



First Steps in Managing Records: A Transition Priority

The Importance of Records Management

Records management is one of the basic responsibilities of every gubernatorial administration. Thorough recordkeeping enhances services and improves operations while the governor is in office. It also signals that the administration supports open government, transparency, and accountability—concepts that have become synonymous with good government. Records also must be appropriately managed because the documents, files and databases generated by an administration are subject to public records laws.

Ensuring all records are properly maintained throughout the administration's lifetime and disposed of according to set procedures is a far simpler task if pursued rigorously from the outset of the administration. This management brief outlines clear steps to help a new administration make records management a regular and seamless process.

Special Note About Campaign and Transition Documents

Essential executive records are generated almost from the point of election. Gubernatorial transition offices may find that if they accept state resources (office space, personnel and equipment) to create, maintain and file transition documents, those records may be considered public because of the investment of public resources. Furthermore, any records an outgoing administration sends to the transition office also could be classified as public since they were created while that administration was incumbent. Campaign records present another concern. If an incoming administration mixed its campaign documents with transition documents, it is likely the campaign documents would be newly classified as official government records. The governor-elect must be prepared to deal with the assumption that new documents created or accepted during the transition period may become official documents, possibly pre-inauguration. Knowing how to deal with such documents is essential to manage records properly and alleviate risk.

Steps to Effectively Manage Gubernatorial Records

Understand Your Obligations Under State Law

The following steps will help you establish a systematic program for managing gubernatorial records.

1. Governors and their staff should begin working from the point of election with the designated state agency or agencies in charge of archives and records management. Agency staff are familiar with established state laws, policies and practices for addressing both physical and electronic public records. They can assist with records management compliance and help determine when records can be disposed of or transferred and how best to do so. **Establishing records management procedures at the beginning can prevent problems:** know where to locate records when needed, know which records can legally be destroyed, and know which records need to be retained permanently for legal or historical purposes.
2. If there is no existing program in place, consult your state archives or records management agencies for guidance. You will need to identify the types of records the administration will create and how these records are organized and accessed.
3. If state record laws include both public records and personal papers, the governor's staff should **determine which records are public and which are personal** in consultation with the governor's legal counsel and the state's archives or records management agency.

4. Office records retention policies should address the possible separation of public records and personal papers and the procedures for transferring records and papers to the appropriate archival repository.
5. Office procedures should address how to handle Freedom of Information (FOI) requests and requirements related to litigation. Like any state agency, the governor's office should have policies and procedures for handling and responding to FOI requests.

Work with Records Retention Policies

Once the administration has a clear understanding of its obligations for maintaining and transferring records, it should learn about state statutes and laws regarding the retention policies for the records it will create. The administration can work with state archives and records management personnel to develop a system within the governor's office to meet required records retention schedules. Office procedures can then be established to make this routine work. There are four main elements to address:

1. Distinguish personal papers from public records.
2. Determine how long public records should be retained before legal disposal.
3. Transfer public records on a regular basis to the appropriate repository as designated by law or best practices.
4. Determine where and when to transfer personal papers.

Most states have established public records policies for commonly created records (operational, administrative, fiscal and legal) and they may also have specific transfer policies, procedures and forms. Your state's archives or records management agency should be consulted to understand and comply with these requirements prior to disposing of any public records. Records management staff can assist with following existing policies or creating a records retention schedule for public records.

Distinguish Public Records versus Personal Papers

On the surface, distinctions between public records and personal papers seem obvious.

- **Public records** are those created or received by the governor, his or her immediate staff and other units and individuals in the governor's office, in the conduct of government business. These records relate directly to the constitutional and administrative functions of the office and document those functions. These records can be paper or electronic files and normally include the administration's social media accounts.
- **Personal papers** are materials of a personal or private character, not related to the carrying out of official duties; for example, family correspondence. Political files, where they do not relate to government business, may also be considered personal papers.

Despite this definition, in practice, such distinctions are not always clear. No universal legal standard exists to define what constitutes an official or public record and what, alternatively, may be a non-official or personal record.

For example, political campaign documents are clearly personal papers. However, documents maintained by an appointments office about prospective appointees, while clearly related to official business, are also highly political and are sometimes allowed to be classified as personal papers. The same may be true about handwritten notes and staff advice about politically or personally sensitive matters. On the other hand, public records may be exempted from public disclosure by law or regulation. Such distinctions can cause confusion.

The governor and his or her staff should consult with legal counsel to understand and interpret applicable laws and distinguish personal papers from public records. The governor's legal counsel should review all appropriate legal



authorities and citations concerning records to determine a clear and legally defensible delineation. Seeking help from state archives and records management staff also can ensure proper direction as the consequences of mixing records can be quite serious.

The Consequences of Mixing Records

Public relations problems can arise from a conflict over access to, or the management of, records. It is important to note the trend in many, if not most, states is to broaden the definition of public records and to restrict the authority of the executive to classify records as personal. It is best to keep separate accounts for official business, personal matters, campaigning and other personal business and not to commingle the messages. Mixing personal papers with public records can subject the personal papers to additional scrutiny as well as to legal discovery requests.

Managing E-Mail and Electronic Records

A new administration will need to properly follow retention and transfer policies for all electronic records. Email and electronic communication policies are important to put into place quickly. It is critical to explain how email, text messages and any other electronic communication records management and retention will work on an office-wide basis. Email is quick, convenient and a direct communications tool to circulate routing documents and work processes such as decision memos and external correspondence. Email messages can pertain to such varied subjects as appointments to boards and commissions, hiring and firing decisions, instructions given to and reports from cabinet and agency officials, contract negotiations, legal and policy decisions and more. Email messages pertaining to government business are public records and need to be managed accordingly.

- Email requires the same careful handling, management and disclosure as any other public record and as other electronic records. Countless news stories show that poorly managed email messages create negative media attention, protracted litigation and escalated conflicts.
- The governor's legal counsel and office manager should ensure from the outset that the governor's office is complying with state requirements for the management and appropriate preservation of all electronic records, including electronic communication such as email, text messaging, instant messaging, etc.
- It is important for governor's office staff to be aware of the extent to which their email may be or become public records, the type of email messages that constitute a public record and the difference between messages with permanent retention value and those with short-term or transitory value.
- Electronic records are public records if they detail public business. Regardless if an account is personal or public, if the account or text messaging is used for public business, then the email messages, social media posts, or other forms of electronic records from that account may be public records.

Developing and communicating records management policies – with special attention to email messages in particular – is an important office policy decision that must be addressed immediately.

Transferring Public Records

Public records, regardless of format or location, are public property. State laws vary on requirements for retention, disposition and access. Many states mandate the transfer of public records to a designated state agency, such as the state archives. Where there is no clear statutory direction regarding where and how gubernatorial collections are held, staff should discuss records issues with the state's archives and records management agency and look to state best practices when developing a policy for transferring administration records.

Transferring Personal Papers

Repository options for personal papers and electronic files include:

- The state archives (sometimes in a separate collection from public records)
- The state historical society
- A university

Prior to transfer, the receiving repository should execute a deed of gift or transfer incorporating conditions such as access requirements, permission restrictions and time limits on access. The governor's staff should consult the designated repository prior to transferring any personal papers in order to understand and comply with its specific requirements.

BEST PRACTICES CHECKLIST

Establishing a Records Management Policy

- Consult with your state archives and records management agency to understand public records management obligations and policies.
- Consult with the governor's legal counsel to understand your state's open records laws and develop clear standards to classify records as public or personal.
- Assign responsibility to carry out and ensure compliance with the records management policy. The governor's legal counsel can be an effective enforcer.
- Plan a routine process for the transfer of public records and personal papers.
 - Distinguish public records from personal papers.
 - Develop a records retention policy and regularly transfer public records.
 - Develop a records retention policy and regularly transfer personal papers.
- Establish clear guidelines for the governor's administration to follow and communicate these policies regularly to governor's office staff, cabinet officials and other appointees.
- Develop a system to remind staff and administration officials about records retention policies and requirements at key points throughout the administration.

BEST PRACTICES CHECKLIST

Managing Email and Electronic Records

- Ensure that governor's office staff members are aware of the extent to which their email and text messaging is a public record and may be disclosed publicly.
- Establish clear policies relating to the use of email, text messaging, and social media, including limits relating to personal communications and nongovernmental business transactions.
- Seek guidance from your state archives or records management agency and develop appropriate records retention policies and disposition schedules to be used for electronic records.
- Seek expert legal advice regarding your state laws on the retention and public access to email, text messages and any other electronic records. This includes communications generated during transitions into and out of office and communications using private email, cell phones or any electronic communication relating to public business.
- Establish policies regarding the use of personal accounts to conduct official business. In many states, public records laws and/or legal precedents define any message, regardless of originating/receiving account, that concerns public business as a public record subject to public discovery and other requirements. This is particularly relevant to email and social media accounts.
- Be prepared for frequent requests for access to copies electronic records, specifically of email and text messages, and be prepared to invest the staff resources needed to review large volumes of email to determine whether it is protected from or subject to public disclosure.

Additional Resources

The Council of State Archivists (CoSA) is the membership organization of the 56 state and territorial archives, and offers detailed information and resources pertaining to government records management and archives. CoSA can help the governor's office to connect with the appropriate state agencies. A state-by-state directory of archival and records management agencies can be found at: <https://www.statearchivists.org/connect/resources-state/>

Support for this publication was provided by the Institute of Museum and Library Services (IMLS) through a National Leadership Grant to the Council of State Archivists (CoSA) for Archives Collaborating and Cooperating with External Strategic Stakeholders (ACCESS), a project of the State Electronic Records Initiative (SERI).

Council of State Archivists (CoSA)

PO Box 1583
Frankfort, KY 40602-1583
Email: info@statearchivists.org
<http://www.statearchivists.org>

Definitions

"*Disposition*" means the final destruction or transfer of records to an archives as determined by their appraisal.

"*Personal papers*" means nonofficial documents maintained by an individual at a place of work or on an enterprise network or equipment.

"*Public records*" means data or information in a fixed format created or received by a government agency in the course of business. These include records created or received by the governor, his or her immediate staff, and other units and individuals in the executive office, in the conduct of government business. Please note that state statutes may provide a more specific definition of what constitutes a "public record."

"*Records management*" means "the systematic and administrative control of records throughout their life cycle to ensure efficiency and economy in their creation, use, handling, control, maintenance, and disposition."

"*Retention schedules*" means "documents that identify and describe an organization's records, usually at the series level, provide instructions for the disposition of records throughout their life cycle."

"*Record series*" means a group of similar records that are related as the result of being created, received, or used in the same activity.

All terms are adapted from the SAA (*Society of American Archivists*) *Archival and Records Terminology Glossary*.