

# **Managing Your Records**

## **A Guide for Appointing Authorities, Deputies and Division Managers**

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## **Introduction**

All managers have a fundamental responsibility to develop a comprehensive records management program. Beyond meeting an agency's business needs, a well designed program contains three basic goals; 1) to fulfill legal mandates and responsibilities; 2) to store records in the most efficient and cost-effective manner possible; and 3) to assure public access to the documentary history of government. Together, these ensure that an efficient, democratic form of government will properly function.

While all state agencies and all state employees create records, not all records created are equal; that is, some records, because of their enduring legal and historical value, deserve extra care and consideration. The basic files of appointing authorities, deputies and division directors are particularly important, so this brochure is designed to assist managers by defining the legal and practical aspects of retaining their files.

## **Public Records Law**

**The Indiana Code**, in 5-14-3-1, in pertinent part, makes agency responsibilities clear when it states:

A fundamental philosophy of the American constitutional form of representative government is that government is the servant of the people and not their master. Accordingly, it is the public policy of the state that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.

Lest there be any doubt as to the importance the General Assembly attaches to public records, **IC 5-14-3-2(9)** emphasizes it with this all-inclusive definition:

"Public record" means any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained used or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

With that definition, the General Assembly essentially precludes any state agency or state employee from determining individually what is or is not a record: anything, on any medium and created for any governmental purpose, falls under the rubric of public records law. To demonstrate the comprehensive nature of this definition, State Board of Accounts auditors even consider post-it notes to have evidentiary value in certain situations.

Note that the term "public," in this context does not have the sense of "open to the public," but, rather, serves to distinguish between "personal," as in an employee's personal papers, and "public," as in records created in the course of state government business and so belonging to the public. A "non-confidential" record is "open to the public;" a "confidential" record is accessible only when certain conditions are met.

## **The General Retention Schedule**

Records management begins with identifying a record series: a record series consists of records that have the same physical form, are arranged under a single filing system, are related to a particular subject, document a particular transaction or are produced by the same activity, and so form an identifiable group. A record retention schedule specifically defines and describes a record series and sets rules for its disposition. Properly developed retention schedules ensure compliance with state statutory requirements and existing government regulations.

Proper records retention requires the preparation of two retention schedules. The general retention schedule is used for scheduling records common to all agencies, such as accounting, administrative and personnel records. A second schedule describes the disposition of documents created to fulfill an agency's specific mission. This schedule covers those records generated only by the particular agency, such as BMV accident reports.

IARA's role in records management is to aid agencies as they develop their official retention schedules. The destruction of records is not licit without the sanction of a retention schedule approved by IARA. This is summarized in **IC 5-15-5.1-14**:

A public official or agency may not mutilate, destroy, sell, loan, or otherwise dispose of any government record, except under a record retention schedule or with the written consent of the commission [i.e., Archives and Records Administration].

### **GRADM-3**

GRADM-3 (General Retention Schedule, Administrative Records, Item 3) requires retention of policy files of appointing authorities, deputies and division directors. These office files document substantive actions of administrative agency appointing authorities and constitute the official record of an agency's performance of its functions and the formation of policy and program initiatives.

This series may include various types of records - correspondence; memos; and reports concerning agency policy and procedures, organization, program development and reviews. Some of these records may be confidential.

Managers are allowed some discretion in determining confidentiality. For example certain investigative records in law enforcement agencies; work products of an attorney pursuant to state employment; advisory or deliberative material communicated for the purpose of decision making or data used in administering a licensing examination may be determined confidential. See **IC 5-14-3-4(b)** for further information. Confidential records must be clearly labeled as such prior to shipment to the Indiana Archives. All records automatically lose their confidentiality after 75 years [**IC 5-13-3-4(e)**], and at that point, no restrictions on access can be instituted.

Inevitably, there will arise some dispute about decisions made as to the confidentiality of records. Accordingly, **IC 5-14-3-9(d)** affirms that

"a person who has been denied the right to inspect or copy a public record by a public agency may file an action in the circuit or superior court of the county in which the denial occurred to compel the public agency to permit the person to inspect and copy the public record."

Agencies should note that, in cases of legal action, **IC 5-14-3-9(h)** allows a court to award reasonable attorney fees and other cost of litigation, if "the plaintiff substantially prevails and the court finds the defendant's violation was knowing or intentional." In other words, there are instances where the state could be liable for the costs of the plaintiff's suit.

### **Final disposition**

Certain records created by state agencies are deemed to have a permanent value for the documentary history of the state. The Indiana Archives is the final repository for all state government records of permanent legal or historical significance. Records within the GRADM-3 category should be transferred to the Indiana Archives after 3 years. When an agency transfers its records to the Indiana Archives, ownership of and responsibility for the records is transferred to the Archives as well [**IC 5-15-5.1-11**].

### **Benefits**

Compliance with GRADM-3 has benefits managers will readily identify. First, old files sent to the Indiana Archives can free much needed office space. Second, all files concerning specific policy issues can be grouped together, allowing managers control of their records and ease in evaluation and transfer. Finally, managers will be able to distinguish their agency's role in Indiana State Government history by preserving their agency's records in the Indiana Archives.

### **Practical Solutions**

Managers may wish to consider the following activities to insure the proper preservation of their records.

- 1.** Gaining control of records can be simplified by performing a records analysis inventory and developing a record retention schedule. IARA can assist with schedule development.
- 2.** Place files in chronological order and determine confidentiality when records are created. This will save time when the records must be prepared for transfer.
- 3.** Modern paper is subject to a rapid rate of disintegration because of its high acid content. This problem can be solved by using acid free paper for all files designated for permanent preservation.
- 4.** To preserve faxes and newspaper articles, always photocopy them on acid free paper.
- 5.** For more detailed information, agency managers should attend the information and records management workshop offered by the Archives and Records Administration through the Department of Personnel's Management Institute.
- 6.** Two particularly useful IARA publications are the Records Coordinator's Handbook and Indiana's Public Records: The Legal Framework of Records and Information Management in State Government. Both provide basic information concerning the legal and practical aspects of records retention.