

My name is Martha Doty Freeman. I am a member of the Texas State Library and Archives Commission, but I am not speaking on behalf of the Commission. By profession I have worked for the past 35 years as a consulting historian to private individuals; private and public companies; state agencies, including the Texas Parks and Wildlife Department, Texas Department of Transportation, and Texas Historical Commission; and federal agencies, including the U.S. Army Corps of Engineers and the General Services Administration. My work and the work of many state and federal agencies has depended on the ready accessibility of state and local records, both current and historic. I am here to emphasize to you the importance of local records, to support their protection and preservation for public use by the development and enforcement of retention schedules published by the Texas State Library and Archives Commission, and to point out problems inherent in looking at those schedules as guidelines rather than as rules.

First, what are these “records” we’re talking about, and why should we care about them? On a local level, records include deeds and court cases. They also document births, deaths, issues of public health, operations of justice and municipal courts, public works, public school districts, and utility services, to name just a few. They’re what we think of as the records that are closest to home and the most meaningful to each of us. Because of the information embedded in them and because of their intrinsic monetary value as objects, these records have a value that is in the billions of dollars. They prove our identities, they ensure our property and other fundamental rights, they ensure that local and state government is efficient and accountable to citizens, and they tell the story of our communities and shared heritage. On the one hand, they’re the records we’re most inclined to take for granted. On the other, they’re the documents that touch every life and are essential to the functioning of civil society.

On a county level, these records date as early as the 1830s. Until the 1980s, there were no schedules that ensured that records were retained and that retention was uniform throughout the state's 254 counties. This lack of uniformity sometimes had devastating effects. While some counties were paragons, others had willfully destroyed decades of irreplaceable records. By the 1920s, numerous counties had diverted records into attics and storerooms to open space for newer records. In one coastal county, record books and loose materials were sold for scrap; in East Texas, records were hauled off and dumped in a gully; and in an east-central Texas county, older records were placed in a basement until their condition was so deteriorated that they were thrown away.

Schedules published by the Texas State Library and Archives Commission that establish mandatory minimum retention periods for local and state records are essential for their uniform treatment, for their preservation for future users, and for some degree of uniformity from county to county. Conversely, lack of rules about an issue as basic as the housing of local records has resulted in conditions that were documented in the 2011 *Report on the Preservation of Historical Texas State Court Records*, an initiative created by Chief Justice Wallace Jefferson and chaired by Baker Botts partner Bill Kroger. The report documented that, absent mandatory rules, counties have stored their permanent records in everything from new state-of-the-art facilities to sea crates located in flood plains and parking lots adjacent to courthouses.

The dictionary's definition of "guidelines," as opposed to "rules," implies latitude on the part of officials reading retention schedules. So how does that play out in practical terms for those of us who depend on those records to do our jobs and assert our rights?

With thousands of public officials using the schedules, and approximately 500 of those being elected county and district clerks, *guidance* as opposed to *rules* means thousands of different ways of reading, interpreting, and drawing conclusions about how to handle records and even which records to keep and for how long. *Guidance* on the county level means that those 500-odd different approaches may change every 4 years depending on elections. What one clerk may believe has permanent value may not be what another clerk believes.

As a professional consultant to various agencies that require that I use local records, *guidance* as opposed to *rules* means that I will be able to do a thorough job if I'm working for TxDOT on the I-35 corridor through Williamson and Bell counties, where clerks have done a superb job of housing and archiving their records. A lack of rules prior to the 1980s means that, if I'm working on an intercoastal canal project for the U.S. Army Corps of Engineers, both the Corps and I may be out of luck.

For the citizens of Texas, *guidance* versus *rules* may result in lack of uniformity, local practices that endanger citizens' equal access, and the abrogation of their fundamental rights to use public records that communicate vital information across both geography and time. For these reasons I strongly support the continued application of the retention schedules as rules.