

## Retrieving and Opening an Employee's Email

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## General

### Legislation on retrieval and opening messages

According to the Finnish Constitution ([731/1999](#), section 10), the secrecy of correspondence, telephony and other confidential communication is inviolable. This inviolability of secrecy concerns also email messages. According to Act on the Protection of Privacy in Electronic Communications ([516/2004](#), section 4), the identification data of messages is confidential. Identification data includes, for example, information about the parties on who have been communicating by email.

It is stated in the Act on the Protection of Privacy in Working Life (TETSL [759/2004](#), Chapter 6, sections 18 - 20) that the employer has the right to retrieve and open electronic mail messages received or sent by an employee. This instruction is based on procedures outlined in the Act on the Protection of Privacy in Working Life.

### Scope of the right to handle an employee's email

The employer has the right to retrieve or open only such email messages which the employee has sent or received immediately<sup>1</sup> before his/her absence or during the absence. Listing the subject lines from a period longer than this cannot be performed without the consent of the employee.

### What does retrieval of email messages mean?

Retrieval of email messages means listing the subject lines of the messages. The employer may use only the following subject line data:

- sender
- recipient
- title or subject and
- date of sending

Typical programs for reading email are also good for retrieving email. The list created in retrieval of email messages is equivalent to the list of filed messages produced by programs intended for reading email.

In retrieval of email, the message itself is not read.

Retrieval of email is a one-time event with a definite beginning and ending. It is not a continuous process.

### What does opening an email message mean?

Opening an email message means reading the message and it is always preceded by the retrieval of email message.

### Technical and functional requirements

The employer must give the employee at least one of the following options beforehand:

- the employee may authorize another employee to deal with his/her email
- an automatic reply function notifying about the employee's absence can be set to the incoming email messages
- the employee can direct messages further to another email address approved by the employer
- the senders can send the messages related to work task/service to organization or service email address instead of the employee's personal email address

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<sup>1</sup> The law does not define the term "immediately". It remains open for interpretation.

Specifications to the above clauses:

- Automatic reply function on absence replies typically also to spam, which may increase advertising and junk mail. Automatic reply function on absence should be used with consideration.
- All email messages are not located in the University of Applied Sciences' email system. Email can be located on the discs of the employee's work station or mobile devices or in shared servers.
- The email rules of the University of Applied Sciences forbid the employees to send work-related email outside the University of Applied Sciences, for example, to Gmail or Hotmail accounts.

## Grounds of the employer's right to retrieve and open an employee's email

### With the employee's consent

As default, the employer may retrieve and open an employee's email only with the consent of the employee.

The choice whether to retrieve and open messages is always with the employee: he/she cannot be obliged to give consent to deal with his/her email and he/she may at any time revoke this consent.

The lack of employee's consent means moving on to procedures explained in the following.

### Without the employee's consent

To retrieve email without the employee's consent, the employer must have reasonable grounds to assume that the employee's email contains work-related message or messages necessary to the employer's operations. In addition, there is no other system available to the employer where the messages or their contents would have been entered.

The employer may retrieve the employee's email without his/her consent if the employee has died or if he/she is prevented in a permanent way from performing his/her duties.

If the employee is temporarily prevented from performing his/her duties, the following conditions must be met in order for the employer to have the right to retrieve his/her email messages:

- there is no other reasonable way to obtain information included in email messages
- the employee's consent cannot be obtained within a reasonable time and the investigation of the matter cannot be delayed
- the person vested with the authority of information system administrator approves the operation and all phases of the procedure are documented

**Case:** *The employee is arranging a conference and all negotiations with the speakers have taken place by email. Others do not have information of all the speakers, nor do they have their contact information.*

## Procedure

The procedure described here can be deviated from by agreement. In the absence of an agreement this procedure is followed.

### General requirements

The following general requirements must be met for the employer to have the right for retrieving and opening an employee's email:

- task or operation requiring the handling of email can be specified
- the requirements in the previous section “Technical and Functional Requirements” are fulfilled

The supervisor of the employee must at first try to get the employee’s consent. The consent will be given most clearly with a written power of attorney (Appendix 1: Power of attorney for reading email message contents). At this point it is possible to agree on other procedures. In other cases proceeding requires contact with the person vested with the authority of information system administrator.

If the employee’s consent is not available, the conditions mentioned in section “Without Employee’s Consent” must be fulfilled. In addition:

- The information on the message may not be processed more extensively than necessary for the purpose of retrieving the message, and the persons processing the information may not disclose it to a third party during the employment relationship or after its termination (Act on the Protection of Privacy in Working Life, section 19)
- the supervisor of the employee is responsible for ensuring that the level of confidentiality of the obtained material is clarified and the secrecy grounds are marked with a stamp or with some other accepted manner

### Before the retrieval/opening

The supervisor of the employee clarifies whether or not there is a need to retrieve or open an employee’s email. When there is a justified need, the employer asks for the employee’s written consent in order to ensure non-repudiation primarily with a written power of attorney.

If the employee’s consent is unavailable, the supervisor of the employee reviews according to these instructions if the employer has the right to retrieve the employee’s email without his/her consent. In case of the employee not giving his/her consent or the mentioned preconditions of retrieving the employee’s email without consent are not fulfilled, this procedure cannot be used.

If the conditions are fulfilled, the supervisor of the employee contacts the person vested with the authority of information system administrator who arranges the event for retrieving and opening email and takes care that no new messages are received in the employee’s email. An automatic reply function of absence can be set in the employee’s email account.

The person vested with the authority of information system administrator authorizes together with the superior in question a person who retrieves and opens the necessary messages in the employee’s email. It is possible to authorize more than one person if the procedures are related to various tasks or operations of the employee.

### Retrieval

The employee’s emails from the period at hand are retrieved from various information systems with the help of each system’s administrator.

The person authorized for the task marks the emails to be opened in the message list retrieved. A message marked to be opened in this list has to be reasonably connected to a task or operation, which is the reason for these procedures.

A report (Appendix 2: Report of retrieving messages belonging to the employer) about the retrieval of email messages shall be drawn up, and the retrieved list of messages is attached to the report.

In the event of retrieval the authorized person to handle the employee’s email must be present, together with the main operator of each system and the person vested with the authority of information system administrator or another person designated by him/her. They all sign the report made of the event.

## Opening

The messages marked in the list of messages produced above are opened with the help of the main operator. The messages to be opened can be brought to the authorized person to be handled e.g. by printing, filing or saving on a removable flash memory.

The opened message may not be deleted from the original mailbox.

A report (Appendix 3: Report of opening messages belonging to the employer) is made of each message opened and which is signed by all persons present (see "Retrieval" above) in the event of opening. If several messages are opened on the same consistent grounds it is possible, instead of separate documents, to make one common document where the opened messages are specified as a list.

## After the retrieval/opening

A written record is made about the procedure explained above and all produced reports are attached to it (Appendix 4: Record of retrieving and opening an employee's email messages). The persons involved in retrieving and/or opening the message sign the record.

The person vested with the authority of information system administrator delivers the record with its attachments to the President's Office at the University of Applied Sciences to be stored. The President's Office will retain the record according to the information filing instructions.

The person vested with the authority of information system administrator delivers a copy of the record to the employer. The copy is delivered as registered letter and it must be free of charge for the recipient.

The person vested with the authority of information system administrator, the supervisor and the employee will agree on a date when the matter will be discussed. The purpose of the discussion is to clarify how similar situations could be avoided in the future.

## Form templates for documentation

The mentioned forms with filling instructions are appended (Appendices 1-4) to the instructions on retrieving and opening an employee's email, where the conditions required from the procedure are described in more detail. Appendix 1 includes the employee's power of attorney for reading employee's email messages. Forms related to the retrieval and opening of messages, as well as the template of the record to which the reports are to be attached (Appendices 2-4), meet the requirements of reporting to the employee as stipulated in the Act on the Protection of Privacy in Working Life.

The attached model documents in order to verify conformity to law:

Appendix 1: Power of attorney for reading email messages

Appendix 2: Report of retrieving messages belonging to the employer

Appendix 3: Report of opening messages belonging to the employer

Appendix 4: Record of retrieving and opening an employee's email messages

## Further information

The instructions referred to or related to by these instructions are:

- IT Service User Rules
- Email rules
- Retrieving and Opening an Employee's Email (this document)
- Consequences of IT Service Abuse (this document)
- Tables of Penalties of IT Service Abuse
- Administrative Rules for Information Systems

## Power of attorney for reading email messages

*The employee hereby gives a power of attorney to a person approved by the employer to read his/her email messages when the employee is prevented from reading them himself/herself or if the employee is otherwise unable to perform his/her work duties. Granting a power of attorney is voluntary. The employee may at any time revoke the power of attorney. The power of attorney may be used in situations outlined in the Act on the Protection of Privacy in Working Life (759/2004, sections 18 - 20).*

### I hereby authorize

\_\_\_\_\_  
(person(s) approved by the signed employee's supervisor)

to read the work-related email messages sent to my email account and to take any consequent action in the following situations (check one or more):

- ☐ during my annual holiday when its duration is more than \_\_\_\_ days
- ☐ during my leave of absence when its duration is more than \_\_\_\_ days
- ☐ during my business trip when its duration is more than \_\_\_\_ days
- ☐ during my training when its duration is more than \_\_\_\_ days
- ☐ during my sick leave when its duration is more than \_\_\_\_ days
- ☐ during period from \_\_\_\_\_ to \_\_\_\_\_
- ☐ if it is necessary for the operation of the university of applied sciences or one of its units to get the information about the content of the message
- ☐ after my death

The person accessing my email messages is allowed to

- ☐ forward messages related to work tasks to appropriate receivers
- ☐ take the measures described in the appendix

The person reading email messages addressed to me has the obligation of secrecy concerning my personal messages.

I have the right to cancel this power of attorney at any time. Cancellation is immediately effective when the mentioned designated persons have been notified.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Power of attorney granted by – signature and name in block letters

\_\_\_\_\_  
Witnessed by – signature and name in block letters

Distribution: President's Office, (employee), (supervisor), (authorized person), (unit office)

**The completed form will be stored in the president's office for 10 years after the expiry of the power of attorney or termination of employment relationship.**

## Report of retrieving messages belonging to the employer

Email account owner, name and username: \_\_\_\_\_

Identification of IT system: \_\_\_\_\_

### Grounds for retrieval (check one or more):

Reasons 1-3 and either 4 or 5-6 must exist.

- ☐ 1. The employee works independently and the required information is not recorded any other system
- ☐ 2. It is obvious that messages belonging to employer have been sent/received
- ☐ 3. It is necessary to get the information in question in order to deal with matters
- ☐ 4. The employee is permanently unavailable and his/her consent cannot be obtained
- ☐ 5. The employee is temporarily unavailable and his/her consent cannot be obtained
- ☐ 6. The matter cannot be delayed and the employee's consent cannot be obtained within reasonable time

Retrieval was made (date): \_\_\_\_\_ and as the result of it was found out that

- ☐ **Yes**, messages belonging to the employer and which require opening were found.
- ☐ **No**, messages belonging to the employer and which require opening were not found.

A list if messages which were retrieved but not opened is attached to this report.

*The list must have detailed data of the message in the format they were reviewed. The reviewed data can comprise the sender/recipient, subject line and sending date of the message. The attachment must be kept secret under the Act on the Protection of Privacy in Electronic Communications (516/2004), section 4.*

### The retrieval was conducted by:

Signatures of authorized persons \_\_\_\_\_

Name in block letter and title \_\_\_\_\_

Signature of system administrator \_\_\_\_\_

Name in block letters and title \_\_\_\_\_

### The retrieval was witnessed by:

Signature of witness \_\_\_\_\_

Name in block letters and title \_\_\_\_\_

**The original form is attached to the record which is taken to the President's Office. A copy of the record and this form is delivered to the email account owner without any undue delay.**



## **COMPLETION INSTRUCTIONS: Report of retrieving messages belonging to the employer**

This form should be completed when the university of applied sciences or some of its units, based on the Act on the Protection of Privacy in Working Life (759/2004) require information on the contents of email messages sent or received by the employee when the employee cannot give the information and the information is not stored in any other system. If it is necessary to retrieve messages from several systems, a separate copy of this form must be completed for each retrieval case. The form is attached to the record made of the procedure.

The employee's name and user ID in the target system are entered in the form. In addition, the data system where the message is retrieved from is mentioned as well as the unit responsible for the system in question. The data system can be either email service or the user's disc space, for example home directory or a folder on the employee's workstation.

The procedure may only be taken if points 1-3 and either 4 or 5-6 can be checked on the form (Act on the Protection of Privacy in Working Life, section 19).

The retrieval is a one-time procedure, the date of which is recorded on the form.

Information is filled in the form whether any such messages were found in the retrieval which would require opening.

A form "Report of opening messages belonging to the employer" is completed on each opened message and attached to the record made on the procedures.

A list of the retrieved messages not requiring opening is attached to this form. The list presents the information in the form it was reviewed in the retrieval. The format may vary depending on the used email application or retrieval method. The retrieval may only feature the following data: sender/receiver of message, title or subject and the date of the message. The information in question is identification information of the message, the handling of which is regulated by the Act on the Protection of Privacy in Electronic Communications. According to Section 4 of the Act, the message, identification data and location data are confidential unless the Act or another Act provides otherwise.

### **People involved in the retrieval:**

1. One or more persons authorized by the person vested with the authority of information system administrator together with the supervisor of the employee in question
2. The system administrator who can enable the retrieval
3. As a witness, either the person with the authority of information system administrator or a person designated by him/her.

Each participant must sign the form.

## Report of opening a message belonging to the employer

Email account owner, name and username: \_\_\_\_\_|\_\_\_\_\_

Identification of IT system \_\_\_\_\_

### Grounds for opening the message (check box):

- ☐ 1. It is obvious that the message to be opened belongs to the employer.
- ☐ 2. It is necessary to obtain the information in question in order to deal with matters.  
Why? \_\_\_\_\_
- ☐ 3. The sender/recipient of the message cannot be contacted in order to obtain the information.

All grounds must be valid.

### Specification of the opened message:

Sender/Recipient \_\_\_\_\_

Message subject/title \_\_\_\_\_

Message date \_\_\_\_\_

The message was opened on (date) \_\_\_\_\_

Information about the contents of the message was provided to (names)

\_\_\_\_\_  
\_\_\_\_\_

### The message was opened by:

Signatures of authorized persons \_\_\_\_\_

Name in block letters and title \_\_\_\_\_

Signature of system administrator \_\_\_\_\_

Name in block letters and title \_\_\_\_\_

### The opening was witnessed by:

Signature of witness \_\_\_\_\_

Name in block letters and title \_\_\_\_\_

**The original form is attached to the record and delivered to the President's Office. A copy of the record and this form is delivered to the email account owner without any undue delay.**

## COMPLETION INSTRUCTIONS: Report of opening a message belonging to the employer

This form must be completed if the University of Applied Sciences or its unit opens an email message belonging to an employee under the Act on Protection of Privacy in Working Life (759/2004). **Before opening, the message must be retrieved, and the retrieval must be documented using the form** "Report of retrieving messages belonging to the employer". If it is necessary to open several messages, a separate copy of this form must be completed for each message. The report of message retrieval and this form are both attached to the record made of the procedures.

The employee's name and user ID in the target system are entered on the form. In addition, the target system and the unit responsible for the system in question are specified. The data system can be either email service or the user's disc space, for example home directory or a folder on the employee's workstation.

Messages can only be opened if all grounds specified on the form are valid (Act on the Protection of Privacy in Working Life, Section 20). In addition, the need to open the message must be justified.

### Specification of the opened message:

- Sender (From) or Recipient (To) of the message
- Contents of the Subject field of the message and
- Date of reception/sending the message

In addition, the date of opening the message and the person(s) informed about the contents of the message are specified on the form.

### People involved in the opening:

1. One or more persons authorized by the person vested with the authority of information system administrator together with the supervisor of the employee in question
2. The system administrator who can enable the opening
3. As a witness, either the person with the authority of information system administrator or a person designated by him/her.

Each participant must sign the form.

## Record of retrieving and opening an employee's email messages

<Name of the employee> (hereinafter: the Employee) works in the <unit> of the University of Applied Sciences and his/her tasks include <the task(s) related to the need to access messages>.

<Description why the existence and contents of the messages must be reviewed.>

As stipulated in Section 18 of the Act on the Protection of Privacy in Working Life (759/2004) the email service <specify> used by the Employee has enabled the Employee to <check the available options>

- ☐ use an out-of-office automatic reply
- ☐ direct work-related email messages to another employee
- ☐ give another employee the right to read his/ her received messages
  
- ☐ The Employee has utilized these possibilities <how>.
- ☐ The Employee has not utilized these possibilities.

<Specification whether the Employee has been asked for consent to read his/her messages, whether he/she has voluntarily given such consent, or why the consent cannot have been asked for>.

IN ADDITION, IF NEEDED

The delivery of new messages to the Employee's Inbox was prevented <date> and an automatic reply message was set to guide senders to send messages to the address <organization address>.

Based on the above mentioned grounds, the Employee's email messages were retrieved under Section 19 of the Act on the Protection of Privacy in Working Life <date(s)> to ascertain whether the employee has received or sent messages containing information crucial to the University of Applied Sciences immediately before or during his/her absence. A report of the retrieval is attached as Appendix 1.

In connection with the message retrieval it was discovered that that the Employee's Inbox <contains/does not contain> messages that need to be opened.

IF NEEDED

Consequently, the Employee's email messages were opened under Section 20 of the Act on the Protection of Privacy in Working Life <date(s)>. A report of the opening is attached as Appendix 2.

Place and Date	<the Employee's supervisor's signature and name in block letters>  <others involved, signature and name in block letters>
Appendices	1. Report of retrieving messages belonging to the employer 2. Report of opening a message belonging to the employer
Distribution	President's Office, <Employee>

## **SAMPLE – Record of retrieving and opening an employee's email messages**

Teemu Tieteilijä works in the Karelia University of Applied Sciences in the Centre of Creative Industries and his tasks include the practical arrangements of the symposium that will take place on 31 May in 2010.

Mr. Tieteilijä is on sick leave as of 15 March 2010 due to a serious accident. As Mr. Tieteilijä has personally negotiated with the symposium presenters about their schedules and presentation topics, it is obvious that his email Inbox contains messages that are crucial in order to continue with the symposium arrangements.

The email service of Karelia University of Applied Sciences has enabled Mr. Tieteilijä to direct his work-related messages to another employee, as is referred to in Section 18 in the Act on the Protection of Privacy in Working Life.

Mr. Tieteilijä has not utilized this possibility.

Due to his current state of health, it is not possible to ask for his consent for retrieving and possibly opening his email messages.

The delivery of new messages to Mr. Tieteilijä's inbox was prevented on 20 March 2010, and an automatic reply was set to guide senders to send the messages related to the symposium to the address [zz\\_symposium2010@karelia.fi](mailto:zz_symposium2010@karelia.fi).

On the above mentioned grounds, Mr. Tieteilijä's email messages were retrieved, under Section 19 of the Act on the Protection of Privacy in Working Life on 21 March 2010, to ascertain whether he has received or sent information crucial to the Centre of Creative Industries. A report of the retrieval is attached as Appendix 1.

In connection with the message retrieval, it was discovered that Mr. Tieteilijä's inbox contains messages that need to be opened. Consequently, Mr. Tieteilijä's email messages were opened, under Section 20 of the Act on the Protection of Privacy in Working Life, on 22 and 23 March 2010. A report of the opening is attached as Appendix 2.

Joensuu 23 March 2010	Raimo Johtaja	
	Arto Avustaja	Erkki Tietohallintopäällikkö
	Yrjö Ylläpitäjä	Timo Postimestari

Appendices	1. Report of retrieving messages belonging to the employer 2. Report of opening messages belonging to the employer
Distribution	President's Office, Rehtorin toimisto, Teemu Tieteilijä