND REVISION HISTORY



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| Date | Revision |
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| 3/22/2005 | Rev 1 – Initial version |
| 3/7/2008 | Rev 2 – Updated version |
| 1/6/2010 | Rev 3 – Updated version |
| 4/25/2012 | Rev 4 – Updated version |
| 4/8/2013 | Rev 5 – Updated version |
| 8/13/2013 | Rev 6 – Updated version |
| 2/18/2015 | Rev 7 – Updated version |
| 2/21/2023 | Rev 8 – Updated version |

IV. APPROVAL SIGNATURE BLOCK

| | |
|---|-------------|
| On File | |
| Name & Title: State Chief Information Officer | Date |

V. RELATED DOCUMENTS

- Appendix 1 - [Acceptable Use Policy](#)
Appendix 2 - [eRecords Request Form.pdf \(delaware.gov\)](#) (Request to Disclose Individual User e-Resource records)
Appendix 3 - [Designee Form](#) (Electronic Records (Resources) Request Form)



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