EXECUTIVE ORDER NO. 64

TO: ALL AGENCIES UNDER THE MAYOR

FROM: MAYOR WELLINGTON E. WEBB

DATE: September 17, 2002

SUBJECT: RECORDS MANAGEMENT

Purpose: This executive order establishes the policy of the City and County of Denver concerning the management of official records. Executive Order No. 64 dated May 18, 1990, subject "Records Management" is hereby superseded by this Executive Order No. 64. The purpose of the Records Management Policy is to establish a Records Management Program.

1.0 Applicable Authority: The applicable authority relevant to the provisions and requirements of this Executive Order No. 64 can be found in Article 1, section 2.2.10 and 2.9 3(B) of the Charter of the City and County of Denver (revised).

2.0 Policy: The policy of the City and County of Denver to provide economical and effective controls over the creation, distribution, organization, maintenance, use, and disposition of City and County records. It establishes a comprehensive system of integrated procedures for their management, from creation to ultimate disposition, consistent with the requirements of the Public Records Act of the State of Colorado, City and County of Denver Municipal Codes and Ordinances and accepted records management practice. These shall be created, maintained and disposed of in accordance with the provisions of this policy or authorized procedures. All document imaging systems or electronic document management systems implemented by a City Agency must meet the standards developed by the Records Advisory Committee with recommendations from the Records Manager.

3.0 Scope of the Records Management Program: The scope of the Records Management Program includes:

- Creation, receipt, maintenance and disposition of City and County of Denver records;
- Maintenance of approved records retention schedules;
- Utilization of appropriate technology to facilitate records and information storage and retrieval;
- Establishment of procedures and guidelines to carry out these functions.

The Program manages City and County of Denver records in all storage media including paper, microfilm, and other hardcopy formats, optical images, electronic records and any other storage media or record formats that the City and County may use to maintain records.
4.0 **Objectives:** The objectives of the Records Management Program are to:

4.1 Identify City and County records to facilitate access to information required to conduct City and County business and to provide appropriate access by the public.

4.2 Maintain City and County records for the duration of the approved retention period.

4.3 Provide access to City and County records for operating, legal or public requirements.

4.4 Identify vital records and ensure that they are protected and available in the event of a disaster or other major interruption to city operations. *(Note: see XO 85 and the Disaster Recovery Plan for specific information)*

4.5 Ensure compliance with legal statutes and governmental regulations regarding record keeping requirements.

4.6 Destroy City and County records in accordance with the approved records retention schedules or, in the case of records having historical significance, process them for long-term retention in coordination with the State Archivist.

5.0 **DEFINITIONS:**

5.1 **City and County of Denver Records:** All documents, papers, letters, books, maps, photographs, sound or video recordings, microfilm, magnetic tape, electronic media, or other information recording media, regardless of physical form or characteristic and regardless of whether public access to them is open or restricted under the laws of the State of Colorado, created or received by the City and County of Denver. The term "Record" is covered by the Public Records Act as set forth in C.R.S. as amended, Section 24-72-201 through 206.

5.2 "Agency or Department head" means the person who by ordinance, order, or administrative policy is in charge of an office of the City and County of Denver.

5.3 "Vital record" means any record of the City and County of Denver necessary to the resumption or continuation of the operations of the city and county of Denver in an emergency or disaster, to the re-creation of its legal and financial status of the City and County of Denver.

5.4 "Permanent record" means any record of the City and County of Denver, for which the retention period on the records retention schedule is given as permanent.
5.5 "Records retention schedule" means any document of the City and County of Denver prepared by or under the authority of the Records Manager or the prior Executive Order No. 64, listing the titles (categories) of records maintained by the City and County of Denver, their retention periods, and other records disposition information that the records management program may require.

5.6 "Records management" means the application of management techniques to the creation, use, maintenance, retention, preservation, and disposal of records for the purposes of reducing the costs and improving the efficiency of records keeping. The term includes the development of records retention schedules; the management of filing and information retrieval systems; protection of essential and permanent records; the economical and space-effective storage of inactive records; control over the creation and distribution of forms, reports, and correspondence; and the management of micrographics and electronic and other records storage media.

5.7 "Agency records liaisons and coordinators" means the persons designated by the agency or department head to implement the records management program in the agency or department. Persons designated as records liaison or coordinator shall be thoroughly familiar with the records created and maintained by the agency or department.

6.0 Ownership of Records: City and County of Denver Records are the Property of The City and County of Denver. No City and County of Denver official or employee has, by virtue of his or her position, any personal or property right to such records even though he or she may have developed or compiled them. The unauthorized destruction, removal from files, or use of such records is prohibited.

7.0 Establishment of the Records Management Committee. A Records Management Committee is hereby established. The members shall include the following persons.

   a) Clerk and Recorder (Chairperson)
   b) Manager of General Services
   c) City Attorney
   d) Director of Finance
   e) Representative from the Denver Office of Information Technology
   f) Records Manager (ex-officio)

8.0 Designation of a Records Manager: The Clerk and recorder in collaboration with the Records Management Committee shall select a Records Manager for the City and County of Denver who will be able to perform the functions and duties of Records Manager.
9.0 Duties and Responsibilities:

9.1 The Records Management Committee shall:

9.1.1 Review and approve policies and procedures governing the records management program developed by the Records Manager.

9.1.2 Review the performance of the program on a regular basis and propose changes and improvements as necessary.

9.1.3 Review and approve records retention schedules submitted by the Records Manager.

9.1.4 Actively support and promote the records management program throughout the City and County of Denver.

9.2 The Records Manager under the Career Service Authority Position Analyst Specialist-Records Management shall:

9.2.1 Administer the records management program and provide assistance to agencies and departments in its implementation.

9.2.2 Plan, formulate, and prescribe record retention policies, systems, standards and procedures.

9.2.3 Prepare a Records Management Procedures Manual and perform on-site consultation.

9.2.4 In cooperation with Agency and Department Heads, identify vital records and establish a disaster recovery plan for each agency and department to ensure maximum availability of the records and re-establish operations quickly with minimum disruption and expense.

9.2.5 Develop procedures to ensure the permanent preservation of the historically valuable records of the City and County of Denver.

9.2.6 Establish non-electronic standards for filing and storage equipment and for records keeping supplies.

9.2.7 Establish standards for electronic storage systems in concurrence with The Denver Department of Information Technology.

9.2.8 Study the feasibility of and, if appropriate, establish a uniform filing system and system and a forms design and control systems for the City and County of Denver.
9.2.9 Coordinate the review and approval of the records retention schedules with the Colorado State Archivist, the State Attorney General, and the Records Advisory Committee of the City and County of Denver.

9.2.10 Maintain records and provide reports to the Committee on the volume of records destroyed under approved retention schedule, the volume of records microfilmed or stored electronically, and the estimated cost and space savings as a result of such disposal.

9.2.11 Obtain authorization for records destruction from the State Archivist and Attorney General for the State of Colorado, as provided by applicable laws.

9.3 The Agency Records Coordinators shall:

9.3.1 Facilitate compliance with records retention policies and procedures within their respective agencies and work directly with the Records Manager.

9.3.3 Ensure that employees for complying with the requirements of the Records Management Procedures Manual and the Records Retention Schedules.

9.4 Agency heads shall:

9.4.1 Submit records retention schedules for records under their authority to the Records Manager using the guidelines outlined in the Records Management Procedure Manual. The Records Manager will then submit the records retention schedule to the Records Advisory Committee for approval as set forth in Section 9.1.3.

9.4.2 Be responsible for ensuring compliance with the approved agency records retention schedules.

9.4.3 Appoint an agency Records Coordinator to work with the City and County Records Manager.

9.5 The City Attorney shall Approve for legality, prior to their use or implementation, all policies, systems, standards, procedures, manuals, plans, forms and reports developed for the retention, storage, recovery and destruction of City Records.

10.0 MEMORANDUM ATTACHMENTS: The procedure(s) for implementing this Executive Order shall be defined by Memorandum Attachments to the Executive Order which may become a part of the Executive Order. Further, the Clerk and Recorder which is responsible for the content of this Executive Order, shall have the authority to issue procedural Memorandum attachments relative to this Executive Order.
Approved for Legality:

J. Wallace Wortham, Jr.
Attorney for the City and County of Denver

Approved:

Wellington E. Webb
MAYOR

Bruce Baumgartner
Manager of Aviation

Chris Veasey
Manager of Environmental Health

Thomas J. Migaki
Manager of General Services

James E. Mejia
Manager of Parks & Recreation

Stephanie A. Foote
Manager of Public Works

Cheryl P. Cohen-Vader
Manager of Revenue

Tracy Howard
Manager of Safety

Donna Good
Manager of Human Services
Executive Order 64

MEMORANDUM NO. 64A

TO: All Employees, Agencies, and Departments Under the Mayor
FROM: John W. Hickenlooper, Mayor
DATE: January 22, 2008

SUBJECT: PRESERVATION OF LITIGATION RECORDS

This Memorandum is incorporated into Executive Order No., 64 dated, September 17, 2002, and subject to “Records Management.” It details the City’s Litigation Hold process on all documents defined by Executive Order No. 64.

DECLARATION OF POLICY

The goal of this Memorandum is to satisfy the City’s obligations to preserve any and all documents related to pending or anticipated litigation.

TERMS AND DEFINITIONS

For the purposes of this policy, consistent with Executive Order 64, the following definitions will apply unless context requires otherwise:

I. Agency Records Coordinator: The employee within each Department or Agency designated to receive a Litigation Hold Advisory and responsible for managing the Litigation Hold for the Department or Agency. The Agency Records Coordinator is responsible for (a) preserving the integrity of the Records Retention Schedule and (b) meeting the Litigation Hold requirements as requested by the City Attorney’s Office.

II. Documents: All records, documents, drawings, graphs, charts, photographs, sound recordings, images, writings, and all other data or data compilations in paper or digital format and stored in any medium, including but not limited to, email and any attachments, word processing documents, spreadsheets, presentation documents, graphics, animations, images, audio, video and audiovisual recordings, and voice-mail records relating to the referenced case and parties.

III. Litigation Hold Advisory: A notice from the City Attorney’s Office instructing a City Department or Agency that litigation has been filed or is threatened and that records must be preserved by law. A sample memorandum is attached.

IV. Litigation Hold: The actions taken by the City to suspend a records retention policy and order the preservation of all documents and records relating to an actual or potential dispute in the event that they must be used or produced for litigation.
V. Records Retention Schedule: A standard schedule that establishes the minimum retention periods for various types of City Department and Agency documents and records. Retention periods are in calendar years and based upon Federal and Colorado laws, record surveys, business needs, and general knowledge and business practices regarding how long information should normally be retained.

LITIGATION HOLD PROCEDURE

A Litigation Hold requests the suspension of records retention and destruction policies pertaining to specific pending or threatened litigation and requests the affected City Departments and Agencies to preserve all documents and records for possible production. The duty to preserve such records will not end until the City Attorney's Office sends a notice of resolution or completion of the litigation. Newly created documents and newly located documents relating to the litigation must also be preserved.

A Litigation Hold will be requested by the City Attorney's Office following the process detailed below.

1. Upon becoming aware of pending or threatened litigation, the City Attorney's Office shall contact the relevant Agency Records Coordinator(s) to assist with identifying:
   a. the types of Documents which may exist;
   b. the likely location of Documents;
   c. the names of key players, officials, employees, and/or witnesses who may control or possess potentially relevant Documents; and
   d. the key players most knowledgeable about the matter.

2. The City Attorney's Office shall prepare a Litigation Hold Advisory and send it to the Agency Records Coordinator for all relevant Departments and Agencies.

3. The Agency Records Coordinator shall distribute the Litigation Hold Advisory and communicate the following information to all identified individuals:
   a. A description of the pending or threatened litigation;
   b. A description of the Documents and types of Documents that must be preserved;
   c. The location and source of potentially relevant Documents, if known;
   d. The procedures to be used for preserving Documents;
   e. A request to contact the Agency Records Coordinator with the names of any other key players or individuals and current or former employees who might have relevant Documents;
   f. The procedures to be used to preserve newly created and newly located Documents relating to the matter.
   g. How to obtain updates and further advisories concerning the Litigation Hold.

4. The Agency Records Coordinator shall assist the employees of the Department or Agency in complying with the Litigation Hold requested by the City Attorney's Office.

5. The Agency Records Coordinator will specifically advise Technology Services of any Litigation Hold. If necessary to comply with the Litigation Hold, that advice will direct Technology Services to suspend all routine or scheduled records destruction processes that could destroy relevant Documents. The Agency Records Coordinator will keep
Technology Services informed if the scope of the preservation requirement is altered or amended.

6. The Agency Records Coordinator shall not use mass communication (such as a broadcast email) to inform employees of a Litigation Hold unless specifically advised to do so by the City Attorney’s Office. If the City Attorney’s Office and the Agency Records Coordinator determine together that mass communication is necessary, then a mass communication technique may be used in coordination with Technology Services. Mass communication of the Litigation Hold Advisory may be by email, “log-in notice”, “banner notice”, or other means designed to communicate the Litigation Hold effectively and professionally. Any method used must contain specific information consistent with this policy and/or refer employees to a City intranet site where greater detail is provided. The City Attorney’s Office will determine when and how updates or further advisories will be communicated.

7. If a matter involves confidential, sensitive, privileged, or private documents, the City Attorney’s Office may advise and coordinate directly with Technology Services concerning a Litigation Hold, in order to identify, secure, and retrieve relevant Documents by electronic means.

8. Agency Records Coordinators and others who retrieve Documents requested by a Litigation Hold Advisory will provide those records to the City Attorney’s Office as instructed. All electronic documents will be saved in their original format in a location designated by the Agency Records Coordinator in cooperation with the City Attorney’s Office and Technology Services. Electronic Documents preserved in compliance with a Litigation Hold must be saved in a read-only format to protect the integrity of the documents and preserve meta-data to the fullest extent possible.

9. When the litigation, or anticipated litigation, has been resolved and Documents no longer need to be preserved, the City Attorney’s Office will release a Litigation Hold Advisory and issue instructions to Agency Records Coordinators and Technology Services to return to standard retention schedules. The duty to preserve will not end until the City Attorney’s Office notifies the Department or Agency that the Litigation Hold has ended.
- SAMPLE -

NOTICE TO PRESERVE RECORDS INCLUDING ELECTRONIC DATA ("LITIGATION HOLD")

To: [identified employees in relevant Department(s) or Agency(ies) of the City]

From: __________, Assistant City Attorney

Date: __________, 2008

A. ANNOUNCEMENT OF ANTICIPATED OR INITIATED LITIGATION

The following lawsuit or legal action has been filed or is anticipated:

______________________________________________________________

Factual Background

[summary description of litigation or matter]

Record Preservation

The law requires that the City make all reasonable efforts to preserve all records and documents (as defined below), including electronic data, in the possession of the City and potentially relevant to the above-referenced lawsuit or threatened litigation, and the factual background as described above. We need your assistance in preserving the City's records (including electronic data) related to this matter as described below. Please ensure that beginning immediately your department or agency does not alter, delete or otherwise modify any relevant records that now exist or that will be created relating to this matter.

B. RECORDS AND MATERIALS TO BE PRESERVED:

The term "records" refers to any "document," information, item, or evidence in the possession of the City. "Documents" is to be applied as broadly as possible. Documents include writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations in paper or digital format and stored in any medium, including, but are not limited to, e-mail and any attachments, word processing documents, spreadsheets, presentation documents, graphics, animations, images, audio, video and audiovisual recordings, and voice-mail records relating to the above-referenced matter.

NOTE: The obligation to preserve records includes "electronic data."

Electronic data includes, but is not limited to:

All text files (including word processing documents and presentations), spreadsheets, e-mail, databases, calendars, computer system activity logs, internet usage files, and network access information. The City’s computer systems include, but are not limited to, all workstations,
laptops, network servers, removable media, handheld devices, voice-mail and backup tapes. Again, any questions as to the scope of this directive should be resolved in favor of preservation and retention.

In particular, the documents and records to be preserved include but are not limited to the following topics, files, persons, and subjects:

[liste of topics, subcategories, contracts, persons, and entities under which documents and records might be filed or kept relating to the litigation]

C. CONTACT NAMES FOR QUESTIONS:

Questions regarding the relevance of particular files, documents, e-mail or electronic data should be addressed to:

____________________, Assistant City Attorney
____________________address]
____________________ phone number]

D. MONITORING EFFORTS

The Assistant City Attorney(s) responsible for the lawsuit or matter will contact you to advise you about steps to take to implement this Litigation Hold and ensure that records are being preserved appropriately. After the Litigation Hold is initiated, the City Attorney’s Office will contact you periodically to monitor the preservation of records and ask you to describe the continuing efforts taken by your department or agency to preserve records.
APPENDIX A

Special Advisory regarding Electronic Data

At individual work stations, this Litigation Hold requires you to preserve and retain all potentially relevant files stored on your hard drive.

At the network and systems administration level, this Litigation Hold requires you to preserve and retain all potentially relevant files stored on City’s servers and to refrain from doing any administrative work that has the potential to destroy potentially relevant files. When back up tapes are used and contain relevant information, it may be necessary to preserve such tapes and pull them from recycling rotation. One full back up or snapshot of key players’ hard drives and network drives should be created as soon as you receive this Litigation Hold Advisory.

Additionally, you should contact and inform all staff of this Litigation Hold and instruct any relevant staff members who may possess files and records related to above-referenced litigation hold to preserve them. Please identify key players who may know what information is available, where it is stored, how it is preserved, and how it can be accessed. Communicate any technical difficulties, recalcitrant employees, or cost issues to the Contact Attorney immediately. Notify staff when a Litigation Hold is modified or has ended.

Thank you for your attention to this matter. If you have any questions, please contact your records custodian or the Contact Attorney listed above.
Executive Order 64

MEMORANDUM NO. 64B

TO: All Employees, Agencies, and Departments under the Mayor

FROM: Mayor John W. Hickenlooper

DATE: March 31, 2009

SUBJECT: RETENTION AND DELETION OF ELECTRONIC MAIL

This Memorandum is incorporated into Executive Order No. 64 dated September 17, 2002, subject “Records Management.” It details the City’s electronic mail retention policy as a subcategory of documents defined by Executive Order No. 64.

1.0 PURPOSE

This Memorandum states the City’s policy for preservation and deletion of electronic mail (E-mail). Questions about this policy should be addressed to your Agency Records Liaison/Coordinator or to the Records Manager for the City. The Records Manager function is now housed in the Department of General Services.

2.0 TERMS AND DEFINITIONS

For the purposes of this policy, consistent with Executive Order 64, the following definitions will apply unless context requires otherwise:

2.1. Agency Records Liaisons and Coordinators: See Executive Order 64.

2.2. E-mail: All communications by City-approved electronic mail (E-mail) messaging systems, together with attached documents. Approved E-mail includes all electronic mail systems supported by the IT Support Team. These include, but are not necessarily limited to, Microsoft Outlook and personal digital assistant (PDA) E-mail services.

2.3. E-mail Records: All E-mail created or received by City and County of Denver (City) in connection with the exercise of City functions, that contains original communication, documents, papers, letters, books, maps, photographs, sound or video recordings or other information that are created or received by the City and County of Denver in the exercise of City functions, regardless of whether public access to them is open or restricted under the laws of the State of Colorado. The term “E-mail Record” is subject to the Public Records Act as set forth in C.R.S. as amended, Section 24-72-201 through 206.

2.4. Records Retention Schedule: A standard schedule that establishes the minimum retention period for various types of City Department and Agency Records that is adopted by the Records Manager, Department Manager, or Agency Director of the City and County. Retention periods are in calendar years and are based upon Federal and Colorado laws, record surveys, business needs, and general knowledge and business practices regarding how long information should be retained. See Executive Order 64.
3.0 SCOPE

This E-mail retention policy is to be read and implemented together with Executive Order 16 (Use of Electronic and Communication Devices and Services), Memorandum No. 16A, Executive Order 64 (Records Management), the general and agency-specific record retention schedules established pursuant to Executive Order 64, and Memorandum No. 64A (Preservation of Litigation Records) except that this Policy establishes the superseding retention policy for E-mail, as defined herein.

4.0 E-MAIL RETENTION POLICY

All E-mail is categorized into two classifications. All E-mail shall be retained as specified, below, and permanently deleted thereafter. Each employee is responsible for retaining/deleting his/her E-mail in compliance with this directive.

4.1. E-mail Records

4.1.1. Email Records are a subset of Records, as that term is defined by Executive Order 64, similar in all respects except that they are in electronic form.

4.1.2. Users shall save only those E-mail messages that are considered E-mail Records which shall be retained and dispositioned in accordance with the following.

4.1.2.1. E-mail Records that have been printed and saved to a paper file need not be retained electronically because the paper version shall constitute the Record. The electronic version shall be retained only for so long as useful to the employee, and the electronic version shall be deleted no later than thirty (30) days after it is no longer useful.

4.1.2.2. E-mail Records that have no further administrative value (e.g., meeting requests, requests for review, etc.) and that are not pertinent to a pending claim or litigation, or otherwise subject to a Litigation Hold (see Exec Order Memo 64A) shall be retained only for so long as useful to the employee, and deleted no later than thirty (30) days after it is no longer useful.

4.1.2.3. All other E-mail Records shall be retained in accordance with Executive Order 64 for the period stated by the retention schedule applicable to that type of Record. Upon reaching the assigned retention period specific to the Record type, the E-mail Record shall be permanently deleted.

4.1.3. E-mail Records shall be saved to the user’s assigned network drive or other shared drive as designated by user’s supervisor.

4.2. Non-Record E-mail: All E-mail communication that is not an E-mail Record should be retained only for so long as it is useful to the employee, and deleted no later than thirty (30) days after no longer useful.

5.0 BACKUP MEDIA

The City maintains backup tapes of the E-mail systems for a period of 30 days. After the 30 day period the tapes are overwritten and reused. These tapes shall be retained for 30 days strictly for use in the case of a disaster and the need to perform a full system restore. These tapes will not be utilized to recover deleted E-mail or to restore individual E-mail boxes as that is a time-intensive, costly practice that the City will not pursue.
Executive Order 64

MEMORANDUM NO. 64C

TO: All Employees, Agencies, and Departments under the Mayor

FROM: Debra Johnson, Clerk and Recorder
      Adrienne Benavidez, Manager, General Services

SUBJECT: MEMORANDUM OF UNDERSTANDING: INTERIM CHANGE IN LEADERSHIP AND OVERSIGHT RESPONSIBILITIES FOR THE RECORDS MANAGEMENT PROGRAM

This Memorandum of Understanding (MOU) is incorporated into Executive Order No. 64 dated September 17, 2002, subject “Records Management.” By agreement between the Clerk and Recorder and Manager of General Services, the leadership and oversight authorities and responsibilities for the Records Management Program defined by Executive Order No. 64 are revised.

1.0 PURPOSE

Executive Order 64 established certain leadership and oversight authorities and responsibilities in the Office of the Clerk and Recorder. Subsequently, an amendment to the Charter of the City and County of Denver was duly adopted which changed the status of the Clerk and Recorder from a member of the Mayor’s cabinet to an independently elected position. A comprehensive review of Executive Order 64 is underway to determine what, if any updates are required. Pending completion of that review, this MOU is entered in order to preserve the accountability of city departments and agencies to a member of the Mayor’s cabinet.

2.0 SCOPE

Accordingly, upon the advice and recommendation of the Records Management Committee the Clerk and Recorder and Manager of General Services agree to implement Sections 7.0, 8.0, and 10.0 of Executive Order 64 as follows:

“7.0 Establishment of the Records Management Committee. A Records Management Committee is hereby established. The members shall include the following persons.
   a) Clerk and Recorder (Chairperson)
   b) Manager of General Services (Chairperson)
   c) City Attorney
   d) Director of Finance
   e) Representative from Technology Services
   f) Records Manager (ex-officio)

“8.0 Designation of a Records Manager. The Clerk and Recorder Manager of the Department of General Services in collaboration with the Records Management Committee shall select a Records Manager for the City and County of Denver who will be able to perform the functions and duties of Records Manager.
"10.0 MEMORANDUM ATTACHMENTS: The procedure(s) for implementing this Executive Order shall be defined by Memorandum Attachments to the Executive Order which may become a part of the Executive Order. Further, the Clerk and Recorder who is Manager of the Department of General Services, who is responsible for the content of this Executive Order, shall have the authority to issue procedural Memorandum attachments relative to this Executive Order."

Signed this 13th day of June, 2012.

Debra Johnson
Clerk and Recorder

Adrienne Bellavidez
Manager, General Services