



Archive Legislation:

Email archiving in the United Kingdom

The key laws that affect your business

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Email is a primary source of documentation for many organizations and it has taken on an increasingly critical role in corporate litigation and court cases.

The need to archive all email correspondence is growing in importance because companies are realizing that being in a position to retrieve an old email could save them thousands of dollars (euros) in legal fees and fines as well as their credibility.

Today, more than ever before, legal and compliance issues are driving the case for email archiving. Email archiving legislation is complex and varies greatly from country to country. Unless companies are well versed in compliance and email compliance law, the various regulations affecting email can be a minefield.

This document provides an overview of the archiving legislation in your country.

Laws regulating archiving, who they apply to and the penalties

Data Protection Act 1998 (DPA)

Individuals have a right to obtain a copy of their personal data held about them. Companies will need to quickly and efficiently retrieve emails that include reference to the individual and then assess whether that information should be released. Companies have 40 calendar days to comply with requests and cannot charge more than £10 for recovering the information. It therefore pays to retrieve the information quickly and without too much expense.

Who is affected?

- All private and public sector organisations that :
Process personal data
Are involved in court proceedings
Are involved in Employment Tribunal claims.
- Public Sector organisations and any other company or organisation that holds information on behalf of a public sector organisation
- Subsidiaries of US companies (as well as US companies themselves).
- Internet Service Providers and Telecoms companies.

All private and public sector organisations that process personal data

Penalties for non-compliance

Enforcement Notice from the Information Commissioner requiring the company to take, or to refrain from taking, specified steps. Failure to comply with an Enforcement Notice is an offence - with the possibility of a £5,000 fine in the Magistrates Court or an unlimited fine in the Crown Court. Individuals can bring separate actions against organisations where they have suffered loss as a result of the failure to comply with the DPA. Adverse publicity can arise from a company's failure to comply with obligations under the DPA.

Court Action

During Court proceedings, an order for disclosure of documents would require parties to make a reasonable search for documents (including metadata). This is now extended to deleted documents and those in backup tapes. It is likely that a company's obligation to disclose will extend to its parent company and subsidiaries where those companies have had access to the documents via a shared server.

All private and public sector organisations involved in court proceedings

Penalties for non-compliance

A claim, or a defence to a claim, could be struck out for lack of evidence. An order for costs might be made against the party unable to produce the documents requested. Evidence submitted could be taken as prejudicial - the strength of the evidence being questioned due to lack of reliable audit trail.

Employment Tribunals

Companies will be required to submit evidence to an employment tribunal in formal proceedings regarding the dismissal of an employee.

All private and public sector organisations involved in Employment Tribunal claims

Penalties for non-compliance

Lack of evidence can make it difficult to justify staff dismissals, increasing the risk of an unfair dismissal claim.

Freedom of Information Act 2006

This act gives the public rights of access to recorded information such as emails. Information must be provided within 20 working days of request. If email is at all recoverable (e.g. a trace of it exists on the network), it must be retrieved in order to comply.

Public Sector organisations and any other company or organisation that holds information on behalf of a public sector organisation

E.g. private companies to whom services have been outsourced.

Penalties for non-compliance

It is a criminal offence to alter, deface, erase, destroy or conceal any record with intention of preventing disclosure by a public body. Potential breach of contract claim - public body will almost always impose contractual obligations on its service providers to comply with this Act.

Sarbanes-Oxley Act of 2002

There must be adequate internal controls over financial information and assets - this applies to email. Records must accurately and fairly reflect financial transactions. Financial transactions by email must be properly preserved and capable of being easily retrieved. Emails should be properly maintained to enable prevention/detection of unauthorised transactions.

Subsidiaries of US companies (as well as US companies themselves)

Penalties for non-compliance

Failure to comply could lead to a false certification by the company. Providing a false certification exposes company officers to a broad range of civil and criminal liabilities including liability for material mis-statements, liability for causing, aiding or abetting securities law violations, and claims from shareholders. Criminal penalties are severe - including a \$5m fine or 20 years in prison (or both) where the officer has acted wilfully.

The Data Retention Directive

(implementation of UK Regulations in relation to internet email has been delayed until 15 March 2009 - in the meantime, a voluntary code of practice for the retention of communications data is in place)
Applies to traffic and location data. Competent authorities may be granted access to retained data for investigation, detection and prosecution of serious crime. The Directive specifies the outer limits for retention periods (between 6 months and 2 years) during which operators will need to trace and identify the source, destination, location, date, time, type and duration of an email. Operators must be able to transmit this information to competent authorities upon request and without undue delay.

Internet Service Providers and Telecoms companies

Penalties for non-compliance

The UK Regulations will be required to adopt suitable measures to ensure the full implementation of the Data Retention Directive, including sanctions for infringement of its provisions. These are likely to be similar to those under the DPA.

Specific Periods of Retention

Email retention periods will depend upon the nature of the information e.g. documents relating to contracts should be retained for a minimum of 6 years from the date of breach.

All private and public sector organisations are affected and liabilities range from breach of statutory duty to parties being unable to successfully make, or defend, a claim.

GFI Archiver

GFI Archiver is used by thousands of administrators worldwide to comply with legislation on email archiving. GFI Archiver provides a secure, tamper-proof central storage for all company email and files while allowing fast and easy access to all archived items if required.

Using the auditing functionality, management can access any email that is requested for eDiscovery/ email compliance purposes and provide a guarantee that these emails have not been tampered with – a major requirement in corporate litigation cases.

With GFI Archiver, companies can:

- Gain instant access anytime, anywhere to business critical emails, calendar entries and files via Outlook, laptop, smartphone or tablet. Retrieve old and deleted emails on demand - with full thread and conversation without any intervention needed from IT Public Sector organisations and any other company or organisation that holds information on behalf of a public sector organisation
- Use advanced email search and 'Saved Search' capabilities
- Archive files and folders and share between different users and teams to enable collaboration on different projects
- Maximize compliance and minimize legal risk with a complete, tamper-proof archive of all company email and files

The benefits for IT administrators:

- Reduce reliance on unreliable PST files and centrally store all archived items in one central database
- Free up space and resources on your mail servers by storing archived emails in a separate database. GFI Archiver is a stub-free solution and therefore does not impact your mail server performance

- Reduce user requests for retrieval of old emails or files from backup through the web-based GFI Archiver interface
- Avoid relying on third-party storage and sharing providers because your email and file archive is stored on premise, in your own environment
- Use the email setup you require, this includes Microsoft® Exchange, Office 365™, Google Apps™ and other email servers, because GFI Archiver works seamlessly with them.

More information about GFI MailArchiver can be found at <http://www.gfi.com/archiver/>.



For a full list of GFI offices/contact details worldwide,
please visit: www.gfi.com/contact-us

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