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# Records Retention and Management

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Report to the  
Government Oversight  
Committee

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April 2015

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## **INTRODUCTION**

### **Summary**

The intent of the Freedom of Access Act (“FOAA”) is that the people’s business should be conducted openly and government records should be open to public review. 1 M.R.S. § 402. While FOAA does not expressly identify the documents that must be retained in order for the public to be able to see how government agencies transact business, its purpose cannot be achieved without adequate documentation and retention.

The Office of Program Evaluation and Government Accountability (“OPEGA”) Report on the Healthy Maine Partnerships’ FY 13 Contracts and Funding demonstrates how difficult it is to reconstruct the actions of one agency in the distribution of public funds when even a single document with critical information has been destroyed. Even after OPEGA’S painstaking review of hundreds of documents, many interviews of witnesses and a full day public hearing by the Government Oversight Committee (“GOC”), the conclusions the GOC could reasonably draw were not definitive.

The GOC referred several key questions to our working group for follow up. In broad terms, those questions concern the effectiveness of State agency record retention activities and the need for accountability in their implementation. The legal structure for record retention already exists in the statutes and rules of the State Archives. Some agencies have invested more effort than others in devising and updating their retention schedules and providing training. The recommendations offered here will benefit from review by the GOC, by State agencies and by other interested persons.

### **Purpose**

As part of the actions taken following OPEGA December 2013 report on Healthy Maine Partnerships’ FY13 Contracts and Funding, GOC requested that a working group convene to make recommendations regarding improvements to the State’s records retention and management framework.

The GOC unanimously accepted the December 2013 Report at its September 24, 2014 meeting, following a day-long hearing on March 14, 2014 and discussions at numerous GOC meetings beginning in 2013. That Report concluded that the Maine Center for Disease Control did not maintain sufficient documentation to support key decisions in its FY 13 Healthy Maine Partnerships lead selection process, and that employees had been directed to destroy documents. By letter dated July 24, 2013 (see Appendix), the GOC asked the Freedom of Access Act ombudsman and the Director of the State Archives Records Management to convene a working group to make recommendations on a number of issues identified as weaknesses in the State’s records retention and management framework in the course of this review.

### **Method**

Pursuant to the GOC July 2014 letter to the Attorney General and the Secretary of State, the working group was convened by Brenda Kielty, FOAA ombudsman in the Attorney General’s

Office, and Tammy Marks, Director of the State Archives Records Management Division. Eric Stout, Office of Information Technology, provided invaluable support and expertise.

The working group consulted subject area experts for guidance and input on information technology, personnel and human resources, records management training and legal issues. The GOC anticipated that broad stakeholder input might not be possible prior to its public consideration of these recommendations. The working group acknowledges that additional feedback from interested parties would be appropriate, particularly from State agency representatives. The working group informed the Right to Know Advisory Committee in August 2014 about the issues under review. Since the Advisory Committee does not meet during the Legislative session, a copy of the report was sent to individual Advisory Committee members.

The working group reviewed Maine statute, rules, policies and practices applicable to records management. A comparison of federal records management law and regulations, the procedures of the National Archives and Records Administration, and the records management systems of other states was done to evaluate best practices and identify potential weaknesses in our records management framework.

## **Report Format**

The issues targeted by the GOC have been clustered under the headings of: improved guidance and policies; records retention schedules; agency records officers; training and accountability; oversight and compliance; and FOAA request costs. The chart on page four lists the GOC request areas and the pages in the report where discussions of each of those issues can be found. Recommendations are included at the conclusion of each section and a complete listing is found on page 22.

## **Resources**

We acknowledge that many agencies are understaffed and lack the personnel and the training to comply with existing records management requirements. Similarly, implementing some of the recommendations of this report will depend on the availability of staff to carry them out. Nevertheless, access to government records is a vital part of our democracy. Sometimes millions of dollars and important public interests are at stake in the actions of government agencies as reflected in notes, emails or draft documents. Agencies must find a way to review their records and to retain, archive or destroy those records only as appropriate in order to comply fully with law and public policy.

## ISSUES

<b>GOC Request Areas:</b>	<b>Page:</b>
<b>Working group make specific recommendations:</b>	
1. Improved guidance for agencies, including drafts	7 - 9
2. Model policies on record retention	7 - 9
3. Training requirements and a system of accountability	14 – 17, 18 - 20
4. Avenues for employees to get answers to records retention questions	16
<b>Working group make suggestions on ensuring expectations on records retention are clear and well understood by all employees, and employees are accountable for complying with expectations:</b>	
1. All Executive Branch agencies:	
• Review and update records schedules per improved guidance and model policies;	10 - 13
• Train all incoming and existing employees and supervisors on those updated record retention policies and procedures (and FOAA training); and	16 - 17
• Require staff to review and acknowledge State Records Policy annually.	8
2. Employees who fail to comply may receive discipline, up to discharge (consistent with union agreements and civil service law and rules).	16 - 17
3. FOAA Ombudsman’s ongoing training address:	16 - 17
• Importance of record retention	
• Each agency update their record retention schedules, policies and procedures	
• Assure all agency staff receive training	
<b>Working group make recommendations on guidelines for agencies in determining costs for responding to a FOAA such that costs are:</b>	22
• Reasonable	
• Consistent across State government	
• Do not present unnecessary barrier to FOAA requests	

## RECORDS RETENTION & MANAGEMENT OVERVIEW

### Preservation and access

As noted in the December 2013 OPEGA Report, the absence of adequate documentation about agency decisions left serious questions about the process by which the lead Healthy Maine Partnerships agency was selected. The policy underlying the Freedom of Access Act is that records of government action be open to public inspection, 1 M.R.S. § 401. But the public's access to information about how government exercises its authority depends on the preservation of records. The goal of any recordkeeping system is simple: to preserve documentation of policies, actions and operations of government in the most economical way possible. Quickly evolving technologies, the rapid increase in the volume of electronic records, outdated practices and limited resources all hinder efficient and effective records management.

The Archives and Records Management Law, 5 M.R.S. §§ 91 – 98 and Maine State Archives Rule 29-255 chapter 1 govern the management of state agency records throughout the entire cycle of record creation, use, retention, preservation and disposition.

Prior to the convening of the 102<sup>nd</sup> Legislature, Governor John H. Reed created the Maine Archives Committee to review the need to assemble and preserve the vast quantity of valuable State records and make the materials accessible for State and public use. It was evident to this Committee in 1964 that many of the State's records were either inaccessible or kept under haphazard and unsafe conditions, resulting in permanent loss and destruction. With the support of both the Governor and the Legislature, "An Act Creating the Office of State Archivist" was enacted in 1965 giving the new State Archivist records management and archival duties. The former Committee on Destruction of Old Records was dissolved and an Archives Advisory Board was formed to advise the Archivist.

The Records Management Service Division of Archives began operations in 1974 and four years later Archives promulgated the chapter 1 rules to guide State agency records management programs.

### Who is responsible for the management of State records?

#### State Archivist

The Archivist, through the Division of Records Management, is responsible for providing guidance to state agencies and assisting in the effective management of state records. By issuing standards, procedures and techniques; establishing record retention schedules; inspecting agency records management programs and recommending improvements, Archives supports and oversees the agencies.

Archives provides guidance, support and oversight

#### State agencies

State agencies are responsible for establishing and maintaining a records management program that complies with Archives regulations and guidance. A fully functional program encompasses the complete cycle of records creation, maintenance and use, and disposition.

Agencies establish and maintain a records management program

5 M.R.S. § 95(7)

The head of each state agency or local government agency shall establish and maintain an active, continuing program for the economical and efficient management of any records in compliance with the standards, procedures and regulations issued by the State Archivist.

State employees

State employees are responsible for creating records in the normal course of agency business, managing records efficiently so that information can be retrieved and disposing of records in accordance with retention schedules.

Employees perform record keeping activities in accordance with the agency program

## IMPROVED GUIDANCE & MODEL POLICIES

### Drafts and records retention

As noted in the December 2013 Report (at page 28), OPEGA had difficulty reconstructing the events that occurred during the process of selecting a lead Healthy Maine Partnership because there was limited documentation kept during the important scoring and selection phase. Testimony from agency participants about practices differed and was sometimes inconsistent. The question of whether drafts or “working documents” have to be retained is complicated by the variety of documents that can be called “drafts” and an absence of clear policies on their value and relative retention requirements.

#### Documents that could be considered “drafts”

A broad reading of the term “drafts” would include even preliminary or informal writings such as handwritten versions that are subsequently transcribed, notes taken on other documents, “to-do” lists and other personal work aids. Also included are incomplete rough drafts containing no significant information that is not also contained in the final version of the document. Records that alter important policy decisions of an agency, documents that are used in consultations outside of the agency or documents that are reviewed and edited by the agency’s legal staff are also drafts.

The Archives records management manual defines drafts as “support documents, working files for reports, special studies, memorandums, and correspondence that may support major program policy development. These support documents may be needed to fully understand the alternatives and options considered for high-level program initiatives, and the basis for deciding on a course of action. Some drafts contain unique information in substantive annotations or comments added during circulation for comment and approval. Agencies should maintain such drafts, with the file copy of the final document.”

#### Retention of drafts

How long a draft has to be retained depends on the administrative, legal, fiscal and historical value of the record. Drafts with short term value may not need to be retained at all.

Retention depends on administrative, legal, fiscal and historical value

The general retention schedules established by Archives that apply across State government do not contain any guidance on drafts. If an agency does not have specific language about drafts in its agency schedules, Archives refers them to the following National Archives and Records Administration guidance:

National Archives and Records Administration  
Management Guide Series 1995

#### **Drafts and working files.**

Although records of Federal agencies usually contain high-level policies and decisions, policy formulation and execution may be poorly documented. Support documents such as drafts and working files for reports, special



studies, memorandums, and correspondence that support major program policy development may not be incorporated into office files. These support documents may be needed to fully understand the alternatives and options considered for high-level program initiatives, and the basis for deciding on a course of action. Some drafts contain unique information in substantive annotations or comments added during circulation for comment or approval. Agencies should maintain such drafts, with the file copy of the final document, if any, when the drafts relate to formulation and execution of high-level policies, decisions, actions, or responsibilities.

In addition to drafts, working files and background materials may be needed to adequately document agency activities. Agencies should evaluate the documentation practices of senior officials and staff, engineers, scientists, and other professionals and specialists, particularly those who manage unique agency programs and major contracts, and provide guidance for ensuring adequate documentation. Special attention should be given to notebooks, notes, calculations, and other background materials that may contain information needed to supplement formal records. Drafts and working papers or files that propose and evaluate options or alternatives and their implications in the development of high-level policies and decisions or that document findings or support recommendations should be preserved.

Background materials or drafts that are records according to agency recordkeeping guidelines should be maintained in agency recordkeeping systems. Senior officials or their staff members should not keep such Federal records as person papers. Drafts and working papers or files that relate to routine program or administrative operations or that contain only corrections or editorial or stylistic changes may be disposed of as non-record materials.

The only written reference to drafts in Archives training materials states:

**What about draft documents that undergo several revisions?**

Draft documents or working papers that:

- Are circulated via e-mail
  - Propose or evaluate high-level policies or decisions
- AND
- Provide unique information that contributes to the understanding of major decisions of the agency
- THESE SHOULD BE PRESERVED PERMANENTLY

Other drafts circulated for comment, which demonstrate significant revisions in the view of the author, should be scheduled, as is the final product.

Uncirculated drafts may be destroyed at will by the author.

## **Model Policies**

Archives indicate that as of October 2015, they will issue new informational directives and bulletins every quarter to provide policy guidance to agencies. Focus areas identified by Archives include agency responsibilities for establishing a records management program and records management training standards.

The Policy of Preservation of State Government Records issued by the Secretary of State in October 2013 requires that employees review records management information and complete an acknowledgment form. Archives will continue to promote this policy with annual reminders.

## **Recommendations**

- Archives convene a stakeholder group, including representatives of State agencies and other interested groups, to review and update general retention schedules as they apply to draft documents, and develop guidance on agency retention requirements for draft or working documents, with a report back to the GOC
- Archives issue policy directives and bulletins on quarterly basis

## **RECORDS RETENTION SCHEDULES**

### **Records retention schedules**

#### Archives and agencies must develop schedules

The primary tool for managing a record from creation to disposition is the records retention schedule. A schedule describes the records of an agency, establishes the length of time the records must be maintained and serves as the legal authorization for the disposition of records covered by the schedule.

The statutory powers and duties of the State Archivist include establishing schedules to retain and dispose of records.

5 M.R.S. § 95(7)(C)

Establish schedules, in consultation with the heads of state agencies and local government agencies, under which each agency shall retain records of continuing value, and dispose, as provided by this chapter, of records no longer possessing sufficient administrative, legal or fiscal value to warrant their further keeping for business purposes.

As part of its records management program, an agency must provide for the formulation of records schedules. Maine State Archives Rule 29-255 ch.1 § 5(A)(3) and § 12(A) require the development of schedules for all records in the custody of each State agency.

Each State agency must formulate schedules for all records in its custody

29-255 C.M.R. ch.1 § 5(A)(3)

The head of each executive agency shall establish and maintain an efficient and continuous records management program which shall focus upon the complete cycle of records creation, records maintenance and use, and records disposition. The program established by the head of each agency shall provide for:

3. Provision shall be made to insure that records of continuing value are preserved, but that records no longer of current use to an agency are promptly disposed of or retired. Effective techniques for accomplishing these ends are the development of records disposition schedules; the transfer of records to records centers and to the archives, the microfilming of appropriate records; and the disposal of valueless records.

29-255 C.M.R. ch.1 § 12(A)(2)(a)

2. The following steps shall be taken in the development of records disposition schedules:
  - a. Each State agency shall formulate a records disposition schedule for all records in its custody.

Three types of record retention schedules

**General schedules** cover the kinds of records that are common to most or all executive branch state agencies. Records schedules organize records into “record series” or groups of records that relate to a particular function, result from the same activity, have a particular physical form, or because of some other relationship arising out of their creation, receipt or use. The general schedules include records such as financial orders, employee personnel records and Freedom of Access Act requests. The general schedules are found at [www.maine.gov/sos/arc/records/state/gensched2.html](http://www.maine.gov/sos/arc/records/state/gensched2.html).

**State agency schedules** are retention schedules that are unique to each agency. The state agency schedules are found at [www.maine.gov/sos/arc/records/state/stsched.html](http://www.maine.gov/sos/arc/records/state/stsched.html).

**Disposition schedule** is a term that refers generically to any schedule that identifies records and establishes a time frame for disposition. The terms schedules, retention schedules and disposition schedules are sometimes used interchangeably but all such schedules include a listing of record series with corresponding retention periods.

**Creation and approval of schedules**

The process

The development of a retention schedule begins with an understanding of an agency’s mission, its functions, the kinds of records it typically generates and any legal recordkeeping requirements. Agency personnel having subject matter expertise compile a records **inventory** by reviewing the types of records and information systems in the organization. A fundamental principle of records management is that records no longer having value should be destroyed. Groups of related records identified in the inventory are evaluated based on the administrative, fiscal, legal and historical value of the records. The **appraisal** of records’ value determines the retention period and disposition of the records. An agency’s proposed records retention **schedule** goes to the next level for review, discussion and revisions. The **review** of draft schedules involves records management personnel from Archives. Retention schedules are then forwarded to the approving body for review, discussion, revision or **approval**. The **implementation** of approved schedules within the agency requires issuance and distribution of the schedule and staff training on the schedule.



Approving schedules: State Archivist and Archives Advisory Board

The process for approving general and agency schedules depends on whether the power to grant approval rests with Archives, the Archives Advisory Board or both. There is disagreement about the roles of the Archivist and the Archives Advisory Board in approving schedules. Because of this disagreement, some agency schedules have not been approved for over two years while other agency schedules have been approved by the Archivist but not by the Board.

The Archives Advisory Board was created in 1965, at the same time as the office of the State Archivist. It was originally composed of representatives of the Attorney General, the Commissioner of Finance and Administration, the State Librarian, the State Historian and the Registrar of Vital Statistics as well as six other persons especially interested in Maine history.

The composition of the Archives Advisory Board changed four years later to replace the State government members with three more citizen members. The Archives Advisory Board, whose members are appointed by the Governor, currently has four vacancies, and the terms of the remaining five members have expired though they continue to serve.

Historically the Archives Advisory Board has advised the Archivist on the disposition of records, on retention schedules and on administrative matters of concern. Although there is some dispute about whether the Archives Advisory Board's review of State agency schedules should be limited to the authorization to destroy records, the interchangeable use of the terms "disposition schedule" and "retention schedule" suggest that the Board has broad authority. Past practice and a plain reading of the Maine State Archives Rule indicate that the Archivist and the Archives Advisory Board should work together to approve general and agency schedules.

General records schedules are issued by the Archivist and the Archives Advisory Board pursuant to Maine State Archives Rule 29-255 ch.1 § 12(B).

29-255 C.M.R. ch.1 §12(B)

B. Approved general records schedules

General records schedules shall be issued by the State Archivist and Archives Advisory Board to govern the disposition of certain types of records common to all agencies.

Agencies submit proposed schedules to Archives and after review by Archives staff their requests go to the Archivist and the Archives Advisory Board for approval.

29-255 C.M.R. ch.1 § 12(C)

C. Agency disposal authority

1. Requests for authorization to dispose of records shall be initiated by State agencies by submitting records disposal lists or schedules to the Maine State Archives.
2. After review by the Maine State Archives staff, the request is submitted to the State Archivist and Archives Advisory Board as required by law. If the request is approved by the State Archivist and Archives Advisory Board, the State Archivist shall notify the agency thereof. This notice constitutes the disposal authorization.

Archives suggests improving the schedule approval process through changes to the Archives Advisory Board, including appointing members with expertise in the administrative, fiscal, legal and historical value of records; creating separate review subcommittees for local records and historical archive issues; and ensuring timely renewals or changes to appointments.

Existing schedules must be updated annually

Since 1970 Archives has tracked the number of agency schedule updates by State agency. Sixty four percent of the total changes to agency schedules occurred between 1980 and 1999. Only eleven percent of the changes date from 2010 to 2015, suggesting that the schedules are not regularly updated and do not reflect current records practices.

Regular review and updating of retention schedules will provide meaningful guidance to agency staff. As business practices evolve, new and amended schedules will document the changing use and value of records. Maine State Archives Rule 29-255 ch.1 § 12(A)(2)(e) provides that retention schedules should be reviewed and updated at least once a year.

Schedules must be reviewed and updated annually

29-255 C.M.R. ch.1 § 12(A)(2)(e)

- e. Schedules shall be reviewed at least once annually to effect changes necessary to maintain their current status.

**Recommendations**

- GOC should consider, with input from interested persons, changes to the Archives Advisory Board, including appointing members with expertise in the administrative, fiscal, legal and historical value of records; creating separate review subcommittees for local records and historical archive issues; and ensuring timely renewals or changes to appointments.
- GOC should consider, with input from interested persons, clarifying the schedule approval process so that the roles of the Archives and the Archives Advisory Board are clearer; this may require legislative action
- Agencies and Archives should increase the number of schedule reviews done each year

## RECORDS OFFICERS

### Agency records officers

#### What staff resources are needed for an agency records management program?

In order to implement recordkeeping policies and procedures, to provide training, and to ensure oversight and compliance, each agency needs to designate employees who are qualified in records management.

Each agency head must appoint a records officer and assistant records officers

A records officer coordinates the records management of an agency and is an important link between the agency and Archives. Assistant records officers support the overall program by performing records management responsibilities for each unit within the agency.

#### Appointment of records officers

Pursuant to Maine State Archives Rule 29-255 ch. 1 § 6, each agency head must appoint a records officer at the managerial level and assistant records officers for each organizational unit.

Archives must be informed of records officer appointments

Agencies are required to notify Archives immediately of any changes in records officer designations and the transfer of any associated duties to another agency employee.

29-255 C.M.R. ch. 1 § 6

### **6. RECORDS OFFICER**

The head of each agency shall appoint a Records Officer at the managerial level who shall be responsible under his direct supervision for the economical and efficient management of the records of the agency in compliance with the standards, procedures and rules issued by the State Archivist. The person chosen as Records Officer shall have a thorough knowledge of the organization and specialized functions of the agency and of the general records requirements of the State.

The head of each agency shall appoint an Assistant Records Officer for each organizational unit of the agency who shall be immediately responsible for the exercise of such records management functions as are authorized to be performed within the unit for which he is assigned responsibility and which shall operate within the framework of the overall agency program. The names of the Records Officer and Assistant Records Officers shall be reported to the Maine State Archives immediately following their appointment. All official correspondence between the agency and the Maine State Archives concerning the disposal of agency records shall be signed by the head of the agency or by the Records Officer.

Archives identifies four problems in this area that weaken agency records management programs: agency failure to appoint records officers and assistants; lapses or changes in appointments not reported to Archives; confusion about the role of records officers and

assistants; and the need for more records officer assignments to address the various functions, policies, procedures and records within each agency.

Records officer responsibilities are added on to an employee's existing duties, making time for records management challenging. In addition, about half of the records officer and assistant positions across state government are now vacant. The dedication of time and resources to appointed records officers or to new positions for full-time professional records managers would improve agency-wide records management functions.

### **Recommendations**

- As part of the annual review of schedules, each agency should submit to Archives the names of their records officers and assistants.
- Archives should identify records officers and assistants gaps or recommended additions and notify each agency
- Archives should insist that they will not accept records from or release to an agency without an assigned records officer



## TRAINING & ACCOUNTABILITY

### Records management training

Agency-specific training for employees at all levels is a critical component of an effective records management program. Whether training is in person or web-based, it should be recurring, consistent and customized specifically for the agency's records management program.

Despite all the responsibilities of agency heads, records officers and line employees to create, retain and dispose of records, there are no minimum standards for required training of State employees in Maine statute, rule or Archives policy.

Training has been provided by a single Archives staff member to small groups of employees or records officers, usually only in response to an agency request. Archives has posted information about records management online and improved their website. Archives, the Office of Information Technology, the Office of the Attorney General and the Department of Health and Human Services have collaborated to develop an on-line training tool which combines records retention, electronic records and freedom of access and which could be a model for other agencies. The FOIA ombudsman's ongoing training incorporates material on the importance of records management, including updating schedules and training. Still, these measures are inadequate.

A lack of clear and consistent training standards is a significant weakness in the State's records management framework. Who must be trained? What content should be included in training for new hires, continuing employees, supervisors and records officers? How frequently should training occur? What documentation of training completion should be on file? Archives have indicated that training standards will be issued in October 2015. With those standards in hand, agencies should ensure that all personnel can meet records training requirements.

Archives should issue minimum standards for training and provide training resources

Agencies should ensure training for all personnel

### State employee resources for records retention questions

Employees should have a number of ways to get answers to records management questions. In addition to providing information online, the Archives have enhanced its website with a new "You have questions? We have answers!" text box, highlighting staff contact information to assist in getting answers.

The Office of Information Technology has developed a page on the State intranet site available to all State employees, with information relating to records retention, electronic records management and the Freedom of Access Act.

The agency records officer and assistant records officers are key staff members for agency-specific questions. They should understand their role as a resource and their contact information should be available to all agency employees.

## **Performance and individual accountability**

The State performance management system is premised upon clear, well-defined job responsibilities; notice and training so that employees fully understand their responsibilities; and an annual performance evaluation to foster individual accountability.

Although record keeping is a vital function for most employees, the lack of a consistent understanding of records management responsibilities is a weakness in the State's records management practices. Agency records management programs should include clear standards and expectations communicated through the agency policy and procedures. Agency-customized training should be available to all employees to implement the policy and provide the minimum skills and knowledge needed to meet the policy objectives. With these measures in place, a plan could be developed for regular review of individual employee practice and records management expectations.

State agencies should be encouraged to develop records management programs and policies and partner with Archives to deliver appropriate training to all personnel. With appropriate training, consistency in practice and accountability will improve.

## **Recommendations**

- Archives issue minimum standards for records management training
- Archives develop an online training tool
- Bureau of Human Resources include records management as a required topic in the new employee orientation presentation
- Agencies partner with Archives to deliver appropriate records management training customized for individual agencies
- All continuing personnel complete the agency records management training annually
- Archives notify agencies of enhanced website resources for answering questions
- Agencies direct employee questions to records officers and Archives
- Once clear and updated retention schedules are established and adequate training is implemented, the agencies could consider a plan for an employee records management performance expectation

## OVERSIGHT & COMPLIANCE

### Agency internal controls

#### Agencies must monitor records management program

Agencies are required to establish adequate controls to monitor and assess the implementation of records management policies and procedures. Maine State Archives Rule 29-255 ch. 1 § 5(A)(1) and § 12(F)(1) require effective internal controls over records creation, records maintenance, records use and records disposition. Agencies must establish safeguards against the unlawful removal of records and protect government records against loss or misuse.

Agency records management programs must provide effective controls over the creation, maintenance and use, and disposition of records

29-255 C.M.R. ch. 1 § 5(A)(1)

The head of each executive agency shall establish and maintain an efficient and continuous records management program which shall focus upon the complete cycle of records creation, records maintenance and use, and records disposition. The program established by the head of each agency shall provide for:

- A. Effective internal controls over records creation, records maintenance and use and records disposition, with respect to the conduct of current business.
  - 1. Adequate controls over the creation of agency records shall be instituted to insure that important policies and decisions are sufficiently recorded; that routine operational paperwork is kept to a minimum; and that the accumulation of unnecessary files is prevented. Effective techniques to be applied in this area include the application of systems for the control of correspondence, forms, directives and issuances, and reports; the minimizing of duplicate files, and the disposal without filing of transitory material that has no value for record purposes.

29-255 C.M.R. ch. 1 § 12(F)(1)

F. Unlawful removal or destruction of records

- 1. The head of each agency shall establish safeguards against the unlawful removal or loss of records, including making it known to officials and employees of the agency that records in the custody of the agency are not to be alienated or destroyed except in accordance with law; and the penalties provided by law for the unlawful removal or destruction of records.

## Reviews and inspections

### Evaluation of agency records management program

Agencies are required to conduct reviews and evaluations of how their records management policies and procedures are implemented. Archives must conduct periodic inspections of agency records management programs to evaluate effectiveness and make recommendations for improvements. Maine State Archives Rule 29-155 ch.1 § 5(C) and § 8 provide these specific oversight and compliance measures to identify issues in records management programs.

29-255 C.M.R. ch.1 § 5(C)

The head of each executive agency shall establish and maintain an efficient and continuous records management program which shall focus upon the complete cycle of records creation, records maintenance and use, and records disposition. The program established by the head of each agency shall provide for:

- C. Review and evaluation of agency records management program policies, operations and procedures.

Agency review of records management program policies, operations and procedures

Archives inspection of agency programs for compliance and effectiveness

29-255 C.M.R. ch.1 § 8

#### 8. AGENCY PROGRAM EVALUATION

Agency programs will be inspected periodically by the Maine State Archives to:

- A. Determine agency compliance with the Archives and Records Management Law.
- B. Determine agency observance of Maine State Archives rules.
- C. Evaluate and report on the effectiveness of agency records programs.

29-255 C.M.R. ch.1 § 3(C)

- C. "Inspection" means the review of agency records, records management practices, and records management programs for the purpose of evaluating records management effectiveness and recommending means for the Improvement of records management.

When and how often should an agency records management program be reviewed?

The routine review of an agency records management program could coincide with the annual update of retention schedules. Archives inspection could be done on a rotating basis and include recommendations for improving records management practices, policies and procedures.

**Agency performance goals and measures**

Continued records management program improvements

Archives shall recommend improvements in statewide records management practices and agencies must provide for the continued analysis and improvements of their records management programs. 5 M.R.S. § 95(7)(B) and Maine State Archives Rule 29-255 ch. 1 § 5(A)(2) require that Archives and agencies seek continual improvement in records management programs.

Archives recommend improvements in records management practices

Agency programs provide for continued analysis and improvement

5 M.R.S. § 95(7)(B)

The State Archivist shall, with due regard for the functions of the agencies concerned:

B. Recommend improvements in records management practices, including the use of space, equipment and supplies employed in creating, maintaining, storing and servicing state and local government records;

29-255 C.M.R. ch. 1 § 5(A)(2)

2. To insure that records are maintained economically and efficiently and in such a manner that their maximum usefulness is attained, provision shall be made for the continued analysis and improvement of such matters as mail handling and routing, record classification and indexing systems, the use of filing equipment and supplies, and the reproduction and transportation of records.

Performance goals are specific, measurable, meaningful improvements

Performance measures are metrics that track progress toward goals

How can agency improvements be tracked?

Essential to an agency records management program is the establishment of performance goals and methods to measure progress. Agency goals should build on existing records practices and identify next steps toward a more effective system.

**Recommendations**

- Agencies implement internal controls that provide reasonable assurance that their programs comply with all state records management laws and regulations
- Annual agency review of records management program

- Periodic Archives inspection of agency records management program scheduled on rotating basis and include recommendations for improvements
- Agencies establish specific performance goals and measures for their records management program based on outcome of reviews and inspections

## **FREEDOM OF ACCESS ACT REQUEST COSTS**

The Freedom of Access Act allows agencies to assess and collect FOAA fees from requesters. Agencies recover some of the costs of responding to a FOAA request through a capped hourly fee for staff time, reasonable costs for copies and reimbursement of actual costs for conversion or postage. The question presented by GOC is whether this scheme is adequate to establish a consistent government-wide framework and whether the fees are reasonable and not an unnecessary barrier to access.

Although consistency could be improved through comparing similar agency activities and applying a standard fee, such as a unit standard for searching email accounts, the statute does not provide for uniform fee schedules. Other changes to the fee provisions to address fees as a barrier to access could also require amendments to FOAA.

The Right to Know Advisory Committee has looked at the issue of fees multiple times and because of their broad stakeholder representation and expertise, are well positioned to make recommendations that balance the cost of FOAA requests and the public's need for access to information.

### **Recommendations**

- Refer the issue of Freedom of Access Act request costs to the Right to Know Advisory Committee for review and proposals

## **RECOMMENDATIONS**

### **Improved Guidance & Model Policies**

- Archives convene stakeholder group, including representatives of State agencies and other interested groups, to review and update general retention schedules as they apply to draft documents, and develop guidance on agency retention requirements for draft or working documents, with a report back to GOC
- Archives issue policy directives and bulletins on quarterly basis

### **Records Retention Schedules**

- GOC should consider, with input from interested persons, changes to the Archives Advisory Board, including appointing members with expertise in the administrative, fiscal, legal and historical value of records; creating separate review subcommittees for local records and historical archive issues; and ensuring timely renewals or changes to appointments.
- GOC should consider, with input from interested persons, clarifying the schedule approval process so that the roles of the Archives and the Archives Advisory Board are clearer; this may require legislative action
- Agencies and Archives should increase the number of schedule reviews done each year

### **Agency Records Officers**

- As part of the annual review of schedules, each agency should submit to Archives the names of their records officers and assistants
- Archives should identify records officers and assistants gaps or recommended additions and notify each agency
- Archives should insist that they will not accept records from or release records to an agency without an assigned records officer

### **Training & Accountability**

- Archives issue minimum standards for records management training
- Archives develop an online training tool
- Bureau of Human Resources include records management as a required topic in the new employee orientation presentation
- Agencies partner with Archives to deliver appropriate records management training customized for individual agencies
- All continuing personnel complete the agency records management training annually
- Archives notify agencies of enhanced website resources for answering questions
- Agencies direct employee questions to records officers and Archives
- Once clear and updated retention schedules are established and adequate training is implemented, the agencies could consider a plan for an employee records management performance expectation

### **Oversight & Compliance**



- Agencies implement internal controls that provide reasonable assurance that their programs comply with all state records management laws and regulations
- Annual agency review of records management program
- Periodic Archives inspection of agency records management program scheduled on rotating basis and include recommendations for improvements
- Agencies establish specific performance goals and measures for their records management program based on outcome of reviews and inspections

### **Freedom of Access Act Request Costs**

- Refer the issue of Freedom of Access Act request costs to the Right to Know Advisory Committee for review and proposals

## **APPENDIX**



SEN. CHRISTOPHER K. JOHNSON, SENATE CHAIR  
REP. CHUCK KRUGER, HOUSE CHAIR

MEMBERS:

SEN. ROGER J. KATZ  
SEN. DAVID C. BURNS  
SEN. MARGARET M. CRAVEN  
SEN. TROY D. JACKSON  
SEN. EDWARD M. YOUNGBLOOD  
REP. PAUL T. DAVIS, SR.  
REP. ANDREA M. BOLAND  
REP. H. DAVID COTTA  
REP. LANCE E. HARVELL  
REP. MATTHEW J. PETERSON

MAINE STATE LEGISLATURE  
GOVERNMENT OVERSIGHT COMMITTEE

July 31, 2014

Honorable Janet Mills  
Attorney General  
6 State House Station  
Augusta, Maine 04333-0006

Honorable Matthew Dunlap  
Secretary of State  
148 State House Station  
Augusta, Maine 04333-0148

Dear Attorney General Mills and Secretary of State Dunlap:

In the months since the Office of Program Evaluation and Government Accountability released its December 2013 report on Healthy Maine Partnerships' FY13 Contracts and Funding, our committee has been considering potential actions on associated issues with records retention policies and practices at the Maine Center for Disease Control and Prevention, as well as Statewide. Chief Deputy Attorney General Linda Pistner, FOAA Ombudsman Brenda KIELTY, Senior Attorney General Phyllis Gardiner and State Archivist David Cheever have provided information and perspective that have helped us to understand where weaknesses exist in the State's records retention and management framework and helped brainstorm possible ideas for improvements. We greatly appreciate their interest and assistance in these matters.

As a result of these discussions, the Government Oversight Committee would like to accept the offer extended by your offices for the FOAA Ombudsman and Director of the State Archives Records Management to convene a working group to develop and/or make specific recommendations to the GOC regarding improvements to the State's Records Retention framework. Specifically, the GOC requests that:

- A. A working group be convened by the FOAA Ombudsman and the Director of Maine State Archives Records Management and include, at a minimum, representatives of the Attorney General's Office, the Office of Information Technology, the Bureau of Human Resources and the Department of Audit.

82 State House Station, Room 107 Cross Building  
Augusta, Maine 04333-0082  
TELEPHONE 207-287-1901 FAX: 207-287-1906

- B. The working group make specific recommendations concerning the following:
  - a. improved guidance for agencies on record retention, including specifically the issue of draft documents and the appropriate criteria for determining the extent to which drafts should be retained;
  - b. model policies on record retention;
  - c. training requirements, including additional requirements for supervisors, and a system of accountability to assure that all state employees receive appropriate training on record retention policies, schedules and procedures; and
  - d. establishing, or promoting/enhancing existing, avenues for employees to get consistent and accurate answers to records retention questions.
  
- C. The working group also make suggestions on how best to implement the following ideas with the goal of ensuring expectations regarding records retention are clear and well understood by all employees and that all employees are accountable for complying with those expectations:
  - 1. All executive branch agencies shall review and update their record retention policies, procedures and schedules consistent with the improved guidance and model policies; train incoming and existing employees and supervisors on those updated record retention policies and procedures (in addition to, or in conjunction with FOAA training); and require staff to review and acknowledge receipt of the State of Maine Policy on Preservation of State Government Records on an annual basis.
  - 2. Consistent with collective bargaining agreements, civil service law and rule and other applicable law, compliance with record retention policies, procedures and schedules should be included as part of each employee's performance expectations. Employees who fail to fulfil their obligations under applicable record retention policies, procedures and schedules will be subject to disciplinary action, up to and including discharge.
  - 3. The FOAA Ombudsman's ongoing training of state agency personnel continue to address the importance of record retention, as well as the obligation of each agency to update their record retention schedules, policies and procedures, and to assure that all agency staff receive training on those policies and procedures.
  
- D. The working group make recommendations on guidelines that should be used by agencies in determining costs for responding to a FOAA such that costs are reasonable, consistent across State government and do not present an unnecessary barrier to FOAA requests.
  
- E. In developing its recommendations and suggestions, that the working group seek input from the Right to Know Advisory Committee, other State agencies and/or stakeholders as appropriate.
  
- F. The working group report back to the GOC by February 1, 2015, on the results of its work and include recommendations for any additional steps, including those that may require legislative action.

(b) (5) - DPP

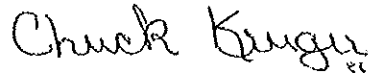
We understand that your offices have very limited staff resources to support this effort and, consequently, there may not be time or resources to involve or seek feedback from a broad stakeholder group, even if the working group feels that would be appropriate. If it seems that the working group's recommendations should be vetted with stakeholders more than you have opportunity to do before February 1<sup>st</sup>, the GOC can do so through its public consideration of those recommendations.

Please confirm with OPEGA Director Beth Ashcroft that your offices intend to honor this request. Director Ashcroft can also answer any questions you may have.

Sincerely,



Senator Christopher Johnson  
Senate Chair



Representative Chuck Kruger  
House Chair

Cc: Members of the Government Oversight Committee

Maine Revised Statutes Annotated  
Title 5. Administrative Procedures and Services  
Part 1. State Departments  
Chapter 6. State Archivist

**5 M.R.S.A. §§ 91 – 98**

**§ 91. Short title**

This chapter shall be known and may be cited as the “Archives and Records Management Law.”  
1973, c. 625, § 16, eff. July 5, 1973.

**§ 92. Declaration of policy**

The Legislature declares that it is the policy of the State to make the operations of State Government and local government more efficient, more effective and more economical through records management; and, to the end that the people may derive maximum benefit from a knowledge of state affairs, preserve its records of permanent value for study and research.  
1973, c. 625, § 16, eff. July 5, 1973; 1995, c. 148, § 2; 1997, c. 636, § 1.

**§ 92-A. Definitions**

The following definitions are established for terms used in this chapter.

- 1. Agency records.** “Agency records” means records of government agencies to which they retain legal title, but that have been transferred to the custody of the Maine State Archives to effect economies and efficiency in their storage and use pending their ultimate disposition as authorized by law.
- 2. Archives.** “Archives” means government records that have been determined by the State Archivist to have sufficient value to warrant their continued preservation and that are in the physical and legal custody of the Maine State Archives.
- 2-A. Local government.** “Local government” means a municipality, county, school district or other special-purpose district or multi-purpose district.
- 3. Record center.** “Record center” means facilities maintained by the State Archivist for the storage, security, servicing and other processing of agency records that must be preserved for varying periods of time and need not be retained in office equipment and space.
- 4. State agency or agency.** “State agency” or “agency” means any unit of State Government or local government, including any state board or commission, except the Legislature and its committees and subcommittees, the Judicial Department, the University of Maine System, the Maine Community College System and the Maine Maritime Academy.
- 5. Record.** “Record” means all documentary material, regardless of media or characteristics and regardless of when it was created, made or received or maintained by an agency in

accordance with law or rule or in the transaction of its official business. "Record" does not include extra copies of printed or processed material of which official or record copies have been retained, stocks of publications and processed documents intended for distribution or use or records relating to personal matters that may have been kept in an office for convenience. "Record" includes records of historic and archival value to the State, regardless of the date of their generation, including all documents determined to have such value to the State by statute and, when appropriate, by the State Archivist.

**6. Electronic record.** "Electronic record" means a record whose content is not readable unless retrieved by means of an electronic device such as a computer or an audio or video player. 1973, c. 625, § 16, eff. July 5, 1973; 1991, c. 837, § A-8, eff. April 8, 1992; 1995, c. 148, §§ 3, 4; 1997, c. 636, §§ 2 to 4; 1999, c. 12, § 1; 2003, c. 20, § OO-2, eff. July 1, 2003; 2009, c. 509, § 1.

### **§ 93. State Archivist**

The Secretary of State shall appoint a State Archivist subject to review by the joint standing committee of the Legislature having jurisdiction over state and local government and to confirmation by the Legislature. The State Archivist shall be chosen without reference to party affiliation and solely on the ground of professional competence to perform the duties of that office. The State Archivist shall hold office for a term of 6 years from the date of the appointment and until a successor has been appointed and qualified. The compensation of the State Archivist shall be fixed by the Governor.

This section shall not affect the term of the person holding office as State Archivist on October 1, 1977.

1973, c. 625, § 16, eff. July 5, 1973; 1975, c. 771, § 33, eff. Jan. 4, 1977; 1977, c. 674, § 2; 1995, c. 148, § 5.

### **§ 94. Maine State Archives**

The office of the State Archivist is a bureau within the Department of the Secretary of State and consists of at least 2 organizational units as the State Archivist and the Secretary of State determine best suited to the accomplishment of the functions and purposes of this chapter. One organizational unit consists of the State Archivist and immediate support staff. The office is known as the Maine State Archives. The State Archivist is the official custodian of the archival resources of the State.

1973, c. 625, § 16, eff. July 5, 1973; 1989, c. 716.

### **§ 95. Powers and duties of State Archivist**

The State Archivist has, upon consent of the Secretary of State, the duties and powers established under the following provisions governing the creation, use, maintenance, retention, preservation and disposal of state records:

**1. Administration.** To administer the office of the State Archivist. In exercising the administration of the office, the State Archivist shall formulate policies, establish organizational and operational procedures and exercise general supervision. The State Archivist shall employ, with the approval of the Secretary of State subject to the Civil Service Law,<sup>1</sup> such assistants as are necessary to carry out this chapter. The State Archivist shall adopt a seal for use in the official business of the office. The State Archivist has custody and control of the facilities provided for the administration of this chapter;

**2. Examination of public records.** To have the right of reasonable access to and examination of all state and local government records in Maine;

**3. Rules.** To adopt such rules as are necessary to effectuate the purposes of this chapter. No restrictions or limitations may be imposed on the use of records that are defined by law as state and local government records or as records open to public inspection, unless necessary to protect and preserve them from deterioration, mutilation, loss or destruction. Restrictions or limitations imposed by law on the examination and use of records transferred to the archives under subsection 7, paragraph C and subsection 8 remain in effect until the records have been in existence for 50 years, unless removed or relaxed by the State Archivist with the concurrence in writing of the head of the agency from which the records were transferred or the successor in function, if any. The State Archivist shall adopt rules governing the transfer of records from the custody of one agency to that of another subject to any applicable provision of law;

**4. Acceptance of gifts and bequests.** To accept gifts, bequests and endowments for purposes consistent with the objectives of this chapter. Such funds, if given as an endowment must be invested in securities by the Treasurer of State according to the laws governing the investment of trust funds. All gifts, bequests and proceeds of invested endowment funds must be used solely to carry out the purposes for which they were made;

**5. Publication.** To publish archival material, reports, bulletins and other publications that promote the objectives of this chapter. The State Archivist shall establish the price at which publications, photocopies and photoduplication services may be sold and delivered. The income received under this subsection and subsection 12 must be credited to a special revenue account, which is carried forward and expended by the agency for these purposes;

**6. Biennial report.** To report biennially to the Governor and Legislature facts and recommendations related to the work and needs of the office of State Archivist;

**7. Records management program.** To establish and administer in the executive branch of State Government an active, continuing program for the economical and efficient management of state and local government records, and for the proper disposition of local government records. Upon request, the State Archivist shall assist and advise in the establishment of records management programs in the legislative and judicial branches of State Government and shall, as required by them, provide program services similar to those available to the executive branch. The State Archivist shall, with due regard for the functions of the agencies concerned:



- A. Provide standards, procedures and techniques for effective management of state and local government records in the conduct of business;
- B. Recommend improvements in records management practices, including the use of space, equipment and supplies employed in creating, maintaining, storing and servicing state and local government records;
- C. Establish schedules, in consultation with the heads of state agencies and local government agencies, under which each agency shall retain records of continuing value, and dispose, as provided by this chapter, of records no longer possessing sufficient administrative, legal or fiscal value to warrant their further keeping for business purposes; and
- D. Obtain such reports from state or local government agencies as are required for the administration of the program.

The head of each state agency or local government agency shall establish and maintain an active, continuing program for the economical and efficient management of any records in compliance with the standards, procedures and regulations issued by the State Archivist.

**8. Transfer of state records.** To provide for the transfer to the archives of state records, disposed of under subsection 7, paragraph C, that have archival value;

**9. Destruction of state records.** To authorize and receive confirmation of the destruction of the state records of any state or local agency that, in the opinion of the head of the agency, are no longer of value to the state or local government agency, and that, in the opinion of the State Archivist and the Archives Advisory Board, have no archival value to the State;

**10. Transfer of state and official records.** To receive all state records transferred to the Maine State Archives under subsection 8 and to negotiate for the transfer of official records from the custody of any public official not governed by subsection 7. The State Archivist shall charge a fee sufficient to cover the cost of receiving and processing all transfers from the custody of any public official not governed by subsection 7. The fees collected must be deposited in the General Fund. Any public officer in Maine is authorized to turn over to the State Archivist those official records legally in that public official's custody that are not needed for the transaction of the business of that office, whenever the State Archivist is willing and able to receive them.

Whenever such a transfer is made, the State Archivist shall transmit to the office from which the records are transferred a memorandum in which such records are described in terms sufficient to identify them, which must be preserved in the transferring office. Unless otherwise directed by law, the state records of any public office, commission or committee in the State must, upon the termination of its existence or functions, be transferred to the custody of the State Archivist;

**10-A. Records of Secretary of State.** To preserve the records of the Secretary of State to the extent the Secretary of State determines desirable under the Constitution and the regulations of the State Archivist;

**10-B. Permanent state records of agency administration.** To establish such standards concerning the establishment, maintenance and operation of state or local government administered computerized and auxiliary automated information handling as are necessary to ensure the preservation of adequate and permanent records of the organization, functions, policies, procedures, decisions and essential transactions of the agencies of State Government or local government;

**10-C. Legislative records.** To receive legislative records. The Secretary of the Senate and the Clerk of the House of Representatives shall obtain the noncurrent records of the Legislature and of each legislative committee at the close of each Legislature and transfer them to the Maine State Archives for preservation, subject to the orders of the Senate or the House of Representatives, respectively, and subject to schedules established in consultation with the Executive Director of the Legislative Council;

**11. Archives available for public use.** To make archival material under the archivist's supervision available for public use at reasonable times. The archivist shall carefully protect and preserve the materials from deterioration, mutilation, loss or destruction. State records maintained by the archivist that contain information related to the identity of an archives patron relative to the patron's use of materials at the archives are confidential. Those state records and the information contained in them may only be released with the express written consent of the patron involved or as a result of a court order;

**12. Copies.** To furnish copies of archival material upon the request of any person, on payment in advance of such fees as may be required. Copies of state records transferred pursuant to law from the office of their origin to the custody of the State Archivist, when certified by the State Archivist, under the seal of that office, have the same legal force and effect as if certified by their original custodian. A facsimile of the signature of the State Archivist imprinted by or at the direction of the State Archivist upon any certificate issued by the State Archivist has the same validity as the written signature of the State Archivist;

**13. Photoreproduction and restoration.** To provide centralized photoreproduction and records preservation services for government agencies to the extent the State Archivist determines advisable in the administration of the state program and facilities. Such services must be furnished to such agencies at cost.

Fees collected under this subsection must be deposited in the General Fund; and

**14. Records explanation available.** To prepare a detailed explanation of what constitutes a "record" pursuant to section 92-A, subsection 5 and "records belonging to the State or to a local government or any agency of the State" pursuant to section 95-A, subsection 1. The State Archivist shall include in the explanation practical examples of such records in plain language. Upon request, the State Archivist shall provide the explanation to interested parties at no cost to the requestor and shall post the explanation on a publicly accessible website.

1973, c. 625, § 16, eff. July 5, 1973; 1981, c. 456, §§ A, 17, 18, eff. July 1, 1981; 1985, c. 785, § B, 10, eff. July 1, 1986; 1989, c. 235, §§ 1 to 3; 1989, c. 501, § L, 4, eff. July 1, 1989; 1991, c. 172, § 1; 1991, c. 837, § A-9, eff. April 8, 1992; 1995, c. 148, §§ 6 to 8; 1997, c. 636, § 5; 1997, c. 636, § 6; 2005, c. 683, § A-4, eff. June 2, 2006; 2009, c. 509, §§ 2 to 4.

## **§ 95-A. Protection and recovery of public records**

**1. Ownership and possession; notice and demand of return.** A record created by or belonging to the State, to a local or county government in the State or to any agency of the State remains the property of the State until ownership and possession are formally relinquished in accordance with statute and rules. Whenever the State Archivist has reasonable grounds to believe that records belonging to the State or to a local government or any agency of the State or to which the State or its agencies have a lawful right of possession are in the possession of a person or entity not authorized by the State Archivist, other lawful custodian or by law to possess those records, the State Archivist may issue a written notice and demand to that person or entity for the immediate return of the records. The notice and demand must be sent by certified or registered mail, return receipt requested. The notice and demand must identify the records claimed to belong to the State or local government with reasonable specificity. Upon receipt of the notice and demand, the person or entity in the possession of records claimed to belong to the State or local government may not destroy, alter, transfer, convey or otherwise alienate those records unless authorized in writing by the State Archivist or by an order issued by a court of competent jurisdiction. The notice and demand must specifically state that any transfer, conveyance or other alienation of the records after receipt of the notice and demand constitutes a Class E crime in violation of section 97.

**2. Petition; hearing.** Following the issuance of a notice and demand in accordance with subsection 1, the State Archivist, with the assistance of the Attorney General, may petition the Superior Court of Kennebec County or the Superior Court in the county in which records are located for the return of state records that are in the possession of a person or entity not authorized by the State Archivist, other lawful custodian or by law to possess those records. After hearing, the court shall order the records to be delivered to the State Archivist, or other custodian designated by the State Archivist, upon a finding that the materials in question are records and that the records are in the possession of a person or entity not authorized by the State Archivist, other lawful custodian or provision of law to possess the records. The court may issue all orders necessary to protect the records from destruction, alteration, transfer, conveyance or alienation by the person or entity in possession of the materials and may also order the person or entity in possession of the materials to surrender the records into the custody of the State Archivist pending the court's decision on the petition.

**3. Presumption.** In any proceeding pursuant to subsection 2, there is a rebuttable presumption that records that were once in the custody of the State or a local government were not lawfully alienated from that custody.

**4. Deleted.** Laws 1997, c. 636, § 7.

**5. Sale or transfer of record prohibited.** A person may not sell or transfer a record unless specifically authorized by law. A person who violates this subsection commits a Class D crime. 1989, c. 283; 1995, c. 148, § 9; 1997, c. 636, § 7; 2003, c. 365, § 1; 2009, c. 509, § 5.

### **§ 95-B. Local government records**

The following provisions apply to local government records.

**1. Omissions or errors corrected.** When omissions or errors exist in local government records, those records must be corrected under oath by the person who was responsible for those local government records, whether or not that person remains in office.

**A.**<sup>1</sup> If an original town meeting warrant is lost or destroyed, the return may be made or amended on a copy of it.

**2. Safe or vault for preservation.** Each local government shall provide a fireproof safe or vault for the preservation of all records that must be retained permanently but are not required for business purposes. The official having responsibility for those records shall deposit them in the safe or vault where those records must be kept except when required for use. Beginning in 2002, each local government shall respond to a survey distributed biennially by the State Archivist requesting:

**A.** A description of the fireproof safe or vault required by this section;

**B.** A statement of the adequacy of the safe or vault for the preservation of records that must be retained permanently; and

**C.** A plan, if any, for the establishment or enhancement of a safe or vault to comply with the requirements of this section.

The State Archivist shall report the results of the survey, with recommendations, to the joint standing committees of the Legislature having jurisdiction over education and cultural affairs and over state and local government matters.

**2-A. Retention of archival records currently in digital form.** Beginning in 2002, each local government shall respond to a survey distributed biennially by the State Archivist requesting:

**A.** A description of the provisions currently in place for the preservation of records that must be retained permanently and are currently maintained in digital form;

**B.** A statement of the adequacy of those provisions for the preservation of records that must be retained permanently; and

**C.** A plan, if any, for the establishment or enhancement of those provisions to ensure the permanent retention of and access to these records.

The State Archivist shall report the results of the survey, with recommendations, to the joint standing committees of the Legislature having jurisdiction over education and cultural affairs and over state and local government matters.

**3. Attestation.** The records of a local government official may be attested by volume. Each document is sufficiently attested when the volume in which it is recorded bears the attestation with the written signature of the official.

**4. Delivery to successor in office.** Local government officials shall deliver the records of their office to their successors in office upon the expiration of the officials' terms.

**5. Records available for public use.** Each local government official shall make records available for public use under that official's supervision at reasonable times unless the use of the records is otherwise restricted by law.

**6. Protection of records.** Local government officials shall carefully protect and preserve the records of their office from deterioration, mutilation, loss or destruction.

**7. Disposition of records.** Records may not be destroyed or otherwise disposed of by any local government official, except as provided by the Archives Advisory Board. Records that have been determined by the board to possess sufficient archival value must be preserved by the municipality or deposited with the State Archivist.

**8. Regulations of Archives Advisory Board.** Each local government official shall comply with the standards, procedures and regulations issued by the Archives Advisory Board.

1995, c. 148, § 10; 1997, c. 636, § 8; 2001, c. 704, §§ 1, 2.

## **§ 96. Archives Advisory Board**

The Archives Advisory Board, established by section 12004-I, subsection 8, shall serve to advise the State Archivist in administration of this chapter and to perform such other duties as may be prescribed by law. The board shall consist of 9 persons especially interested in the history of the State appointed by the Governor as advisors for overlapping terms of 6 years. The 3 new advisors shall be first appointed one for one year, one for 3 years and one for 5 years. Their successors shall be appointed for terms of 6 years. Each advisor shall serve for the term of appointment and thereafter until a successor is appointed and qualified. In case of the termination of an advisor's service during that advisor's term, the Governor shall appoint a successor for the unexpired term. Advisors shall be compensated as provided in chapter 379.<sup>1</sup>  
1973, c. 625, § 16, eff. July 5, 1973; 1983, c. 812, § 13; 1989, c. 503, § B, 9, eff. June 30, 1989.

## **§ 97. Violation**

Violation of any provision of this chapter or any rules and regulations issued under section 95, subsection 3, except those violations for which specific penalties are provided, is a Class E crime.  
1973, c. 625, § 16, eff. July 5, 1973; 1977, c. 696, § 33, eff. March 31, 1978.

## § 98. Maine Historical Records Advisory Board

The Maine Historical Records Advisory Board, established by section 12004-I, subsection 18-D and referred to in this section as the "board," is within the office of the State Archivist and serves to encourage the preservation of and access to historical records within the State.

**1. Duties.** In support of its mission, the board shall conduct the following activities:

- A. Make recommendations to the National Historical Publications and Records Commission regarding the funding of proposals seeking support from that commission;
- B. Develop, maintain and execute a strategic plan supporting the board's priorities for funding recommendations and other activities;
- C. Seek, receive and administer nonstate funds to support its priority activities;
- D. Work cooperatively with other state historical records advisory boards, especially those in New England;
- E. Report biennially to the joint standing committees of the Legislature having jurisdiction over education and cultural affairs and over state and local government matters on the board's activities and on the condition of historical records in the State; and
- F. Other activities it determines appropriate.

**2. Authority.** In order to carry out its mission, the board may make expenditures in accordance with the following:

- A. Beginning with the 2004-2005 biennium, the Governor shall include in the budget submitted to the Legislature each biennium a line item to allow the expenditure by the board of any non-General Fund revenues received by the board, including federal funds, grants or gifts; and
- B. Beginning with the 2004-2005 biennium, the Governor shall include in the budget submitted to the Legislature each biennium a line item to allow the expenditure by the board of any non-General Fund revenues received by the board to fund a full-time position.

**3. Membership.** The board consists of at least 7 and no more than 11 members who are appointed to serve as follows:

- A. Except as provided in paragraph B, the Governor shall appoint all of the members, the majority of whom must have experience in the administration of historical records or in a field of research activity that makes extensive use of historical records;
- B. The Director of the Maine Historical Society and the State Archivist are members ex officio and are voting members; and
- C. The Governor shall appoint either the Director of the Maine Historical Society or the State Archivist to serve as the Maine Historical Records Coordinator and to serve as the chair of the board. The coordinator shall serve a term of 4 years and may not be compensated but may receive the reimbursements allowed members of the board.

All members, with the exception of the coordinator, serve 3-year terms. All members serve without compensation. All legally allowed expenditures incurred by the members in the

performance of their duties may be reimbursed by the National Historical Publications and Records Commission or by other funds available to the board.

**4. Maine Historical Records Advisory Board Fund.** The Maine Historical Records Advisory Board Fund, referred to in this section as the “fund,” is established for use by the board. Balances in the fund may not lapse and must be carried forward and used for the purposes of this section. The board may accept and deposit in the fund money from private and public sources.

2001, c. 704, § 3.

Current with legislation through the 2013 Second Regular Session of the 126th Legislature. The Second Regular Session convened January 8, 2014 and adjourned May 2, 2014. The general effective date is August 1, 2014.

**Chapter 1: STATE AGENCY RECORDS PROGRAMS**

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**SUMMARY:** This chapter prescribes policies, standards, and procedures for the economical and efficient management of State records.

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**1. APPLICABILITY**

These rules apply to the agencies in the Executive Branch of State government.

**2. RESPONSIBILITY FOR ENFORCEMENT**

The head of each agency shall be responsible for the application and enforcement of these rules.

**3. DEFINITIONS**

The following definitions are established for terms used in these rules:

- A. "Agency" means any department, except for organizational units thereof which are administered under statutory authority exclusively within the unit, independent offices, boards or commissions, or aforesaid units, in the Executive Branch of State Government, except the office of the Governor.
- B. "Archives" means noncurrent government records that have been determined by the State Archivist to have sufficient value to warrant their continued preservation and that are in the physical and legal custody of the Maine State Archives.
- C. "Inspection" means the review of agency records, records management practices, and records management programs for the purpose of evaluating records management effectiveness and recommending means for the Improvement of records management.
- D. "Records" means all documentary material, regardless of media or characteristics, made or received and maintained by an agency in accordance with law or rule or in the transaction of its official business. This term shall not include extra copies of printed or processed material of which official or record copies have been retained, stocks of publications and processed documents intended for distribution or use, or records relating to personal matters that may have been kept in an office for convenience.
- E. "Records creation" means any process that produces any recorded information necessary to conduct the business of a State agency.



- F. "Records disposition" means the (1) removal by an agency, (in accordance with approved records schedules) of records no longer necessary for the conduct of business by such agency, through removal methods which may include disposal of temporary records by destruction; transfer of records to an agency storage area or records center; and the transfer to the archives of records determined to have sufficient value to warrant continued preservation. (2) Transfer of records from one State agency to another State agency other than the Maine State Archives.
- G. "Records maintenance and use" means any activity involved with respect to the (1) planning and establishment of methods for the location of records of a State agency; (2) development and implementation of systems and procedures to facilitate the safeguarding, retrieval, and use of recorded information kept at file locations; and (3) the control of selection and use of equipment and supplies associated with records.
- H. "Records management" means the planning, controlling, directing, organizing, training, promoting, and other managerial activities undertaken with respect to records creation, records maintenance and use, and records disposition, including the management of correspondence, forms, directives, reports, machine readable records, microforms, information retrieval, files, mail, vital records, records equipment and supplies, word processing and source data automation techniques, records preservation, records disposal, and records centers or other storage facilities.
- I. "Records management practices" means any system, procedure, or technique followed with respect to effective records creation, records maintenance and use, and records disposition.

#### **4. AUTHORITY OF STATE CONTROLLER**

The provisions of these rules do not limit the authority of the State Controller with respect to prescribing accounting systems, forms and procedures authorized under 5 M.R.S.A., c. 143.

#### **5. RESPONSIBILITY OF AGENCY HEAD**

The head of each executive agency shall establish and maintain an efficient and continuous records management program which shall focus upon the complete cycle of records creation, records maintenance and use,, and records disposition. The program established by the head of each agency shall provide for:

- A. Effective internal controls over records creation, records maintenance and use and records disposition, with respect to the conduct of current business.
1. Adequate controls over the creation of agency records shall be instituted to insure that important policies and decisions are sufficiently recorded; that routine operational paperwork is kept to a minimum; and that the accumulation of unnecessary files is prevented. Effective techniques to be applied in this area include the application of systems for the control of correspondence, forms, directives and issuances, and reports; the minimizing of duplicate files, and the

disposal without filing of transitory material that has no value for record purposes.

2. To insure that records are maintained economically and efficiently and in such a manner that their maximum usefulness is attained, provision shall be made for the continued analysis and improvement of such matters as mail handling and routing, record classification and indexing systems, the use of filing equipment and supplies, and the reproduction and transportation of records.
  3. Provision shall be made to insure that records of continuing value are preserved, but that records no longer of current use to an agency are promptly disposed of or retired. Effective techniques for accomplishing these ends are the development of records disposition schedules; the transfer of records to records centers and to the archives, the microfilming of appropriate records; and the disposal of valueless records.
- B. Cooperation with the Maine State Archives in applying standards, procedures, and techniques designed to improve records management; promote the maintenance and security of records deemed appropriate for preservation; and facilitate the segregation and disposal of all records of temporary value.
- C. Review and evaluation of agency records management program policies, operations and procedures.
- D. Compliance with the Archives and Records Management Law and with the standards, procedures and rules issued thereunder.

## 6. RECORDS OFFICER

The head of each agency shall appoint a Records Officer at the managerial level who shall be responsible under his direct supervision for the economical and efficient management of the records of the agency in compliance with the standards, procedures and rules issued by the State Archivist. The person chosen as Records Officer shall have a thorough knowledge of the organization and specialized functions of the agency and of the general records requirements of the State.

The head of each agency shall appoint an Assistant Records Officer for each organizational unit of the agency who shall be immediately responsible for the exercise of such records management functions as are authorized to be performed within the unit for which he is assigned responsibility and which shall operate within the framework of the overall agency program. The names of the Records Officer and Assistant Records Officers shall be reported to the Maine State Archives immediately following their appointment. All official correspondence between the agency and the Maine State Archives concerning the disposal of agency records shall be signed by the head of the agency or by the Records Officer.

## 7. ANNUAL SUMMARY OF RECORDS HOLDINGS

Each agency head shall submit to the Maine State Archives within 30 days after the close of each fiscal year a summary of its records holdings on appropriate Maine State Archives forms. Instructions for the preparation of the report are set forth on the forms. The summary may be consolidated for the entire agency, or, if more practical, individual reports may be submitted for each organizational unit of the agency.

## 8. AGENCY PROGRAM EVALUATION

Agency programs will be inspected periodically by the Maine State Archives to:

- A. Determine agency compliance with the Archives and Records Management Law.
- B. Determine agency observance of Maine State Archives rules.
- C. Evaluate and report on the effectiveness of agency records programs.

## 9. AGENCY PROGRAM RESPONSIBILITIES

### A. Program requirements

The head of each agency shall comply with the detailed program requirements set forth in this section.

### B. Correspondence management

1. The objectives of correspondence management are to limit correspondence to essential requirements, to improve the quality of necessary correspondence, and to provide for its creation in an economical and efficient manner
2. Correspondence is a generic term including letters, form letters, telegrams, memorandums, endorsements, summary sheets, post cards, memo routing slips, and other written communications.
3. Program requirements (Reserved)
4. Program implementation (Reserved)

### C. Reports management

1. The primary objectives of reports management are to provide agency officials with needed information at times and places, and in the format most useful to them, and to furnish this information as economically and efficiently as possible.
  - a. A report is data or information, generally summarized, transmitted for use in determining policy; planning, controlling, and evaluating

operations and performance; and preparing other reports. The data or information may be in narrative, statistical, graphic, or other form.

- b. Most reports of an agency can be classified as belonging to one of several well defined groups. Each group of related reports is generally the product of an information system serving a specific administrative or operational area, such as personnel, budget or purchasing. Consequently, the analysis of reports on a system basis provides the best means of establishing reports relationships and evaluating information need and adequacy.
- c. Certain categories of reports normally are exempted from review and clearance in an agency reports management program. These usually include: inspection and audit reports; restricted documents; and information presentations such as research findings, technical summaries, special studies, and surveys. Reports to be exempted should be determined by an analysis of agency information requirements.
- d. Reports to and from other agencies, as well as those for internal management, are included in agency review and clearance procedures.

2. Program requirements (Reserved)
3. Program implementation (Reserved)

D. Forms Management

1. The objectives of forms management are to increase the usefulness of forms through proper design and accurate using procedures; to reduce costs incident to filling in, using, and filing forms; and to achieve savings in designing, printing, storing, and distributing forms.
  - a. A form is any document, including letters, post cards, and memorandums, printed or otherwise reproduced with space for filling in information, descriptive material, or addresses. Certain printed items without fill-in space, such as contract provisions, instruction sheets, notices, tags, labels, and posters, may be considered as forms when it is advantageous to identify and control them as forms for purposes of reference, printing, stocking, distribution, and use with other forms.
2. The head of each State agency shall establish an appropriate program for the management of agency forms. The program shall:
  - a. Establish and implement standards and procedures for the submission, review, approval, and identification of agency forms;
  - b. Implement the forms analysis and design standards established by the Maine State Archives;

- c. Establish and implement standards for the reproduction, stocking, and distribution of approved
  - d. Provide essential management information concerning the number, types and the reproduction and stocking costs of forms in use;
  - e. Provide for the periodic review of all approved forms for need and design, and for possible economies, in reproduction, stocking, and distribution.
3. Standards, guides, procedures, and instructions developed for the forms management program shall be in published form, designed for easy reference and review. They shall be made readily available to those who initiate, design, and approve forms.
4. The following actions will assist in implementing a forms management program:
- a. Establish and maintain an inventory of all agency forms.
  - b. Analyze all forms in accordance with standards established by the Maine State Archives.
  - c. Review all forms for adequacy of design.
  - d. Assign a form number and edition date to each approved form.
  - e. Review all requests for new forms and reprints of approved forms to determine that the forms are produced and made available quickly and cheaply. Specifically determine that (1) The most effective and economical methods of printing and distributing the form are employed, commensurate with required quality and intended use of the form; (2) Proper and adequate inventory level standards have been established; (3) The quantity of the form requested is compatible with procedural and inventory requirements; (4) An acceptable distribution plan exists for making the form available when and where needed.
  - f. Require that each form be supported by a directive setting forth instructions for preparing, submitting, and using.
  - g. Require that each request for a new form justify the form's essentiality.
  - h. Insure that requests for new forms do not substantially duplicate existing forms.
  - i. Combine forms that require substantially the same information.
  - j. Eliminate or update obsolete forms.

E. Directives management

1. The objectives of directives management are to facilitate agency administration and operations by providing the right employee with the right instructions; by producing instructions that are complete, easily understood, readily accessible, and revisable; and by developing and distributing instructions promptly and economically.
  - a. A directive is a written communication which initiates or governs action, conduct, or procedure. Directives are usually printed as circulars, notices, regulations, orders, and handbooks, and include material for insertion in policy, administrative, and operations manuals.
  - b. Certain materials normally are exempted from agency directives management programs. These include public information materials such as professional publications, news releases and announcements of programs, catalogs, and price lists.
  - c. Both internal and external directives are included in a directives management program.
2. Program requirements (Reserved)
3. Program implementation (Reserved)

F. Mail management

1. The objective of mail management is to provide rapid handling and accurate delivery of mail throughout the agency at minimum cost. To do this, processing steps are kept to a necessary minimum; sound principles of work flow are applied; modern equipment, supplies, and devices are used; and, in general, operations are kept as simple as possible to increase efficiency.
  - a. Mail consists of letters, telecommunications memorandums, post cards, documents, packages, publications, and other communications received.
2. Program requirements (Reserved)
3. Program implementation (Reserved)

G. Files management

1. The objectives of files management are to organize agency files so that needed records can be found rapidly, complete records are insured, the selection and retention of records of permanent value are facilitated, and the disposition of noncurrent records is accomplished promptly. All services shall be performed with maximum economy in personnel, equipment, and supplies.
  - a. A file is basically a paper or folder of papers, but the term is used to denote papers, photographs, photographic copies, maps, or other

recorded information regardless of physical form or characteristics, accumulated or maintained in filing equipment, boxes, or on shelves, and occupying office or storage space. Stocks of publications and blank forms are excluded.

2. The head of each State agency shall establish an appropriate program for the management of agency files. The program shall:
  - a. Establish and implement standards and procedures for classifying, indexing, and filing records; providing reference services to filed records; and locating active files to facilitate agency use of records.
  - b. Implement the files classification, operations, and placement standards established by the Maine State Archives. The program shall be reviewed periodically to determine the adequacy of the system and its effectiveness in meeting requests.
3. Standards, guides, and instructions developed for the files management program shall be in published form, designed for easy reference and revision. They shall be made readily available to all employees concerned with files operations. In addition, pertinent information for users of files and reference services shall be given the widest possible dissemination.
4. The following actions will assist in implementing a files management program:
  - a. Standardize classification and filing schemes to: (1) Achieve maximum uniformity and ease in maintaining and using agency records; (2) Facilitate disposal of records in accordance with applicable records disposal schedules; (3) Facilitate possible later consolidation of identical types of files maintained at different locations.
  - b. Formally authorize official file locations. Prohibit the maintenance of files at other than authorized locations.
  - c. Standardize reference service procedures to facilitate the finding, chargeout, and refiling of agency records.
  - d. File accumulations of papers received at file locations on a daily basis.
  - e. Standardize, to the maximum extent possible, the equipment and supplies used in filing and reference service operations.
  - f. Audit periodically a representative sample of the files for duplication or misfiles.

## H. Managing records equipment and supplies

1. The objectives of a records equipment and supplies management program are to insure that equipment and supplies necessary and suitable to agency records operations are available and are put to proper use. Modern equipment and supplies are manufactured in a wide variety of types which, in most instances, are designed for special uses. Competent advice should be available to assure that the correct item is obtained for a given purpose.
  - a. Equipment and supplies include file cabinets, shelf files, visible files, mechanized files, file guides, folders, jackets, wallets, micrographic readers and similar items used in the creation and maintenance of records and in mail handling. A program for managing equipment and supplies may also cover desk-top office machines, dictating and recording equipment, and data recording equipment.
2. The head of each State agency shall establish an appropriate program for the management of agency records equipment and supplies, The program shall:
  - a. Establish and implement standards and procedures for standardization of records equipment and supplies used by the agency; submission, review, and approval of requests for the purchases of records equipment and supplies; and proper utilization of presently owned records equipment.
  - b. Review, on a continuing basis, the utilization of records equipment to insure adequate and proper application.
  - c. Provide for a continuing review of new developments in the field of records equipment and supplies and their possible application to agency records system.
3. Standards, guides, and instructions for managing records equipment and supplies shall be in published form, designed for easy reference and revision. They shall be readily available to agency personnel using records equipment and supplies.
4. The following actions will assist in implementing a records equipment and supplies management program:
  - a. Minimize equipment and supplies needs by providing for prompt disposition of records. Reduce or eliminate the need for additional equipment by freeing equipment on hand for reuse.
  - b. Prohibit the purchase of nonstandard items unless justification for exception is submitted and approved.
  - c. Review requests for purchase of equipment and supplies to determine essentiality and usability.
  - d. Review use of currently owned and rented equipment to determine that it is essential, suitable, properly utilized and maintained.



- e. Analyze record keeping procedures and techniques to determine if requirements for equipment and supplies are realistic and if requirements can be reduced or eliminated through improved or changed procedures or techniques.

## 10. EVALUATION OF RECORDS EQUIPMENT, SUPPLIES AND SERVICES

The Maine State Archives shall recommend improvements in current records management practices, including the use of space, equipment and supplies employed in creating, maintaining, storing and servicing records, as requested by State agencies. The evaluation shall be requested by the agency on forms provided by the Maine State Archives.

## 11. AGENCY RECORDS STORAGE

### A. Agency records storage areas

State agencies may maintain storage areas for the temporary storage of agency records pending their transfer to a Records Center or other disposition authorized by law. No agency records storage area shall be established or relocated by an agency without the prior approval of the Maine State Archives.

1. Requests for authority to establish or relocate agency records storage areas shall be submitted in writing to the Maine State Archives. Each request shall specify:
  - a. Proposed location of the agency records storage area.
  - b. Space to be occupied in gross square feet.
  - c. Nature and quantity of records to be stored.
  - d. Justification of the proposed agency records storage area,
2. Requests for the establishment or relocation of agency records storage areas will be approved by the Maine State Archives where greater economy or efficiency can be achieved through its operation than by use of Records Centers operated by the Maine State Archives.
3. The storage of records in agency records storage areas shall conform to standards prescribed by the Maine State Archives.
4. No records center shall be established by a State agency for the storage, security, servicing or other processing of agency records without the approval of the Maine State Archives.

## 12. DISPOSITION OF STATE RECORDS

### A. Records scheduling programs

A records scheduling program is essential to promote a prompt and orderly reduction in the quantity of records in each State agency.

1. Four basic elements are present in a records scheduling program:
  - a. The taking of a complete inventory of the records in the custody of the agency.
  - b. The formulation of a retention plan to govern disposition of each type or series of records and its statement in the form of a records disposition schedule.
  - c. The application of the records disposition schedule to effect the elimination or removal of records.
  - d. The identification and selection of permanent records in accordance with this records retention plan.
2. The following steps shall be taken in the development of records disposition schedules:
  - a. Each State agency shall formulate a records disposition schedule for all records in its custody.
  - b. Schedules shall clearly identify and describe the series of records covered, and shall contain instructions that, when approved, can be readily applied. Schedules must, be readily adaptable to use along organizational lines, so that each office will have standing instructions for the disposition of records in its custody.
  - c. All schedules shall take into account the actual filing arrangements in existence, so that disposition of records can be physically accomplished in the largest blocks possible.
  - d. Nonrecord materials, such as extra copies of documents preserved for convenience of reference and stocks of processed documents, that need not be made a matter of record, shall not be incorporated in the official files of the agency. To the maximum extent possible, material not required for record purposes shall be disposed of; it should not be sent to file. In cases where transitory files of such materials are established and maintained in filing equipment, such files shall be controlled by means of instructions in the records disposition schedule.
  - e. Schedules shall be reviewed at least once annually to effect changes necessary to maintain their current status.

3. Records disposition schedules shall provide for:
  - a. The disposal after minimum retention periods of those records not having sufficient value to justify their further retention. Procedures for obtaining disposal authorization are prescribed in Maine State Archives Operations Manual: Disposition of State Records.
  - b. The removal to a Records Center of those records which need not be maintained in office space and equipment. Such records will be maintained by the Records Center pending their transfer to the Archives facility or disposal.
  - c. The retention as current records in office space and equipment of the minimum volume of records consistent with efficient operation.
  - d. The identification of permanent records in accordance with the record retention plan.
4. The head of each State agency shall take necessary action to implement records disposition schedules to provide for the maximum economy of space, equipment, and personnel. A copy of each directive or other issuance (including the text of schedules as issued) affecting the agency's records disposition program shall be transmitted to the Maine State Archives for approval.
5. Applicable Federal disposition schedules shall govern the disposition of records created or maintained by State agencies pursuant to Federal law or regulation. The head of each State agency shall advise the Maine State Archives of pertinent Federal disposition schedules governing the disposition of such records.

B. Approved general records schedules

General records schedules shall be issued by the State Archivist and Archives Advisory Board to govern the disposition of certain types of records common to all agencies.

C. Agency disposal authority

1. Requests for authorization to dispose of records shall be initiated by State agencies by submitting records disposal lists or schedules to the Maine State Archives.
2. After review by the Maine State Archives staff, the request is submitted to the State Archivist and Archives Advisory Board as required by law. If the request is approved by the State Archivist and Archives Advisory Board, the State Archivist shall notify the agency thereof. This notice constitutes the disposal authorization.
3. The head of a State agency may retain records authorized for disposal after the specified retention period in cases of emergency. When records are so retained, the agency head should notify the State Archivist and such records shall be disposed of as soon as is practicable.

4. In cases of emergency or when it is in the interest of efficiency of government operations, disposal authorization contained in disposition schedules approved by the Maine State Archives will be withdrawn. Such withdrawal may apply to particular items on schedules submitted by agencies, or may apply to all existing authorizations for the disposal of a specified type of record obtained by any or all agencies of the government. Agencies will be notified of such action by the State Archivist.
5. Disposal authorizations contained in disposition schedules approved by the Maine State Archives are automatically superseded by approval of a later schedule applicable to the same records.

D. Emergency authorization for the disposal of records

1. Under certain conditions, records may be disposed of without regard to the provisions of subsection F, paragraph 2.
2. Whenever the head of an agency has determined that records have been contaminated by inflammable or poisonous substances which render them hazardous to health or property, he shall notify the Maine State Archives specifying the nature of the records, their location and quantity, and the nature of the contamination. If the Maine State Archives concurs in the determination, the removal of the contaminated records by the destruction of the records or by other appropriate means will be authorized.

E. Methods of destruction

State agencies shall comply with the following rules governing the methods to be used in disposing of records. Only the methods set forth in this subsection shall be used.

1. Paper records to be destroyed shall normally be sold as wastepaper. The contract for sale shall prohibit their resale or use as records or documents. All sales shall be in accordance with the established procedures for the sale of surplus property. Records protected by law or rule from disclosure shall be shredded by the State before being sold as wastepaper or destroyed as provided in paragraph 2 of this subsection. Records other than paper records (film, plastic recordings, etc.) may be salvaged or sold in the same manner and under the same conditions as paper records.
2. If the records cannot advantageously be sold or otherwise salvaged, the records may be destroyed by shredding, burning, burial or other effective means.

F. Unlawful removal or destruction of records

1. The head of each agency shall establish safeguards against the unlawful removal or loss of records, including making it known to officials and employees of the agency that records in the custody of the agency are not to be alienated or destroyed except in accordance with law; and the penalties provided by law for the unlawful removal or destruction of records.
2. Whoever knowingly and willfully removes any book, record, document, or instrument, belonging to, or kept in any State office, except books and documents kept and deposited in the State Library, or knowingly and willfully secretes, alters, mutilates, defaces or destroys any such book, record, document or instrument, or knowingly and willfully aids or assists in so doing, or, having any such book, record, document or instrument in his possession, or under his control, willfully neglects or refuses to return the same to said State office or to deliver the same to the person in lawful charge of the office where the same were kept or deposited, shall be punished by a fine of not more than \$5,000 and by imprisonment for not less than one year nor more than 3 years. (1 M.R.S.A. § 452).

G. Interagency records transfers

No records shall be transferred from one executive agency to the custody of another without the prior written approval of the Maine State Archives except as provided in paragraph 4 of this subsection.

1. The head of an executive agency may request the transfer of records to or from his agency. Approval shall be requested by letter addressed to the Maine State Archives, in which are included:
  - a. A concise description of the records to be transferred, including the volume in cubic feet.
  - b. A statement of the restrictions imposed on the use of records.
  - c. A statement of the number of reference requests per month made on the records, with information as to the agencies and persons using the records and the purpose of such use.
  - d. A statement of the number of persons, if any, assigned to the administration of the records.
  - e. A statement of the current and proposed physical and organizational locations of the records.
  - f. information as to why the proposed transfer is in the best interests of the Government.
2. Copies of the concurrence or nonconcurrence in the transfer by the heads of any agencies concerned shall be attached to the agency request.

3. Records of executive agencies whose functions are terminated or are in process of liquidation shall be transferred to the Maine State Archives in accordance with law.
4. Prior written approval of the Maine State Archives is not required:
  - a. When records are transferred to the Records Centers or the Archives.
  - b. When records are loaned for official use.
  - c. When the transfer of records or functions or both is required by statute, or Legislative or Judicial order, or by specific determinations made thereunder.

H. Transfer of records to state records centers

1. The following procedures govern the transfer of records to Records Centers. Such procedures are detailed in the Maine State Archives Operations Manual: State Records Centers.
  - a. Records Centers will accept for transfer any records offered by State agencies, subject to the following conditions: (1) The records are not authorized for immediate disposal and transportation costs are not in excess of the resulting savings; (2) Facilities for storing and providing reference service on the records are available; and a request for a records disposition schedule is submitted prior to the proposed transfer.
  - b. Priority will be given to the removal of records from office space, from space convertible to office use, from leased space, and from filing equipment which can be reused.
  - c. Transfers may be initiated by either oral or written request to the Maine State Archives. Requests shall specify the nature and quantity of the records proposed for transfer.
  - d. Transfers to Records Centers shall be accompanied by appropriate records transmittal forms. Records shall normally be transferred in standard corrugated boxes used by the Records Centers.
  - e. Records Centers will furnish agencies with a receipt acknowledging the transfer of records by returning to the transferring agency a signed copy of the form required by subparagraph d of this subsection. The returned copy will serve as a future aid in requesting reference services.
2. Equipment received with the transfer of records to a Records Center will normally be disposed of in accordance with applicable surplus property rules. An agency desiring return of the equipment should make such request prior to transfer of the records to the Records Center.

3. Restrictions lawfully imposed on the use of records will be observed and enforced by all Records Centers.
  4. Records of State agencies stored by Records Centers will be disposed of in accordance with the agency disposition schedule.
- I. Transfer of records to archives
1. Records will normally be transferred to the Maine State Archives from the Records Center. When such transfers are made, the agencies concerned will be furnished an inventory of the records transferred.
  2. The classes of records listed below may be offered for direct transfer to the Maine State Archives. Such transfers shall be initiated by agencies by oral or written request to the Maine State Archives specifying the nature and quantity of the records proposed for transfer.
    - a. Records of the Office of the Governor and of Boards, Commissions, and Committees.
    - b. Records of the Legislature.
    - c. Records of the Supreme, Superior and District Courts.
    - d. Audiovisual records (motion pictures, still photographs, sound recordings, etc.).
    - e. Cartographic records (maps, charts, etc.).
    - f. Series of records of unquestionable value that are not susceptible to screening or other processing (such as microfilming) to reduce their bulk.
    - g. Records that have been in existence 25 or more years and that are considered to have permanent value.

3. Use of records transferred to Archives

Restrictions lawfully imposed on the use of transferred records will be observed and enforced by the Maine State Archives. The rules, insofar as they concern the use of records in the search room of the Maine State Archives, apply to official use of the records by State agencies as well as to the public. Archives may not be borrowed for use outside the Maine State Archives facility, except in accordance with Maine State Archives rules.

**13. VIOLATION OF RULES**

Violation of any provision of these rules, except those violations for which specific penalties are provided, is a Class E crime.

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