

# Processing of Electronic Documents at the INAI: Preservation of E-Mails and of Information Posted on Social Network Institutional Accounts and Its Contribution to Transparency

*FRANCISCO JAVIER ACUÑA LLAMAS, Ph.D.*

Commissioner, National Institute for Transparency, Access to Information and Personal Data Protection  
e-mail: francisco.acuna@inai.org.mx

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## *ABSTRACT*

In Mexico, laws and regulations on transparency provide that information held by public agencies and entities is public. This information includes that contained in institutional e-mails, since these are considered to be archival documents that evidence the activities undertaken by public entities when exercising their functions. The information contained in institutional e-mail accounts, and that posted on social networks has become a working tool to optimize the activities of the public system and contributes to transparency. This information must be preserved by using suitable document management processes, since the servers where e-mails are hosted and social network platforms are not information repositories, and its preservation is required to guarantee the right to access. This paper discusses the importance of preserving such content and how such preservation contributes to transparency and accountability.

**Key words:** electronic documents, INAI, e-mail, social networks, transparency, processing

Treatment of electronic documents at INAI: conservation of email and of information posted on institutional social network accounts and its contribution to transparency

## *SINTESI*

In Messico, leggi e regolamenti sulla trasparenza prevedono che le informazioni detenute da enti pubblici ed enti siano pubbliche. Queste informazioni includono contenuti di messaggi di posta elettronica istituzionale, poiché questi sono considerati come documenti archivistici che comprovano le attività svolte da enti pubblici nell'esercizio delle loro funzioni. Le informazioni contenute nell'account di posta elettronica istituzionale e pubblicate sui social network sono diventate uno strumento di lavoro per ottimizzare le attività del sistema pubblico e contribuire alla loro trasparenza. Queste informazioni devono essere conservate utilizzando adatti processi di gestione del documento, dal momento che i server dove risiedono i messaggi di posta elettronica e le piattaforme di social network non sono depositi di informazioni, e la loro conservazione è necessaria per garantire il diritto all'accesso. Questo articolo parla dell'importanza di preservare tali contenuti, e di come tale conservazione contribuisca alla trasparenza e responsabilità.

**Parole chiave:** documenti elettronici, INAI, e-mail, social networks, trasparenza, gestione

Obdelava elektronskih dokumentov na INAI: ohranjanje e-pošte in informacij iz institucionalnih spletnih strani, objavljenih na različnih socialnih omrežjih ter njihov prispevku k transparentnosti

## *IZVLEČEK*

V Mehiki zakonodaja in predpisi o transparentnosti zagotavljajo, da so informacije, ki jih hranijo javne institucije in subjekti, javne. Te informacije vključujejo vsebino institucionalnih e-poštnih sporočil, saj se le-ta štejejo za arhivsko gradivo, ki prča o dejavnostih, ki jih javni subjekti opravljajo pri izvrševanju svojih nalog. Informacije, ki jih vsebujejo institucionalni e-poštni računi, ter informacije objavljene na socialnih omrežjih, so postale orodje za optimizacijo dejavnosti javnega sistema kar prispeva k transparentnosti. Te podatke je potrebno ohraniti z uporabo ustreznih postopkov za upravljanje z dokumenti, saj strežniki, na katerih so shranjena e-poštna sporočila, in pla-

tforme socialnih omrežij niso informacijski repozitoriji. Zato je njihovo ohranjanje potrebno za zagotovitev pravice do dostopa. Avtor v prispevku obravnava pomen ohranjanja takšnih vsebin in kako tovrstno ohranjanje prispeva k transparentnosti in verodostojnosti.

**Ključne besede:** elektronski dokumenti, INAI, e-pošta, socialna omrežja, preglednost, obdelava

Tratamiento de documentos electrónicos en el INAI: Conservación de correos electrónicos y mensajes en redes sociales de cuentas oficiales y su contribución a la transparencia

### RESUMEN

En México, la normatividad en Transparencia señala que, es pública la información en posesión de los entes gubernamentales, entre ella, la contenida en los correos electrónicos institucionales, pues se trata de documentos de archivo que dan testimonio de la actividad de los entes públicos en el ejercicio de sus funciones. La información contenida en cuentas de correo electrónico institucionales, y en las de redes sociales, se han convertido en una herramienta de trabajo para optimizar y transparentar actividades del sistema público, por lo que deben ser conservados mediante la utilización de procesos de gestión documental adecuados. La conservación por parte de los entes públicos garantiza el derecho de acceso a la información, pues los servidores de correos electrónicos y las plataformas de redes sociales no son repositorios de información. Este documento, plantea la importancia de la conservación de esos contenidos y su contribución a la transparencia y rendición de cuentas.

**Palabras claves:** documentos electrónicos, INAI, correos electrónicos, redes sociales, transparencia, tratamiento

## 1 Introduction

The National Institute for Transparency, Access to Information and Personal Data Protection (*INAI, 2017*) is an autonomous agency created by constitutional mandate to protect the right to access to public information held by any authority, entity, agency or body of the executive, legislative or judiciary branches of government, or that which is held by any individual, legal entity or union that receives and makes use of public funds or that exercises any kind of federal authority. The INAI is also responsible for oversight regarding the protection of personal data held by individuals and entities of the public and private sectors.

The right to access to information is a main pillar of a democratic state, where citizens must play a key role in a society that is informed, critical and demands that its rights be upheld by those in government.

The purpose of this paper is to discuss the public nature of the information contained in institutional e-mail accounts and of that which is posted through institutional accounts on social networks, since such information provides evidence of the regular activities of a public institution or public servant. In addition, the importance of preserving such information in order to ensure access to information in Mexico is also addressed.

## 2 Discussion

### 2.1 Preservation of institutional e-mail messages

The General Law on Transparency and Access to Public Information (*Ley General de Transparencia y Acceso a la Información Pública, 2015*) and the Federal law on Transparency (*Ley Federal de Transparencia y Acceso a la Información Pública, 2016, articles 83, 84 and 123*) of Mexico provide that all information generated and held by obligated parties can be classified as reserved temporarily only in exceptional cases or if such information contains personal data.

In addition, the Guidelines for the Organization and Preservation of Records of the National Transparency System specify that e-mails constitute a public record, since they provide evidence of the activity of government public entities in exercising their authority, jurisdiction or functions, thus allowing for accountability to citizens (2016, forty sixth and forty seventh guidelines). Thus, e-mails beco-

me a working tool that contributes to the agility, optimization, flexibility and transparency of the processes and activities of the public sector. Following this line of reasoning, these public record documents should be preserved by making use of document management processes suitable for governmental needs, and by creating compatible platforms that address issues such as interoperability, compatibility, access and security, among others.

Preservation of documents generated in digital format seeks to conserve them in their original form, and the most common strategies to achieve this are the transfer - migration - of files from a hardware and/or software environment to another, and also the development of applications and the utilization of a widely-used standard for data exchange. Furthermore, preservation requires that these digital documents be classified, ordered and evaluated within the electronic document management systems where they are kept on file. Therefore, archiving requirements must be established to ensure the completeness and authenticity of the messages during their entire life-cycle. In addition, formulas must be developed that facilitate the contextualization of e-mails by suitable metadata allocation.

### 2.1.1 Public information contained in e-mails

As stated by Cruz Mundet (2011), an electronic document is one that is generated, managed, preserved and transmitted by electronic, computerized or telecommunication means, provided it includes data that are electronically signed.

From this point of view and in our opinion, the practices followed to preserve the information contained in e-mails reflect the following:

First, that practices are followed that are applied to document management which entail processes for the reception, production, organization, access and consultation, preservation, assessment and disposal of documents whose purpose is that of creating files on the basis of one and the same matter or topic. As regards e-mails, these are not part of a file. Nevertheless, their preservation requires having in place an automated document management system that allows for the linkage of the electronic documents generated to one single repository. When e-mails are in fact part or are indeed linked to a file, they should receive the same treatment that is given to the documentary series to which they belong for preservation purposes; that is to say: they must be filed, classified, declassified and purged, such being the case, by applying the same criteria used to printed archival documents.

A second aspect focuses on the nature of public institutions as obligated parties who make indiscriminate use of electronic mail for various types of processing and procedures.

As a result of such practice, institutional e-mail mailboxes have become information repositories and are used for consultation purposes, disregarding in many instances internal archival regulations in regard to e-mail preservation timeframes.

It is for this reason that regulations are needed to properly handle requests for information contained in e-mails, which should provide for the manner in which such information is to be handled, so as to reduce to a minimum the time spent and the human resources assigned to search for such information in e-mail servers, which should not by the way, be used solely as repositories of such data. This would also contribute to reduce the cost of using cloud storage devices as repositories for e-mails and would prevent the loss or indiscriminate deletion of information, thus improving efficient and effective governmental performance.

Addressing this issue, and to gain knowledge regarding the interest of the public in government e-mails, the INAI conducted a study entitled "Safeguarding and Preservation of e-mails in Federal Public Administration accounts" which examined the requests for information received by the federal public administration in the 2010-2014 period. The results obtained showed that only 31 out of 246 obligated parties received requests for information asking for the delivery of information contained in an e-mail; that is 9.31% of the obligated parties, that is less than 10%.

During the period under study, these 31 obligated parties received a total of 266,377 requests, out of which only 193 dealt with e-mail messages, and various information was delivered for 112 of these requests. Furthermore, in 42 instances, the information was declared to be non-existent, the obligated par-

ty stating that the e-mail had been deleted due to saturation of the user's mailbox. In Mexico, various public institutions have criteria in place regarding e-mail use which require their public servants to promptly delete any e-mails which have been properly handled.

This leads us to the conclusion that Mexican governmental agencies face the challenge of directing their efforts to improve proper e-mail use and management by public servants, which should be used solely for public communication purposes; since, as stated before, the information contained in such messages may be subject to requests for access to information by private individuals and entities.

It is in this context that efforts have been made to regulate proper handling and management of the information contained in e-mails of public accounts. Thus, in 2009 the INAI's predecessor, the Federal Institute for Access to Public Information<sup>1</sup>, issued the "Recommendations for the organization and preservation of institutional e-mails of the agencies and entities of the Federal Public Administration" (*Recomendaciones para la Organización y Conservación de Correos Electrónicos Institucionales de las Dependencias y Entidades de la Administración Pública Federal* 2009), wherein the minimal criteria for e-mail preservation were established.

To provide an example, we hereby include a resolution issued by the INAI which dealt with a request for information submitted by an individual to one of the departments of the Mexican oil company *Petróleos Mexicanos* (PEMEX).

In his request the individual sought to know the content of various institutional e-mails of a public servant within a specific period of time. However, the entity did not satisfy this request and answered that it was not the proper department to handle the request, the latter being the PEMEX department in charge of Information Technologies services.

To rule on this matter, the INAI gave consideration to the "Recommendations for the organization and preservation of institutional e-mails of the agencies and entities of the Federal Public Administration" which define e-mails as: the institutional e-mails that contain information regarding an administrative, legal, tax or accounting fact or act, that is generated, received or preserved for any reason whatsoever by public institutions in exercising their attributions, and by public servants in the course and while performing their regular activities. In view of the foregoing, the public servant to whom the e-mail account is assigned and the administrative department to which he/she belongs are directly responsible for the operation of their e-mails. Moreover, e-mails are part of the documents and information that are used by obligated parties to render accounts on their public activities and therefore they are under the obligation of preserving them.

Accordingly, the INAI instructed PEMEX to conduct a new search through the messages sent and received by the proper administrative departments, including any e-mail attachments and to prepare the required public versions.

The foregoing illustrates the need of preserving e-mails by using the best documentary management tools and developing models that suit institutional needs, creating compatible platforms that provide solutions on aspects such as interoperability, compatibility, access and security, among others.

It is worth mentioning that medium and long term preservation is achieved by technical means, but must be determined in accordance with archival principles and criteria, since proper preservation can only be attained by following appropriate documentary policies that contemplate identification, organization, description and assessment, and which include adequate document management from the time they are generated. Moreover, there is a series of basic requirements that must be met to be able to ascertain the authenticity of the e-mail such as the context, content, structure, appearance and behavior.

Following this line of thought, some of the advantages implicit in establishing institutional policies for e-mail management are the following:

From the organizational perspective:

1. The predecessor of the INAI was the Federal Institute for Access to Public Information (IFAI). With the passage of time it was transformed when it was granted constitutional autonomy and greater jurisdictional authority. At present it has the authority to take cognizance on matters regarding the rights to access to and protection of personal data held by any Mexican governmental authority.

- ▶ a reduction in lost information;
- ▶ an improvement in institutional efficacy and efficiency;
- ▶ the prevention of the fraudulent use of e-mail systems;
- ▶ the prevention of unauthorized access to information;
- ▶ it serves to ensure that e-mails having documentary value are preserved in a manner such that allows for future access to them;
- ▶ it contributes to preserve the institutional memory.

From the legal perspective:

- ▶ It contributes to compliance with the laws in force on administrative procedure and on access to and preservation of documentation;
- ▶ It contributes to compliance with the laws on privacy of communications;
- ▶ It minimizes legal risks of the organization.

It is important to bear in mind that the e-mail management system must be designed in a manner such that the maximal possible amount of metadata is automatically associated with messages derived from information contained in the transmission file; this enhances the uniformity of included data and reduces the risk of errors.

In addition to the technical means, preservation must be determined taking into account the following archival criteria:

- ▶ Archival requirements must be established that ensure the integrity and authenticity of the messages during their full life-cycle.
- ▶ Formulas must be established that allow for easy classification of e-mails and their contextualization by adequate metadata allocation.
- ▶ Updated preservation timeframes must be established in order for e-mails that are part of a documentary series to be linked to their corresponding preservation and deletion time periods.
- ▶ Specific instructions must be drafted for use by end users.

In addition to the establishment of a policy on e-mail management and preservation, the participation of the people in charge of IT and communications services is essential. Their collaboration is indispensable, especially when it becomes necessary to ensure interoperability and security of e-mail management systems, as well as of the systems and formats implemented for medium and long term preservation.

### 2.1.2 INAI action undertaken for e-mail preservation

In exercising its authority to independently decide on its internal organization, the INAI is currently developing a project regarding the guidelines for the organization and preservation of the institutional e-mails of the Institute's public servants. These guidelines rest on the principle that all public information generated, obtained, acquired, processed or held by obligated parties is public information, and access to it is available for any person as set forth in article 12 of the General Law on Transparency (2015). This action is being undertaken to satisfy the need of having a mechanism to manage the public information contained in the e-mails of public servants.

To this end, the INAI will implement the Documentary Management System designated as GD-Mx, a system that will allow the Institute to have automated document management; this being understood as the set of procedures and technical operations that result in the automated reception, generation, processing, transfer, and permanent deletion and/or preservation, and accessibility to the documents and files regarding substantive and administrative procedures, processing and services.

## 2.2 Preservation of messages sent through institutional accounts on social networks

Network theory is used to explain network dominance on public reality. From this perspective, there is a close correspondence between social networks and new sociocultural manifestations and social movements in complex communities (Martins, 2009). This interaction produces for each relation a cumulus of information that manifests itself as a network to which each individual belongs when interacting with the others (Solórzano and Jaramillo, 2009).

Networks enjoy a high level of acceptance among people, given that they constitute an extraordinary means for public and private communication that is free of prior restrictions or censorship at a very low cost, and which allows practically guaranteed interaction with all participants in the individual's virtual environment. Another important aspect is that the remarkable success of social networks has led governmental agencies to set up their own accounts in order to interact with the different types of citizens (Hutt Herrera, 2012).

Furthermore, social networks are used by government institutions as tools to inform and interact with society.

This activity has generated a great amount of information that is the result of user interaction, information that is hosted on social network platforms. Now, having files that have no backups on social networks poses the risk of losing the information so generated. It is therefore necessary to preserve the publications posted on the official social network accounts for two reasons:

1. It ensures access to information that must be guaranteed by the State; and
2. Social networks are not information repositories and therefore information may be lost due to lack of use, due to technical or financial problems or because the companies that own the social network disappear.

Institutional "official" accounts on social networks used by public institutions and public servants are owned by private legal entities such as Facebook, Twitter or YouTube, and these entities hold title over the information hosted on their platforms.

The preservation of the information posted on social network institutional official accounts is mandated by the principle of access to information, since the State must take the required measures to preserve such information. Moreover, obligated parties must document "all actions" undertaken when exercising their authority, being under the obligation of preserving such documents in updated administrative files, as set forth in article sixth of the Mexican Constitution.

Now I share with you a case that illustrates the importance of managing and preserving the information posted on social networks by public institutions and public servants.

As mentioned before, the INAI protects the right of access to information. In exercising this right, an individual filed a petition for review that was brought for consideration by the Plenum of the INAI requesting that the INAI intervene for a governmental agency to deliver the information such individual had requested. This individual claimed that a public servant had posted on his private twitter account that he was at the time making a presentation on "strategic criteria" to implement the @nosmuevelapaz, the official twitter account of the National Program for Social Prevention of Violence and Crime.

When this individual required that the governmental agency provide him with the document corresponding to the designation "strategic criteria" for implementation of @nosmuevelapaz, the agency answered that the document to which the requesting party was referring to was the "National Program for Social Prevention of Violence and Crime" and the individual was provided with the electronic link to the publication of such program in the Official Gazette of the Federation.

The individual expressed his objection and argued that the document he was referring to was not the one delivered, and insisted that the public servant had referred to the presentation of the "implementation criteria" of the Program on his twitter account.

At the stage in the proceeding where the institution presented its arguments, it argued that there was no document entitled "strategic criteria" as referred by the public servant in his twitter account, regardless of the fact that the @nosmuevelapaz twitter account is the one used to follow-up and disseminate information on the activities taking place within the framework of the National Program for Social Prevention of Violence and Crime.

Upon examination of the case by the INAI, it found that the document entitled "*National Program for Social Prevention of Violence and Crime*" contained no reference to implementation criteria or to the additional information provided by the requesting party. Nevertheless, the institution was instructed to make a new search for the information requested as expressed in the public servant's twitter account.

This case illustrates the risk involved in publicizing official documents on public servants' personal accounts and not on official institutional accounts; because in this instance a request was submitted for erroneous information that was made public by a government official on his personal twitter account. As a result, the obligated party was instructed to conduct a precise search for the information requested, even though the requesting individual had been informed that such information did not exist and that reference was being made to the Program.

It therefore follows that there is a need for transparency regarding information on the activities of public servants and institutions that is shared on social networks, and consequently for its preservation.

It is necessary to take into account that social network platforms are not information repositories and that they are owned by private persons; the fact that the information is hosted in the cloud entails a constant risk of losing the information (*Del Moral, 2013*). Even though it seems that the chance is slim that social networks such as Facebook or Twitter may disappear, backups of all information stored on their platforms should be made. It therefore follows that it is essential for obligated parties to become aware that the release of information entails, in addition, the implementation of mechanisms that allow for the organization and preservation of the information contained in e-mails and of that hosted in social network platforms.

It is important to mention that as in the case of institutional e-mails, not all messages posted on social network institutional accounts should be preserved, since not all information meets the requirement to be considered as having documentary value. Therefore, the information should be subject to assessment before preservation. Once the information has been extracted, assessed and considered to be an electronic document that is part of an archive, long-term access to it through an automated system must be contemplated. In this regard, and in accordance with the Federal Archival Law (*Ley Federal de Archivos, 2012*), "*obligated parties must implement document management automated systems that allow for control and recording of processes as well as for the organization and preservation of electronic file documents originating in the various systems of the obligated party*" (articles 18 and 19).

According to Esteban Navarro (2001) an electronic records archive "*must be understood as the set of documents that are electronically produced, received or collected in an involuntary, natural and spontaneous manner by an individual or legal entity in the course and in support of his/her or its activities and which provide evidence of such activities, which are preserved and transmitted also by electronic means to repositories for permanent preservation after screening to identify and assess the series, this being done under suitable authentication and preservation processes; that is organized by giving careful consideration to the manner in which such documents were produced in order to guarantee their informational, legal and cultural value and to allow access and use also by IT means*".

### 3 Conclusion

Archives are a fundamental pillar for transparency and accountability, these being essential elements in the consolidation of a transparent and democratic state. Document management is an indispensable tool for proactive transparency the permanent goal of which is to allow for wider and expedite access to public information.

All information produced or held by obligated parties which evidences their activities and functions is considered to be public information. Therefore, the information generated by working tools such as e-mail, and tools used for institutional communications such as social networks, is also deemed to be public information and accordingly should be preserved.

The foregoing provides support for the view that archives (in any format) preserve the actions of institutions and public servants, and this is achieved by suitable document management that ensures long term use. Thus adequate document management becomes, for the new information and communications society, an unwavering ally of history, assuming that archives are a mechanism to facilitate access to information and the protection of personal data, thus strengthening the consolidation of a culture of transparency.

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