

2003 COSHRC Annual Meeting
Saturday, July 12, 2003

Incubator Session Report:

C11: Records of Governors and Mayors: Policy and Practice

Moderators: George Parkinson (OH) and Christine Ward (NY)

Description in printed program: With 24 new governors taking office this year, many state archives are facing immediate challenges associated with the records of their chief executives. Although a 1996 COSHRC survey found that 44 state archives received the official public records of their governors, this transfer is not always required by statute nor adhered to when required. Local government officials face similar situations with mayoral records. Several chief executives have sent their records elsewhere in the last year, resulting in high-profile new stories. How can state and city archives establish and maintain jurisdiction over these records and ensure their long-term access and use in a public repository? What successful strategies can be identified and adopted in those states that do not currently have control over these materials?

The moderators opened the session by explaining that the attendees would each be asked to share his or her state's experiences with gubernatorial records, including current status and issues that they have had to confront. In addition, the group would consider what COSHRC can do and develop a plan of action/next steps.

Issues identified

Statutory authority of state archives

Legal vs. physical custody

Scheduling, records management

Public records/private (personal) papers

FOIA

Executive privilege, attorney-client privilege

Quality/value of the materials being retained is diminishing

The more we press for open access, the more reticent they become; need to compromise in period immediately following elections

Electronic records, email

Possible strategies, next steps

1. COSHRC/NAGARA/SAA/ARMA draft a policy statement to which NGA could provide a link

Task force volunteers: Gwenn Stearn (RI), Guy Rocha (NV), Chris LaPlante (TX), Pat Scott (UT), Chris Ward (NY), Mark Jones (CT), Glen McAninch (KY), Conley Edwards (VA), Karl Niederer (NJ)

2. Develop closer relations with NGA
3. Testimonials from governors who have done things the right way
4. Letter from John Carlin as Archivist of the U.S. (a former governor himself) to [new?] governors pointing them to records officers, encouraging cooperation, compliance
5. Participate in orientation for new governors that is held at Kennedy School (biannually?) to explain value, benefits of good recordkeeping practices
6. Why should they listen? We should present a risk analysis, examples of specific values/benefits to be gained
7. Develop guidelines/best practices to help archivists deal with governors and their staffs
8. Professional associations need to address competition that exists between state archives and other repositories (universities, private historical societies) in acquiring collections. Some proposed a session at 2004 SAA annual meeting with panelists from states in which governors records have left state custody (e.g., Michigan).
9. Archivists need to articulate what the value of governors records is and potential uses to which they can be put. Emphasize that without solid archival collections, the history of each administration will be told largely by what was printed in newspapers.

State status reports, comments

- AL Have schedules in place and typically receive 600-1,000 ft from each four-year term. Check recycling bins, shredders.
- AZ Not a good run of early records from 1864 on, they are scattered throughout U.S. Gets better starting ca. 1890. No specific statutory provisions re: custody of governors records, but they are pretty good about turning them over. Two administrations ago, governor was removed from office for felony. No records from that administration in yet. Currently developing records retention schedule with governor's office.
- CT Long history of receiving governors' records. Connecticut Historical Society has early administrations. In 1909, State Library was designated official repository of public records. Governors' subject files began coming then, highlighted Governors' records as important resource. Schedules very important. Working with university. Current administration = longest sitting governor. Governors

records in State Archives are used a lot, especially subject files.

- DE Fairly good run. Last governor set restrictions for 20 years or with permission. One series, Governor's Register (proclamations, executive orders), is sent to state archives every week.
- GA The Georgia Archives has a long history of receiving Governor's official records and has a significant body of such records. More recently, the past two administrations have deposited correspondence, subject files, proclamations and executive orders. They have also apparently removed or destroyed portions of their records prior to leaving office. The Georgia Archives is working to improve communication with the governor's office, as well as with other constitutional and legislative offices, to correct this situation and collect a more complete record. In addition, the archives is working with those local governments who have voiced an interest in obtaining the records of their elected officials. [Note: this statement was submitted in October 2003.]
- GA,
Troup
County Need to do better job on mayors. Suspects mayors are vastly underdocumented. Recent deaths highlighted need for documentation.
- IN In 1988 state archives staff discovered trash bins in statehouse after election, took to archives, finally resulted in orderly transition of 500+ cu ft. If planning ahead, watch for "opposition research." [Reported by former state archivist, Jerry Handfield.]
- KY Division between university-deposited and state archives. Made some progress in getting governors' to use combination of general and special schedules, fairly successful in last few administrations. Working with other cabinet officers too. Focussing now on electronic records, email, and governors' websites.
- MA Before 1962, governors' records are scattered, not in state archives. After 1962, were scheduled. Dukakis campaign destroyed by records re: pardons, communications. John Kerry was Lt. Governor. State archives unprepared for impact of governor running for national office.
- Mayor of Quincy took all records home because he didn't want successor to have them.
- MI As a whole, well-documented, but since 1950 challenged to define difference between public and private. Public go to state archives, private to the University of Michigan. Have had attorney general opinions indicating that Governor has the authority to decide. State archives holdings are not voluminous. Since 1950, the bulk of the governor's records have been broadly defined as personal by the governor and transferred to the University of Michigan.
- MO Archives created in 1965, get records but not without difficulty. Currently receive

about 1/2; before 1965 mixed. One governor melted down a shredder.

- MT Good relationship with governor's office, records are transferred regularly. Records at University of Montana have been transferred, so there's a complete run in state archives. No activity related to electronic records yet.
- NJ More or less complete since 1948 (constitution adopted). Modern public records law passed in 1953. Earlier are more complete, later are sanitized. Same volume (1,000 boxes per term), but substantive content is down. Before 1948 is spotty; before 1920, in universities, historical societies if anywhere. Policy establishes email as a public record. Governor's office signed off on it, but are destroying email every 14 days anyway. Compliance is a problem.
- NM Have the entire run of papers from territorial period. Date to Mexican republic and colonial period. With previous governor, state archives got in early in administration. Ultimately received 200 ft, but no electronic records. Current administration wants retention schedule.
- NV 1861 (territorial) to current are in State Archives. Deposited by tradition. Asked for omnibus legislation in 1983. Executive records at Huntington Library for 2 governors. Executive records deemed public property and go to state archives. Defined executive records vs. private which can go elsewhere. Nothing is closed forever.
- NY Executive law 1858 identified types of records governors should keep, but noting about who owns them. Most have consider their records to be private and put them wherever they want. State archives generally knows where these records are but has no mandate itself to receive governors' records. Have tried to negotiate. Cuomo agreed to microfilm central files. Overall collection is very spotty all the way back. Executive clemency files do come, but users have to go through Executive for access. Bill and veto jackets come, executive orders. Since 1995 have been submitting bill covering governors' records, passed by Assembly but not Senate. Sets bad precedent for mayors in NY State. FDR's gubernatorial records were transferred from the FDR Presidential Library to the State Archives in the 1980s. The Rockefeller gubernatorial records are at the Rockefeller Family Archives. Other gubernatorial records are in various university archives.
- NYC Guiliani took records to "fortress." Private consulting firm doing arrangement and description. Will be housed in Guiliani Urban Research Center.
- OH Up to 1980s, considered private papers (other than pardons) and housed with Manuscript Collections in State Historical Society instead of State Archives. Law changed in 1980s, came to State Archives 1983-1991. Network of history research centers (university-based) has records of one administration.
- OK Since 1982 governors' records have been scheduled. State archives has all administrations since then except one which went to a university when the state archives ran out of space. 1907-1982 records are sketchy. Currently working on

email and electronic records policies with sitting governor. Open records act is in place, but state archives doesn't have the resources to provide access to electronic records.

PA Spotty during 17th and 18th centuries; better coverage for 20th century. No laws re: governors' records. Casey's records scheduled (1990). Ridge hired lawyer who acted as "archivist"; decided what should come to state archives, set restrictions, didn't provide box listing. Not much re: electronic records in yet.

RI Records of elected officials have to be transferred (per 1912 constitution, statutes), but provisions haven't been followed and archives staff doesn't know where all of them are. University of Rhode Island was designated as repository under 1980s agreement signed by the then state archivist. Issues of concern include personal papers, executive privilege, attorney-client privilege. In discussion with URI to set up joint center (for senatorial collections, too). Have used NARA publication because governors like to be compared to presidents.

TX Last 2 years have focused on resolving issues re: GW Bush Administration. In June 2003, formalized a memo of agreement. Records will be at Bush Presidential Library after processing by State Archives.

Before 1997 law, the governors' records went to State Archives. Bush wanted law changed so he could place his records at his father's presidential library, State Archives did not strongly oppose. Majority automatically came to State Archives up to late 1960s, then went to college/university repositories or into storage.

In 1987 state archives sought attorney general opinion, started contacting previous governors and universities to establish agreements for custody, management, processing, access. Texas A&M University is doing good job with Gov. Clements papers.

Current governor tried to exempt governor's records from Public Information Act and asked for attorney general opinion; AG said that they were subject to act.

There is a long history of governors claiming executive privilege. Archives is also concerned about accountability, access. Have sent NAGARA statement to governors, NGA manual.

Not optimistic, sees trend to greatly limit access to governors' records. Large portion of Texas State Archives time committed to this. 2 FT, 3 PT working on processing Bush records. Finding little substantive material, "meat."

NY Times article.

UT Legislation provided 3-4 years of special funding to process collections; currently have 2 years to go. Governor's office hired intern to work on current records. Issue with email; has been taken to court. Current governor is in 3rd term, was

going to bring in archivist/historian, but press ripped into this plan.

- VA Have records from 1776 to most recent governor. Public Records Act generally requires transfer at end of term. Issues of concern include what constitutes “personal” records (last governor was taken to court) and executive privilege.
- Late 70s/early 80s not controversial, now time-consuming. Virginia received 78 boxes, experience was that there should have been more, got 200 more but they contained insubstantial material: photocopies, constituent correspondence, little in the way of policy. Researchers, media will be disappointed.
- VT Covered by statute, 1864. Governors’ records comprise official correspondence of governors. Not clear whether they are exempt from public records case law. State archives got access at end of each term (6/10 years). Law requires that they provide inventories. Have argued for including processing in transition funding, but not successful yet. Governors’ records take a lot of staff time, have extremely low use. Users are usually seeking to clarify appointments, policy decisions. Inter/intra-agency records are not there.
- WA Good history working with governors. First territorial governor is buried in Rhode Island; trying to recover papers.
- “Red Book” contains every official action, transferred regularly to state archives, includes pardons, appointments, etc. There is an unofficial policy of closing governors’ records for 6 years although physically transferred to state archives. Permission to use may be referred to governor’s office.
- WV Mixed jurisdiction between West Virginia University and state archives. After legislation in 1977, governors’ records are supposed to be scheduled by Office of Administration and come to State Archives, but never activated. State archivist has met with university staff, but never brought to conclusion. Electronic records are not coming in. Vanity publication helps make connections.