

## **Joint Statement on Access to State and Local Records**

### **Council of State Archivists, National Association of Government Archives and Records Administrators, and Society of American Archivists**

Government archives play a critical role in ensuring citizens' rights and preserving the nation's history by identifying, preserving, and ensuring public access to records that document government actions. A state or local government archives is legally responsible for maintaining, in perpetuity, the permanent records of its government. Preservation of and access to government records is of paramount importance, for these records establish and protect the legal, financial, administrative, and historical foundation of the government for its citizens. Access to government records, including those of the executive, legislative and judicial branches of government, ensures that elected and appointed officials are held accountable and citizens are able to exercise their rights. Government records help citizens understand the history of our nation and play a central role in the interpretation of the past. The obligation to make these records available and accessible is a fundamental and vital responsibility of government, and thus government archives are a foundation for the operation of governments.

The public's right to access state and local records is governed by state and local law. Although public records laws vary from state to state, ultimately state and local law in each jurisdiction controls the handling of state and local records.

A deed of gift or informal agreement donating government records to a public or private institution cannot displace a statutory requirement that those records be publicly accessible. Accordingly no institution, individual, or group may place restrictions on access to government records that are contrary to the obligation to make the records publicly accessible to the extent required by law.

The Council of State Archivists (CoSA), National Association of Government Archives and Records Administrators (NAGARA), and Society of American Archivists (SAA) recognize that archives and libraries may take legal ownership of an individual's *personal* papers through a deed of gift from the person who or entity that owns those papers and that such an agreement may impose restrictions on access to such *private* papers. However, unlike private papers, state and local records must be made accessible to the public in accordance with state or local law. An individual, corporation, or other entity does not have a legal right to make a deed of gift or other agreement for government records.

If a portion of a collection of government records might be confidential according to law, it would be illegal, inappropriate, and improper in all jurisdictions for an archives or library to

refuse access to the *entirety* of the records. Even if some portions of the records may be exempt from disclosure under law, the repository holding the materials should redact or segregate those confidential portions of the records from all non-confidential portions and make the non-confidential portions publicly available in response to a request for access. CoSA, NAGARA, and SAA are not aware of any law in any state that permits the withholding of the entirety of a set of government records because some portion of that set may be exempt from disclosure.

An archives cannot and should not rely on its inability to process<sup>1</sup> a collection in a timely manner as a justification for withholding public access to government records that have been designated as accessible by law. Availability of resources often dictates the amount of processing an archives will conduct for each new collection it receives. Depending on the extent and range of the materials, it is standard practice for archives to provide, at minimum, a summary description of the collection's basic contents. When a member of the public requests access to a government records collection that is not fully processed, an archives generally will then process that collection sufficiently to make it publicly accessible within a reasonable amount of time.

Each state has laws that govern access to its government records, and those laws are applicable even if the records have been alienated from the government's physical custody and are in the possession of individuals or other institutions. Although replevin<sup>2</sup> laws vary from state to state, replevin generally is used to ensure that physical custody of government records is returned to the public, thereby guaranteeing that government records are preserved and made accessible through a public entity. Some state replevin laws provide for instances in which government records can be held by non-public institutions, if the records are preserved and made accessible as they would be in a government repository, allowing public access to government records when an entity other than the government has custody of them. The purpose of replevin statutes is to ensure that government records—which rightfully belong to the public—remain accessible to the public.

CoSA, NAGARA, and SAA believe that government records must be managed and made accessible in accordance with the applicable laws of the respective government to ensure access to this essential evidence for government and its citizens.

*Approved March 2016*

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<sup>1</sup> Processing is the arrangement, description, and housing of archival materials for storage and use by patrons.

<sup>2</sup> Replevin is an action to recover property that has been improperly or illegally taken. It is frequently used to describe efforts to recover public records that are in private hands. It also describes the court order, or writs authorizing the recovery of property by the person or entity entitled to possess it.