

Texas State Library and Archives Commission

TESTIMONY GIVEN TO
Senate Select Committee on Open Government
Interim Charge 3 – Records Retention
By Peggy D. Rudd, Director and Librarian
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Records management is a fundamental cornerstone of open government. One of the core functions of the Texas State Library and Archives Commission is to “preserve the record of government for public scrutiny.” The commission can achieve this only if there is a record of government to preserve. That’s why records management and records retention and control policies and schedules are so vitally important.

I welcome this opportunity to comment on the Select Committee’s interim charge to *“review record retention policies for state and local governments and make recommendations for improvements to record retention schedules and policies, including e-mail retention and archiving requirements.”*

In 1947 both houses of the Texas Legislature voted unanimously to authorize the Texas Library and Historical Commission to *“establish and maintain in the State Library a records administration division which...shall manage all public records of the State with the consent and cooperation of the heads of the various departments and institutions in charge of such records...”* (Government Code, Chapter 441, Subchapter L; Administrative Code, Title 13, Chapter 6)

In 1989 with the passage of the Local Government Records Act (Local Government Code, Title 6, Subtitle C; Government Code, Chapter 441, Subchapter J; Administrative Code, Title 13, Chapter 7), the Texas Legislature gave the Texas State Library and Archives Commission authority to support the preservation and effective management of local government records.

The Library and Archives Commission carries out its responsibilities for records management through its State and Local Records Management Division, which provides fee-based storage space for non-current, infrequently used state records and, with the passage of H.B. 1844 last session, local records as well. The division also offers fee-based imaging services; technical assistance and advice on effective and efficient records management; and training. Training is delivered in on-site, face-to-face settings as well as through live and curated online courses. In addition, for more than a decade, the Texas State Library and Archives Commission and the Texas Department of Information Resources (DIR) have cosponsored the annual *eRecords Conference*, which this year attracted more than 300 attendees. The conference focuses on the growing challenge of managing electronic records (including e-mail), and the dramatic rise in the use by government of social media. The conference brings together state and local Records Management Officers (RMOs) and Information Resource Managers

(IRMs) to focus on trends, issues, and concerns in electronic records management that pose special challenges to these staff and their organizations.

The State and Local Records Management Division works closely with our Archives and Information Services Division to transfer the small percentage of state records that are of permanent historical value to the Texas State Archives where they are maintained for generations to come.

The rules established for records management by the Texas State Library and Archives Commission are designed to provide a framework for state agencies and local governments to use in categorizing their records and creating logical filing systems for both paper and electronic records. This framework is the Texas State Records Retention Schedule and the Local Government Records Retention Schedules. The framework may be supplemented with record categories that are unique to a particular agency. Rules are intended to save staff time; to ensure that once records have fulfilled the purpose for which they were created and there is no longer any legal, fiscal, administrative, or historical reason to keep them, records may be destroyed; to ensure public access to government records under the state's open government laws; and to control costs. The rules were developed on the basis of the content of a record and not on its format; thus, whether a record is in paper or electronic form makes no difference as far as the retention schedule series that is applied to that record.

State agencies and local governments look to the commission and its State and Local Records Management Division to do the background research required to develop retention schedules that account for the great variety of agency records and to account for the many requirements dictated by law. For example, records retention for justice courts is governed by Property Code, Texas Administrative Code, Family Code, Federal Rules of Civil Procedure, Code of Criminal Procedures, Health and Safety Code, and Civil Practices and Remedies Code.

Frequently state agency and local government Records Management Officers wear many hats and have a variety of responsibilities. The work they do as an RMO may be relegated to a mere portion of the work day or work week. Managing agency records across the enterprise and training staff to help them manage records effectively is all too often low on the priority list of all that a typical RMO has to do. Compounding this problem is the fact that TSLAC has only six Government Information Analysts who provide assistance and training to more than 10,000 state agencies and local governments.

In recent years there has been increased attention paid to the status of local government court records. In 2009 the Texas Supreme Court appointed a Texas Court Records Preservation Task Force, which published a report in August 2011 on the current state of the care of pre-1951 state district and county court records. Here is some of what the task force learned:

In many instances, counties are adequately preserving their Records.

In other instances, however, counties throughout the State need substantial help. Many Records are decaying or being destroyed due to a confluence of events and conditions, including (i) improper storage and handling, (ii) the effects of moisture and temperature fluctuations, (iii) the ravages of rats, bugs and vermin; and (iv) the acidity of the ink and the poor quality of the paper.

H.B. 1559 passed by the 82nd Legislature directs the Texas State Library and Archives Commission to adopt rules “for the retention, storage, and destruction of a court document filed with, otherwise presented to, or produced by a court in this state before January 1, 1951.” The commission appointed a Local Government Records Storage Task Force, broadly representative of county and district clerks, legal counsel, and experts in records management and archives, to assist the agency in developing minimum and enhanced storage standards for pre-1951 court records and permanent records held by local governments. These standards have been posted in the *Texas Register* and will be considered for final approval by the commission in February 2013.

The laws and rules governing records retention practices are extremely complex and may be found in many areas of the statutes, *Texas Administrative Code*, and *Code of Federal Regulations*. Here are a few examples:

- Accident Reports, Reports of accidents to minors (retention schedule GR1000-20b) – retention prescribed by law, Civil Practice and Remedies Code, Section 16.001, retention: Date minor reaches majority age + 3 years, if no claim filed; 3 years after settlement if a claim is filed, whichever is applicable
- Patient Records (retention schedule HR4800-04) – retention prescribed by law, Health and Safety Code, Section 241.103, retention: 10 years past the last date on which service was given or until the patient’s 21st birthday, whichever is later
- Federal Tax Records (retention schedule 3.2.003) – retention prescribed by regulation, 26 CFR 31.6001-1(e)(2), retention: Tax due date, date claim is filed, or date tax is paid, whichever is later, + 4 years

A uniform retention policy exists now in the *Texas State Records Retention Schedule*, which has been adopted as an administrative rule. The retention schedule indicates the minimum length of time listed records series must be retained by a state agency before destruction or archival preservation. This is a general schedule for state agencies that contains common records of all state agencies and sets minimum retention requirements. In addition, state agencies add their own retention series to their schedule to account for agency specific or program records. (See Government Code, Section 441.185, Records Retention Schedules and Government Code, Section 441.182(c)(2), State Records Management Program.) It would be very difficult to devise a uniform schedule for all state agencies that would account for the variety of unique functions and programs across the agencies.

There are 12 local government records retention schedules for different offices and functions that set minimum retention requirements. Local governments may compile

their own retention schedules as long as the schedules meet the minimum retention requirements. (See Local Government Code, Section 203.002(3), Duties and Responsibilities of Elected County Officers as Records Management Officers and Local Government Code, Section 203.023(3)(a), Duties of Records Management Officers.)

Records in electronic format pose their own unique set of challenges for records managers. The Records Management Interagency Coordinating Council recently submitted its *2011-2012 Biennial Report* to the Governor, Lt. Governor, and members of the Texas Legislature. The report incorporates the multi-year research of the Committee on Best Practices for Managing Digital Information, which includes the work of the Electronic Records Management Workgroup, the Email Management Workgroup, and the Social Media Management Workgroup. Among the recommendations in the report is a request for the Legislature to support the Texas State Library and Archives Commission's Exceptional Item Request in the agency's 2014-2015 Legislative Appropriations Request for \$450,000 over the biennium to support two FTE Electronic Records Specialists who would work with other state agencies, such as DIR, to plan and develop a comprehensive electronic records program for the state and a repository for digital archives. Not only would this help state agencies that need guidance in managing electronic records, but it would also ensure that records in electronic format that are permanently valuable archives will not be lost.

Thank you for the opportunity to speak to you about the records management program of the Texas State Library and Archives Commission. What questions do you have?