

REPORT

STATE OF RECORDKEEPING IN GOVERNMENT

Communications data volume and
SMS/texts continue to pose challenges



TD SYNnex
Public Sector





Government workers and organizations are using powerful communication technologies to better engage with constituents, achieve greater collaboration and get government business done.

While it's a sound theory that digital communications boost productivity, efficiency and transparency, it's important to balance that promise with the realities of limited government budgets, outdated technologies and the demands of public records requests.

In this survey report, we use responses from government entities to examine the state of records management processes and the overall ability to respond to public records requests. We hope the insights we share will help you and your agency build a resilient recordkeeping strategy and avoid common pitfalls that can result in costly litigation and embarrassment.

A quick peek inside:

- The state of open records requests
- The rundown of text messaging recordkeeping
- The challenges of change and how to keep up

Our methodology

Our research methods consisted of a 25-question online survey of 59 respondents with recordkeeping responsibilities, conducted Q1 of 2024.

Public organizations participating in this survey were all subject to state public records laws, and respondents worked in departments that included but weren't limited to:

- Administrative
- IT and technology
- HR
- Legal
- Information governance

The state of open records requests

How would you rate your organization's recordkeeping capabilities?

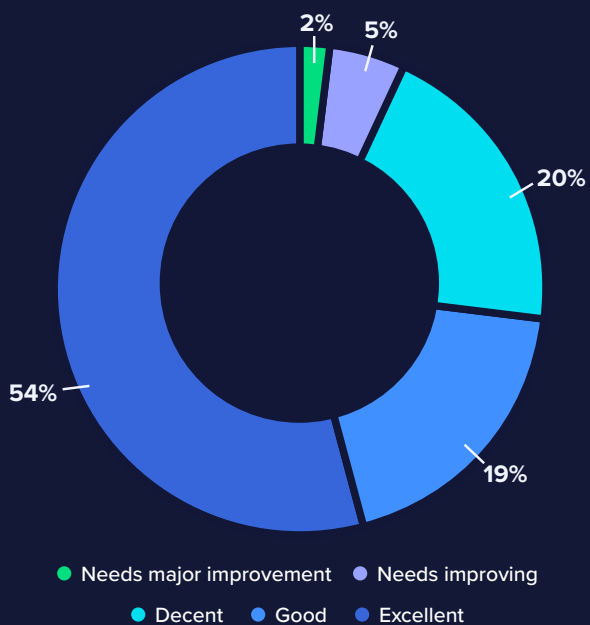


Figure 1.1

Records requests response format

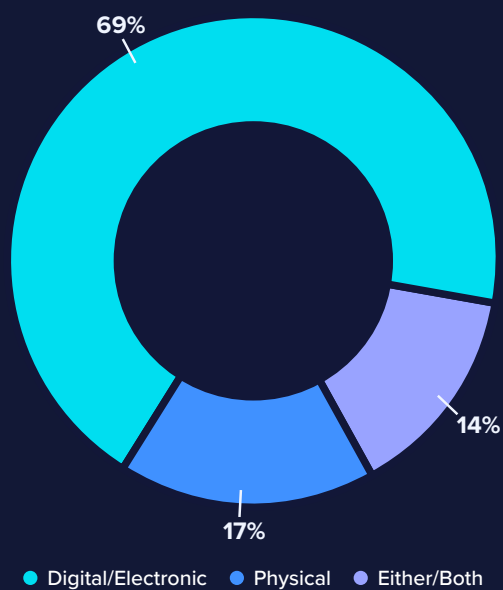


Figure 1.2

Records requests received per week

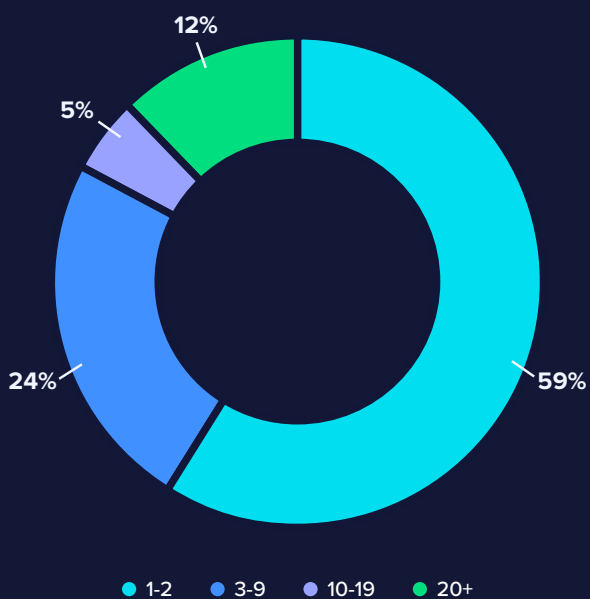


Figure 1.3

Time spent per week fulfilling records requests

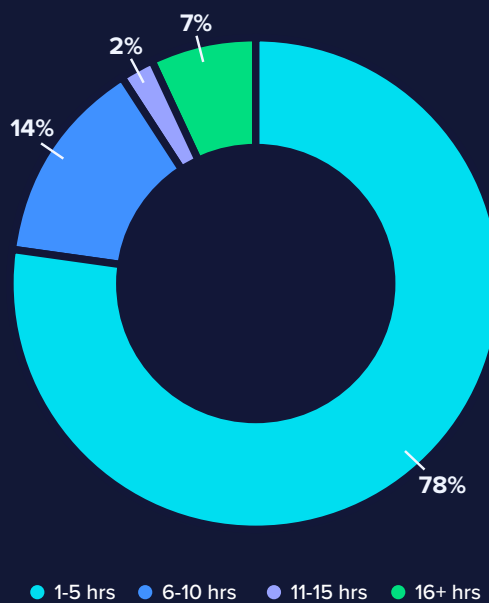


Figure 1.4

What communication channels does your organization use?

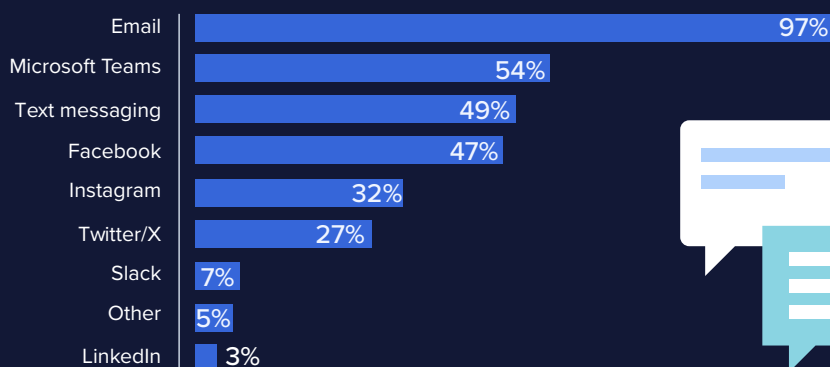


Figure 1.5

DATA SPOTLIGHT:

- All agencies surveyed receive public records requests.
- Almost half (46%) of public agencies recognize that their recordkeeping or open records request processes have room for improvement.
- Nearly one in five public agencies respond to record requests with physical formats despite most of their communications being electronic or digital.
- Only two respondents noted that their public agencies use email and fax as their sole forms of electronic communication channels. All other survey participants use more.

Our takeaway: Recordkeeping must evolve

State-mandated Sunshine laws and the Freedom of Information Act (FOIA) require the retention of all government-related electronic communications for the purpose of fulfilling public records requests.

There's universal agreement and understanding across all survey participants that they must adhere to their state recordkeeping and open records laws — even for roles not directly involved with the recordkeeping.

That's easier said than done. Government agencies are using all kinds of digital communication channels to communicate today – including Facebook, text messaging,

Microsoft Teams and many more. According to a recent Granicus Public Records Complexity Benchmark Report¹, since 2018:

- Record request volume is up 94%
- Quantity of response documents sent to requesters is up 73%
- File size of those documents is up 322%

If government agencies let communication trends, habits and technologies outpace their records management, they risk creating a complex web of unsearchable records that are impossible to retrieve and produce upon request.

¹ 2023 Public Records Complexity Benchmark Report

Are text messages records?

Have you ever received a records request for employee text messages?

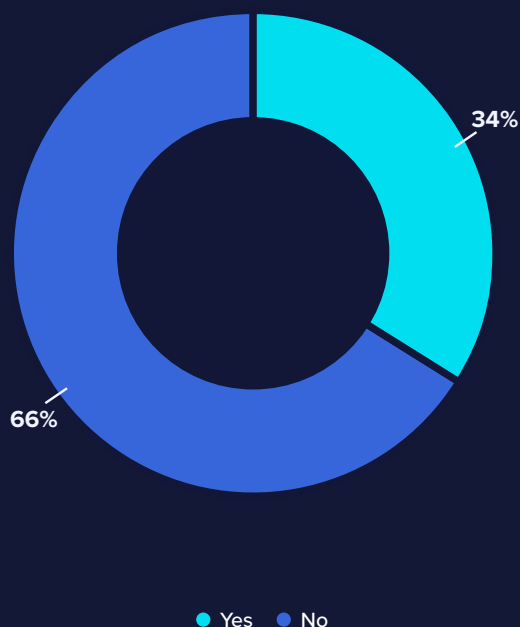


Figure 2.1

Rate your agency's ability to respond to records requests for text messages

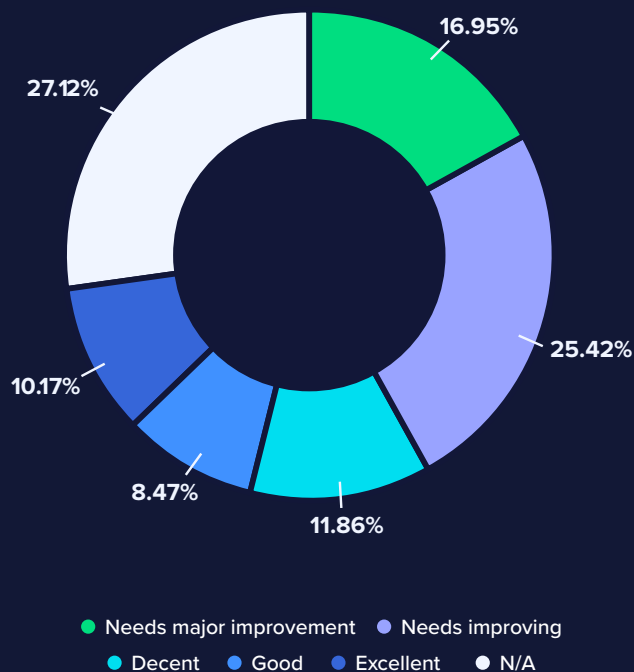


Figure 2.2

DATA SPOTLIGHT:

- Only one in ten agencies rate their ability to archive and retrieve text messages as 'excellent.'
- Of the 16 respondents who responded "not applicable" to responding to records requests for text messages, three allow the use of SMS/text messages in their agency.
- Organizations allowing employees to send text messages for official business communications rose to 49% (see Figure 1.4) from 30% in 2019.²

² State of Electronic Communications in Government Research Brief



Our takeaway: 'Are text messages records?' is a question answered last decade

The answer is **yes**.

Text messaging has become the standard way to communicate with personal and business contacts. When government employees text between mobile devices on the job, these messages are public records and must, by law, be preserved.

Even if an organization doesn't allow text messaging but employees do it anyway, that's a problem. If the organization receives a public records request that includes all related text conversations, it will fail to produce a complete response. That's a litigable offense.

Whether texts are allowed, encouraged, discouraged or prohibited, any government business-related text message is subject to open records requests. This includes text messages on agency-issued devices and text messages on personal devices.

As evidenced in constant news stories, text messaging is often at the center of issues brought to light by requests for records.

Government texting faux pas in the news

- High-level Michigan State Police officials were charged for downloading an app that deletes text messages on their state-issued cell phones — a direct violation of the state's Freedom of Information Act.³
- A whistleblower investigation found that the Seattle Mayor's Office violated state public records laws after discovering the mayor's texts were missing for a 10-month period.⁴
- The Kentucky Court of Appeals issued the opinion that messages on personal cell phones are public records when they are created or used by government officials for government business.⁵

³ Top Michigan State Police officials using encryption messaging apps that can evade FOIA Research Brief

⁴ Seattle Times sues city of Seattle over Mayor Jenny Durkan's missing text messages during protests

⁵ Court: Texts about public business on officials' personal cell phones can be public record Research Brief

Challenges change alongside technologies, data and policies

Number of departments involved with the open records process

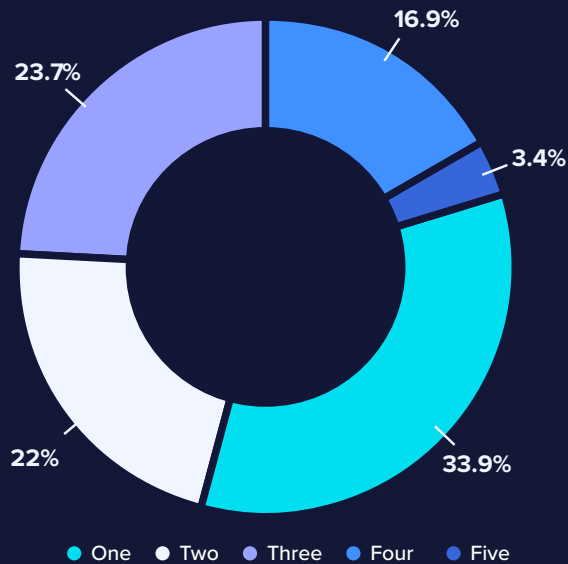


Figure 3.1

Have you ever received a records request for employee communications that you couldn't fulfill?

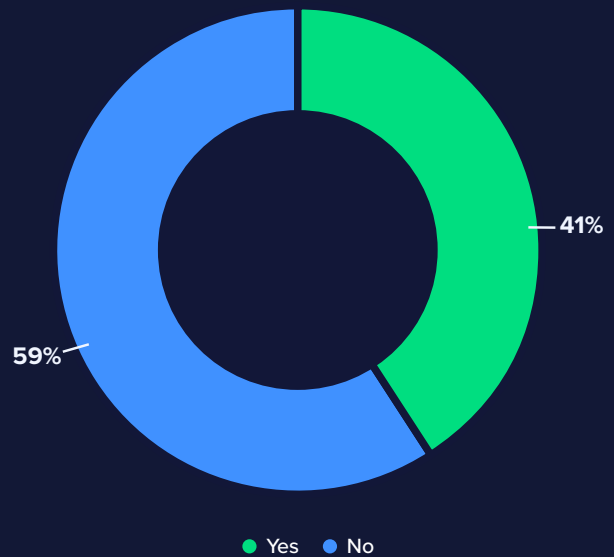


Figure 3.2

Have you ever received a records request that required you to pull resources from a different department or hire additional staff to fulfill?

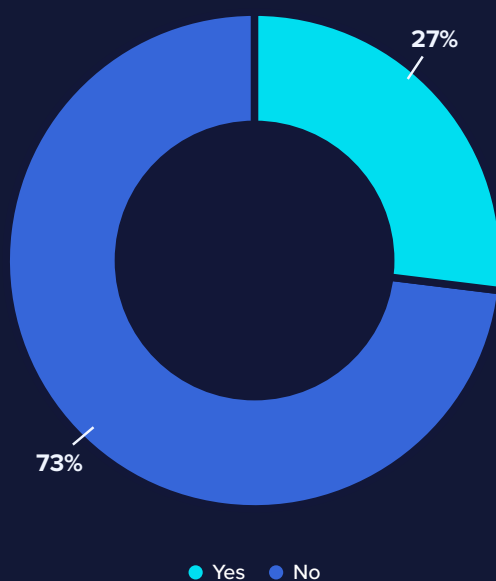


Figure 3.3

Has an unfulfilled records request for employee communications resulted in legal action?

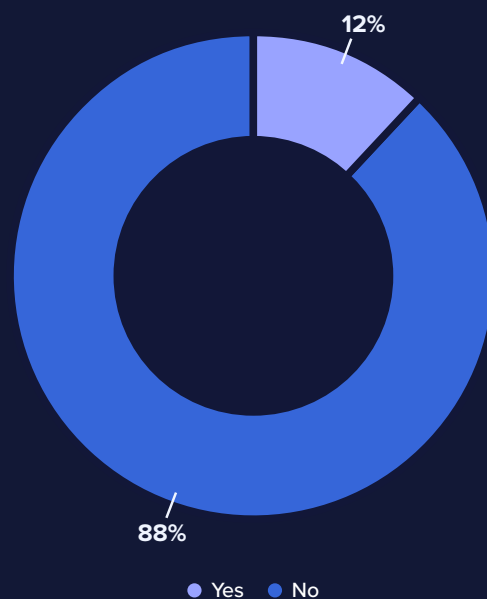


Figure 3.4

DATA SPOTLIGHT:

- Almost one in two public agencies have failed to complete an open records request.
- Two in three agencies require multiple departments' involvement to respond to open records requests

Our takeaway: Don't let change pass you by

One of the biggest challenges is indexing data. Large, unstructured data — such as audio, video or text — is hard to keep track of, because it's abundant and requires substantial management, metadata and storage space. This can be especially difficult at the local level where funding may not be as readily available.

A good example is video. Video files often present more than just a storage space issue because there are more complex issues, including:

- When certain videos can be released
- If minors are identifiable on video
- Whether the retention or release of a video could affect an ongoing trial
- Unlike emails, video content can't be used in keyword searches and must rely on human-supplied metadata

And when data is hard to index or organize, it's even harder to find.

"If half the communications can't be provided, that's a huge problem because that's how people find out what their government is up to," says David Cuillier, director of the Brechner Freedom of Information Project at the University of Florida.⁶

As Cullier noted, it "puts a crimp on the whole process" if records cannot be retrieved, archived, searched or redacted. "The ease of requesting records electronically and the difficulty in finding records electronically, which is counterintuitive," Cuillier explained.

Final thought

Most people today make records requests electronically. It's fast and convenient. More records requests are being made than before, and those requests are getting more complex. Now that most records are digitized, keyword searches can make finding specific documents even more difficult instead of easier.

A more alarming concern is that public sector organizations aren't giving text messages the same level of archiving attention as other digital records. Many organizations don't have an effective solution in place for the retention and oversight of text messages, which causes problems and poses significant risk when facing an open records request, investigation, e-discovery event or litigation.

Texting and other types of digital communication are essential tools for local governments, but they also present challenges that cannot be ignored.

To learn more about streamlining your recordkeeping or responding to records requests processes, read about [Archiving Communications in the Face of Upcoming Elections](#).

⁶ Public Records Requests in a Digital Age: Challenges and Solutions



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