

TECHNICAL UPDATE

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TEXT MESSAGES IN THE LEGAL SPOTLIGHT

There have been several court cases where emails have become exhibits in the proceedings. Because of this, most people, especially those in public office, are cautious about what they write in emails because they understand that they have the potential to become part of the public record. This same caution also needs to apply to text messages.

A text message may be legally binding if it reflects the true intentions of the two parties and has no vague or unclear terms. However, it is important to note that a text message functions differently than a written contract and is less likely to be admissible in court. This is because a text message is not an agreement between two people. Instead, it is simply communication between two people. With that being said, businesses, individuals, and the legal system need to recognize the differences between written contracts and digital communication.

HOW DOES THE LAW VIEW TEXT MESSAGES AS EVIDENCE?

A text message can be used as evidence...

- in a court of law if it is used to prove a fact.
- if it is part of a contract.
- if it is part of a settlement agreement.
- if it is part of an insurance policy.
- if it is part of a will.
- if it is part of a deed.
- if it is part of an agreement between two people.
- if it is part of an agreement between two companies.
- if it is part of a business transaction.
- In general, a text message is considered to be reliable evidence.

The [Colorado Open Records Act](#) states that all records maintained in electronic or digital format — including text and SMS messages — are considered public records. On October 30, 2023, a Colorado state court judge determined that two Denver city officials had improperly withheld public records from a TV reporter when they refused to disclose text messages stored on their personal cellphones in which they discussed the city's public business.

TEXT MESSAGES ARE PART OF THE RECORD

Text messages are often considered part of the record in various contexts. The term "record" can have different meanings depending on the context in which it is used. Here are a few examples:

Legal Context: Text messages can be treated as evidence in legal proceedings and are often admissible in court. They may be used to support or refute claims, establish timelines, or demonstrate communication between parties.

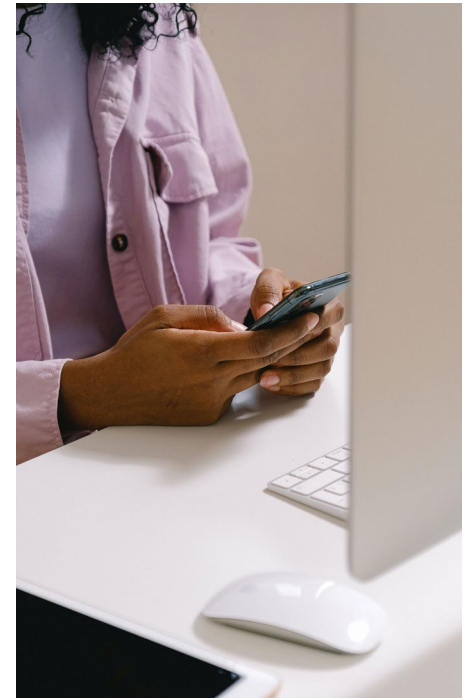
Business and Corporate Context: Text messages exchanged between employees, clients, or stakeholders may be considered part of the official record. Companies may have policies and systems in place to archive and manage these communications.

Government and Regulatory Compliance: In some industries, there are strict regulations regarding record-keeping for compliance purposes. Text messages may be subject to these regulations, and organizations may be required to retain and archive them for a specified period.

Personal Records: Individuals often use text messages for important communication. In some cases, these messages may be considered part of one's personal record, especially if they contain significant information or serve as documentation of agreements.

Every phone company in the US has its own policies regarding data retention. Here is a list of some of the major phone companies and their current policies for retaining text message records:

- **Verizon:** Retains for up to 1 year
- **AT&T:** Retains for up to 7 years
- **Sprint:** Retains for up to 18 months
- **T-Mobile:** Retains for up to 5 years



WHAT THIS MEANS FOR COUNTIES

Text messages, even those sent or received by personal devices, can be used as evidence in legal proceedings. In many cases, the admissibility and significance of text messages in the record may be determined by the context in which they are presented. Before hitting the send button, consider the tone and content of the message. For more information, contact CTSI at (303) 861-0507.