

Managing Government Records

An Introduction to

Kentucky's

State Archives and Records Act

(KRS 171.410—171.740)

for

State and Local Government Employees

Public Records Division

Kentucky Department for Libraries and Archives

Education Cabinet

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Introduction

All of us who work for government agencies, whatever our daily work may be, need good records to do our jobs. Good records are a must to:

- effectively carry out programs,
- document previous actions and policies,
- secure the legal and financial rights of government,
- protect the rights of citizens directly affected by the actions of government agencies, or
- record the history and intent of public policy.

As employees of publicly-funded agencies, we have a special responsibility under Kentucky law to see that information which we create or receive in the course of our work – **public records**, as defined by statute – (whether in paper, electronic, or other formats) is maintained, organized and available for use.

This is also emphasized in the language of the state's Open Records Act. One portion of the act (KRS 61.8715) even states that the General Assembly finds an essential relationship between the intent of the Open Records Act (KRS 61.870-.884) and that of the State Archives and Records Act (KRS 171.410-.740) and that

“to ensure efficient administration of government and to provide accountability of government activities, public agencies are required to manage and maintain their records according to the requirements of these statutes.”

How long records are kept depends on their value. These values may be administrative, legal, fiscal or historical.

For records with permanent value, we need to take special steps to protect them and to make certain that they will be available in the future.

Even for those records not needed permanently, we need to make certain that they are protected and available for as long as required.

Some of these records may be destroyed at a specific time right in our offices, when their use has ended.

Others can be moved to approved off-site locations for temporary storage and later destruction, when their value has expired.

When we allow records to accumulate in an uncontrolled way in our offices, we limit our effectiveness and ability to do daily work, while at the same time increasing our operating costs.

Likewise, when we can't find information when we need it, or if we destroy records without proper legal authority, we place our agencies at major risk and liability.

Creating and maintaining a records management program helps us control the records we create and keeps the cost of their maintenance low, while ensuring the protection and good management of information we need for ongoing purposes. This is a good use of public funds and makes good business sense.

Implementing a records management program involves the creation and regular use of a records retention schedule and the participation of agency personnel, working in cooperation with staff of the Kentucky Department for Libraries and Archives (KDLA) and the State Archives and Records Commission.

Kentucky law provides that three entities -- the head of each state or local public agency, KDLA, and the Commission -- have specific responsibilities for making sure that records are created and well-managed; and that permanently valuable records are preserved, protected, and available for use.

Kentucky law describes the roles and responsibilities of these three parties in the records management process. This discussion of the State Archives and Records Act (KRS 171.410-.840), in question and answer format and with definitions of commonly used terms, will be useful to you as you help manage your agency's records.

Public records: what are they?

Public records are recorded information (in paper, electronic or other format, created or received by a state or local government agency) which document a transaction or activity by or with any public official or employee of that agency.

Public records are specifically defined by Kentucky statute (KRS 171.410 (1)) as "all books, papers, maps, photographs, cards, tapes, disks, diskettes, recordings and other documentary materials, regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency."

Kentucky's General Assembly recognizes that while all government agency records are public records for the purpose of their management, not all public records are required to be open to public access, as defined in the Open Records Act. Some are exempt under the terms of KRS 61.878.

Why should I care about public records?

Good recordkeeping is in the interest of every government employee and the citizens we serve. It:

- contributes to the smooth operation of an agency's programs by making the information needed for decision making and operations readily available;
- provides information useful to successor officials and staff for background and analysis, making the transition between administrations smoother;
- creates a complete record of official actions that will remain with the agency for future use by agency officials and may later be transferred to the State Archives as a historical record;
- ensures accountability to the administration, the General Assembly, and all citizens;
- provides that electronic records, especially those generated by desktop applications, will be available to all authorized personnel;
- protects records from inappropriate and unauthorized access;
- facilitates authorized removal of materials by avoiding the need to separate public records from extra copies of records and personal materials when one leaves office; and
- allows us to provide continued services to citizens.

Under Kentucky law (KRS 171.640), an agency head has a specific responsibility to see that records containing adequate and proper documentation of the organizational functions, policies, decisions, procedures, and essential transactions of the agency are made and preserved. This would include records designed to furnish information necessary to protect the legal and financial rights of the government, and of persons directly affected by a government agency's activities.

Public records: who creates them?

Public records are created or received as a result of the work of employees of a government or publicly-funded agency. For public records management purposes, a public agency is defined in KRS 171.410 (4) as

- every state or local office, state department, division, bureau, board, commission and authority;
- every legislative board, commission, committee, and officer;
- every county and city governing body, council, school district board, special district board, municipal corporation, and any board, department, commission, committee, subcommittee, ad hoc committee, council or agency thereof; and
- any other body which is created by state or local authority and which derives at least twenty-five percent (25%) of its funds from state or local authority.

If you work for an agency which meets this definition, you are creating public records as part of your daily business and you need a records management program.

What is “records management?”

Records management is the systematic control of recorded information, regardless of format, from the time a record is created until its ultimate disposition.

Its goal is to provide the right information to the right person, at the right time, at the lowest possible cost.

Every office creates records, whether in paper, film, electronic, or some other format. These records can be a challenge to maintain.

Records management helps an organization decide which ones to keep and which ones to destroy.

A records management program helps an organization make sure it is creating and maintaining an adequate documentary record of its functions, policies, decisions, procedures, and essential transactions, as required by Kentucky law.

It permits the identification and proper control of records of continuing value.

It can give an organization the economy and efficiency it needs to operate effectively.

If you work in a publicly-funded agency, you need a records management program.

What is a records retention schedule?

An essential element of a records management program is a records retention schedule. A records retention schedule is a list of each record type, what is termed a "record series," and each electronic records system created by a public agency. A record series is simply a filing unit or document maintained as a unit because it relates to a particular subject or function, results from the same activity, has a particular form, or because of some other relationship arising out of its creation, receipt or use.

A schedule shows the title of each record type, a unique number by which it can be identified, the time period during which the record is used in the office where it is created or used, and instructions for what steps need to be taken when the period of its active office use has expired.

A key part of a fully implemented records management program in an agency is the regular application and use of an approved records retention schedule.

A current, accurate records retention schedule should represent a comprehensive inventory of the information holdings of a government agency.

Having a schedule approved by the State Archives and Records Commission is an important first step for an agency as it develops a records management program.

However, for a records management program to be considered implemented, an approved schedule must be used on a regular basis by agency personnel.

When an agency finds it must create new records or electronic systems or when it determines that certain records or systems are obsolete and are no longer being created, the schedule must also be revised to reflect these changes.

By law, draft schedules are reviewed and evaluated by the State Archives and Records Commission. Once new or revised records schedules are approved by the Commission, agencies may apply schedules to their records management needs, with the confidence that they have the legal authority to make disposition of their records when following the directions contained in the schedule.

The scheduling process is described in more detail below.

What is records scheduling all about?

Scheduling records is the process of developing a document that provides mandatory instructions for what to do with records no longer needed for current government business. It involves:

- reviewing the functions and recordkeeping requirements and practices of the agency or office being scheduled, including examining pertinent documents, such as laws, regulations, organization charts, and functional statements about the agency or office;
- conducting a physical inventory of the individual records series or electronic systems of an agency's records and gathering and completing a description and analysis form for each series or system;
- evaluating records with regard to their administrative, legal, fiscal, and future historical or research value; and
- drafting retention and disposition instructions.

Records scheduling is a systematic process of identifying, describing and analyzing each record or electronic record system created by an agency. This leads in turn to a preliminary assessment of the administrative, legal, fiscal, and future historical or research value of each record type. These values, and any special directions for the management or disposition of this information during and after its active office life, are expressed in supporting documentation to a draft records retention schedule and are submitted to the State Archives and Records Commission, which has final approval authority.

Records retention schedules, when approved by the Commission, furnish public agencies with clear legal authority to make disposition of their records according to the schedules' terms, and with a strong resource for management control. While the schedule is a comprehensive expression of the agency's information resources, it also reflects the way an agency meets the requirements of KRS 171.640 and is accountable to legislative bodies and the public.

Schedules help public officials identify which records must be retained permanently and which records may be destroyed after a certain period of time. They help an agency ensure that adequate documentation of its activities has been created and is being maintained, as required by statute.

Schedules become the basis for each agency's records management program, ensuring accountability for the information being produced and providing agencies with a valuable

resource with which to respond to information requests under Kentucky's Open Records Act (KRS 61.870-884). Without an approved records retention schedule, an agency, whether state or local, does not have the legal authority to destroy any of its records, regardless of their format, and can incur substantial costs or liabilities if such destruction does occur.

What is disposition?

In records management, the term *disposition* refers to what is done with records when they are no longer needed for current business.

There are several disposition options for records at this stage, depending on the retention assigned to the record in a retention schedule.

These might include transferring records to off-site storage, storage at the State Records Center, destroying temporary records at an approved time, or transferring records of continuing value to the State Archives or other approved archival facility, when they have been deemed worthy of preservation.

Who has responsibility for public records management in Kentucky?

All state and local government employees are responsible for the records they create and maintain, and they can make a major contribution to good records management in their agencies on a daily basis. Kentucky law (KRS 171.410-.740) assigns broad authority for the management of state and local government records to the Kentucky Department for Libraries and Archives. The statutes also set out specific responsibilities delegated to the head of any state or local government agency and to the State Archives and Records Commission. These are defined in more detail below.

What is the function of the State Archives and Records Commission?

The State Archives and Records Commission, under the terms of KRS 171.420 and 171.670, has the authority to review and approve all records retention schedules submitted by state and local public agencies through the department.

In this task, it considers the importance and potential uses of the record to the creating agency and the various information values within a particular record. It also analyzes recommendations jointly developed by the agency and KDLA's Public Records Division on how long particular records should be kept and determines what further disposition should be made of them.

The Commission is concerned with preserving information of continuing value and making timely disposition of information of temporary value. The Commission also advises KDLA on a range of other matters relating to archives and records management.

What is the scope of the Commission's responsibility and who are its members?

In all cases, the State Archives and Records Commission has final and exclusive authority to determine the ultimate disposition of Kentucky's public records. Under the terms of KRS 171.420, its decisions are binding on all parties concerned, and those decisions can only be modified or otherwise changed by its own actions.

The commission is a seventeen-member body composed of:

- the State Librarian, who serves as chair of the Commission;
- the Secretary of the Education Cabinet;
- the Auditor of Public Accounts;
- the Chief Justice of the Supreme Court;
- the Director of the Legislative Research Commission;
- the Attorney General;
- the Director of the Governor's Office for Policy and Management;
- the Chief Administrator of the Commonwealth Office of Technology;
- one member representing the University of Kentucky;
- one member representing the Kentucky Historical Society;
- one member representing the Kentucky Library Association;
- one member representing regional universities and colleges;
- one member representing local governments; and
- four citizens-at-large.

The composition of the Commission's membership is designed to ensure that Kentucky citizens and government agencies are fairly represented and that records which document the

administration of government are given their appropriate disposition. Not only does the Commission act to ensure that records of enduring value are preserved for use by future generations, it also assures a more efficient and economical use of tax dollars by providing for the timely destruction of records that have ceased to have value. Its decisions help ensure that the intent of Kentucky's public records law, as defined in KRS 171.410 - 171.740, is met.

Under Kentucky law, what are the records management responsibilities of an agency head?

The head of a public agency has a key role in ensuring the implementation of a records management program. By the terms of KRS 171.680, the agency head is required to establish and maintain an active, continuing program for the economical, efficient management of the records of his agency. The law mandates that this program should include:

- effective controls over the creation, maintenance, and use of records in the conduct of current business;
- cooperation with the Kentucky Department for Libraries and Archives in applying standards, procedures, and techniques designed to improve the management of records;
- promotion of the maintenance and security of records considered appropriate for preservation, and facilitation of the segregation and disposal of records of temporary value; and
- compliance with the provisions of the Commonwealth's public records management statutes, KRS 171.410 - 171.740 and the rules and regulations of the department.

Do agencies have to document their activities?

Yes. The schedule is a comprehensive expression of the agency's information resources, it also reflects the way an agency meets the requirements of KRS 171.640 and is accountable to legislative bodies and the public. Under the terms of that statute, the agency head is assigned explicit responsibility for ensuring that records containing adequate and proper documentation of the organizational functions, policies, decisions, procedures, and essential transactions of the agency are created and preserved. This would include records designed to furnish information necessary to protect the legal and financial rights of the government and of persons directly affected by a government agency's activities.

What about the proper storage and protection of records?

Another important role delegated to the agency is ensuring the proper storage of records. By the terms of KRS 171.690, whenever an agency head determines that substantial economies or increased operating efficiency can be achieved, he is directed to provide for the storage, processing and servicing of appropriate records in the State Records Center or, when approved by KDLA, in a location maintained and operated by the agency itself.

Providing for the protection of records is another essential responsibility delegated to agencies. As directed by KRS 171.710, the agency head is required to establish such safeguards against removal or loss of records as he believes necessary and as may be required by KDLA rules and regulations. These safeguards must include making it known to all officials and employees of the agency that no records are to be transferred, turned over to another, or destroyed except in accordance with law, and calling their attention to the penalties provided by law for the unlawful removal or destruction of records, regardless of their format.

The agency head is also directed to notify KDLA of any actual, impending or threatened unlawful removal, defacing, alteration or destruction of records in the custody of the agency that may come to his attention, and with the assistance of KDLA, to initiate action through the Attorney General for recovery of any records which may have been unlawfully removed and for any other redress as may be provided for by law. Penalties are established in statute for violations of the key elements of Kentucky's public records management law, and for state employees, these can include dismissal from state employment. Kentucky's tampering with public records statute (KRS 519.060) and its laws dealing with unlawful access to a computer (KRS 434.845-.850) and misuse of computer information (KRS 434.855) describe various records-related offenses which are punishable as felonies under the Kentucky penal code.

What services does KDLA provide in this process?

The department is responsible, under the terms of KRS 171.450, for managing and controlling records, in whatever medium, created by state and local government agencies in the Commonwealth. Specifically, under the terms of KRS 71.450 (1) (c), KDLA establishes standards, procedures, and administrative regulations for recording, managing, preserving and reproducing public (government-created or maintained) records.

Working in close collaboration with government agencies and designated agency liaison personnel who work with KDLA staff on records management matters, KDLA prescribes policies, principles and administrative regulations to be followed by those agencies in managing

their records; provides records analysis and scheduling assistance to agencies; and furnishes technical assistance to agencies whose records have been damaged in disasters. At the State Records Center, KDLA offers centralized storage and access services to government records of non-permanent retention, and it sets rules governing the transfer of records from one agency to another. KDLA serves as the central repository for archival public records in Kentucky, and describes and creates finding aids to records in archival custody. Records housed at the State Archives are made available for research through the department's Archives Research Room.

What is a Records Officer?

A Records Officer is the person named by the agency head to serve as his official liaison on records management issues with KDLA and to coordinate records management within the agency. He typically works with his agency's staff to compile (or update) a records retention schedule in draft form, prior to its review by KDLA personnel and the State Archives and Records Commission. The schedule is subject to detailed analysis at this stage, including an assessment by legal and audit staff to ensure that it meets relevant requirements in those areas for each record listed.

In addition to maintaining the currency of the agency's retention schedule, the Records Officer monitors records management practices in the agency, advises the agency head and agency staff on records management procedures, coordinates the transfer of records, and supervises the authorized destruction of records within the agency.

Where should I go for further assistance or more detailed information?

All public records management services are provided through KDLA's Public Records Division, which can be reached at **502-564-8300**. Staff will be happy to

- advise you on records management requirements under statute;
- help you interpret or apply your records retention schedule;
- assist you with creating a new schedule or with amending or revising an existing one;
- schedule records management training for your staff;
- explain KDLA policies, procedures or guidelines;
- discuss records storage options and records management issues to keep in mind when designing electronic systems;

- arrange for transfer of your records to the State Archives or the State Records Center, as appropriate;
- explore records format conversion options (including conversion of paper records to digital files, digital files to microfilm, and microfilm to digital files, as well as conventional micrographics services) with you;
- review research services available at KDLA; and
- review the services available through KDLA's Document Preservation Laboratory.

If you work for a state government agency or a public university or community college, please contact the **State Records Branch** for assistance and information about services **at ext. 237**.

If you work for an agency of local government, please contact the **Local Records Branch** for assistance and information about services **at ext. 255**.

If you have a question relating to records management requirements for electronic records, please contact the **Technology Analysis and Support Branch, ext. 242**.

If you have a question concerning research at the State Archives, or the holdings of the State Archives, please contact the **Archival Services Branch at ext. 249**.

If you would like advice on the conversion of original paper records to microfilm or other image management format, including digital imaging, or have other questions about KDLA's digital and micrographics services, please contact the **Micrographics and Imaging Services Branch at ext. 321**.

If you have a question about the physical preservation of original paper records or would like to secure these services from KDLA's **Document Preservation Laboratory, please call ext. 290**.

For other questions, please call ext. 252.

In addition, all government employees are encouraged to visit the KDLA web site for guidelines, policies and procedures, practical advice, and other useful information on managing government records

The main web site can be found at www.kdla.ky.gov.

For information about research opportunities at KDLA, please visit

<http://www.kdla.ky.gov/research.htm>

For details about information/services for government records managers, the main gateway is <http://www.kdla.ky.gov/recmanagement.htm>. On this page, you will find information about the different services we provide to government agencies, as well as links to a variety of other information, including records retention schedules, online versions of records transmittal forms (for transferring records) and records destruction certificates (for documenting authorized destruction of records), policy and guidelines documents, electronic records management guidelines, information about digital format conversion services, and details about services available from the KDLA Document Preservation Laboratory.

For online versions of local government records retention schedules, please see

<http://www.kdla.ky.gov/recmanagement/localschedule.htm>

For online versions of state government records retention schedules, please visit

<http://www.kdla.ky.gov/recmanagement/stateschedule.htm>

These additional pages on the KDLA web site will be of interest to you:

Understanding Records Management: E-mail Records,

<http://www.kdla.ky.gov/recmanagement/tutorial/email.htm>

Understanding Records Management: Web Sites

<http://www.kdla.ky.gov/recmanagement/tutorial/websites.htm>

Understanding Records Management: Electronic Records

<http://www.kdla.ky.gov/recmanagement/tutorial/electronicrecords.htm>