

OVERSIGHT COMMITTEE ON PUBLIC RECORDS
Regular Meeting July 11, 2012

12-07-11-01

CALL TO ORDER AND ROLL

A regular meeting of the Oversight Committee on Public Records was held Wednesday, July 11, 2012. The meeting was called to order by Chairperson Joe Hoage, Public Access Counselor, at 1:36 p.m. in Room 401, Indiana State Library. Members present constituting a quorum: Pam Bennett, Director, Indiana Historical Bureau; Jerry Bonnet, Designee for Connie Lawson, Secretary of State; Caroline Bradley, Designee for Brian Arrowood, Chief Information Officer, Office of Technology; Roberta Brooker, Director, Indiana State Library; Jim Corridan, Director & State Archivist, Indiana Commission on Public Records; John Jacob, Designee for Bruce Hartman, State Examiner, State Board of Accounts; Connie Smith, Designee for Robert D. Wynkoop, Commissioner, Department of Administration; and Micah Vincent, Governor's Office.

Members absent: None. Commission staff in attendance: Ted Cotterill, Deputy Director; Amy Robinson, Records Management; Beverly Stiers, County and Local Government Records Management. Guests in attendance: Steve Key, Hoosier State Press Association; Lisa Berry-Tayman, Information Consulting.

12-07-11-02

NEXT MEETING

Joe Hoage announced the next meeting would be held August 15, 2012 at 1:30 p.m. in Room 401, Indiana State Library.

12-07-11-03

PREVIOUS MEETING

Caroline Bradley moved approval of the June 27, 2012 minutes as presented, seconded by John Jacob. Motion carried.

12-07-11-04

OLD BUSINESS

1. ELECTRONIC RECORDS POLICY #12-01

Jim Corridan – the intention today is to bring this forward for discussion and comments, but not for action. The same thing is true of the E-Mail policy.

Jim Corridan – the version you had at last meeting is what this is based from and all the mark ups are the changes made, we are trying to talk about governmental entities since we are covering local and State.

Pam Bennett moved approval of Electronic Records Policy #12-01, seconded by Caroline Bradley.

Roberta Brooker asked a question concerning people serving on boards and Jim Corridan replied there are situations all across the State or even the county level. For instance, if you serve on the Women's Commission, the chair of the Women's Commission does not get a women's commission.in.gov email account, because she is a volunteer and not a paid employee and she would be conducting government activity on her own email account and those emails related to government policy or the Women's Commission are public record. If they are using their personal email accounts or business email

accounts technically under the statutes those records related to their government duties are public records. Jim Corridan stated we have an education issue here and need to help educate people.

Caroline Bradley – something that comes into play here because they deal with it is they have rules at the State level that say you do not store data on your personal devices because they cannot be recovered and does this need to be addressed in this policy or can we even address this?

Jim Corridan – he has had conversations with people in her Agency about that issue and the reality is IOT has a policy that says that, but it is not enforceable.

Caroline Bradley – no, it is not enforceable, but it gives guidance at the State level, but that does not cover all the local entities.

Jim Corridan – the facts are at the local level you could not do that anyhow because the counties and municipalities are not issuing government computers to elected officials.

Joe Hoage – who is going to go through the personal email – obviously a big issue, if people say Joe is using his personal email and Joe says I will go through it and let you know what is in it and what's not. Someone else is going to have to go through the personal email and he does not know how happy a public official is going to be about that. Another example – person on school board and when off the board leaves town or dies, then the agency gets a records request for that person's email, how is the agency going to go about getting that email? Again, he would have no idea.

Jim Corridan – my expectation would be that it is probably going to be a court level or legal issue to get it resolved. He does not think you can tell the county commissioners have the authority for oversight, it is an unresolved issue. It has hardly been litigated in Indiana.

Jerry Bonnet – in the Indiana Code it states a public official must provide all their official records to their successor or the agency.

Jim Corridan states there is a statute that says that but it is not consistently happening.

Joe Hoage – the guidance he gives for public employees is more simple because they have a public account so he tells them do not ever mix your business with your personal ones and obviously the IOT are retaining those emails now.

Caroline Bradley – Let's be clear on this - IOT does backup, it still belongs to the individual and the agency to retain the records, because IOT does not retain all emails forever, if person is terminated eventually that data will go away unless the agency retains it. It is kept on backups for a long period of time. They cannot recreate those records that were deleted before backup.

Jim Corridan – the reality is backup tapes are not a stable format for permanent preservation or even long term preservation.

Caroline Bradley – right, and we cannot recreate those records that were deleted before they got backed up. Agencies believe that IOT is retaining the records and they are not. IOT is not the record holder. They cannot tell what the content of the emails is to make a decision whether they should be kept or for how long they should be kept.

Roberta Brooker – how long should they be kept?

Jim Corridan – retention of emails depends on their content, so you as State Librarian are issuing policy directives, those should be permanent. If you are talking about a contract dispute and the term of the contract has five (5) years left, that is probably a 15 year record because the last five (5) years of the contract and 10 years after expiration. If you are corresponding with a library director and they have asked you some simple question, it is probably correspondence and it has a three (3) year retention. All based on the content and has nothing to do with who the person is or what their job is.

Joe Hoage said this is labeled a policy – are agencies required to follow this policy – do we have authority over the Warrick County Assessor’s office - we talked about a policy versus a rule and what if an agency simply says, whether it be state or local, they are not going to abide by this?

Jim Corridan – the Oversight Committee on Public Records has the authority to establish rules, they have the authority to set standards, which is kind of where we are headed here, and the authority in the local segments to develop and operate retention schedules.

Caroline Bradley – do we need to actually establish a rule or standard versus a policy?

Jim Corridan – we can call this a standard – ultimately we will want to establish a rule, this Committee needs to establish a rule – his concern is it is not like we are moving too rapidly at this point anyhow but he would rather that they adopt this, we understand the repercussions as we perceive them, but what happens when they try to implement this in Bicknell, Indiana, town of 2,000 people. What is the reaction there so we can get feedback, because amending a rule takes a much longer process than being able to just adopt policy changes. His hope was that six (6) months after this goes into effect than they will start to process and adopt a rule.

Jerry Bonnet – would you say you went to other states or is this a model.

Geoff Edwards - when they were drawing this up for review, they did look at other states, but this is quite different in a lot of ways – most of the other states were very high detail.

Jerry Bonnet – it led him to wonder, he sees the benefit of high level expectations, policy piece about developing consistency – does the high level lead to – agencies and vendors using different protocols and finding a way around the policy?

Jim Corridan - at this point, this is a very great question and he appreciates him thinking long term because that is where we really need to focus. The Office of Technology is working on a program with the Commission on Public Records for State Agencies that would allow them to have an electronic records management system and a content management system that would pull everything together and there would be one (1) system for the State to follow but it has not been mandated. They have discussed the possibility of trying to create a unified system in Indiana government for all levels so that those records that could be electronic come to the State Archives to be stored permanently are not going to come to us in 2000 proprietary format which then makes it extraordinarily expensive.

Jerry Bonnet – microfilm and microfiche – with electronic – proprietary is a whole another word, it is not very standardized.

Jim Corridan – the guidelines talk about proprietary and there is an expectation that if you are using proprietary software in a proprietary format that it needs to be able to be converted or somehow extracted or somehow exported from that system to be able to be imported to something else for fear

that all of that data might be lost forever if the company goes out of business and no one is left knowing how to do that. There are times where local units or State Agencies are running programs that are well past the period where the company has migrated into 15 different conversions and there is no way to get it out anymore.

Joe Hoage – as far as guidance we would have in a perfect world, so in a perfect world he puts in his 2 weeks' notice, should one of the things he needs to do in that last 2 weeks is go through all of his email and then delete ones not considered a public record and then categorize everything else, so when he leaves and hands that off to whomever - how is that supposed to work?

Caroline Bradley – in an ideal world you have everything in folders by project and retention schedules.

Joe Hoage – maybe education wise that is something we should say – employees should change those folders to correspond with the retention schedule.

Caroline Bradley – they have worked with a couple of different Agencies on doing things of that nature where they helped them go through what records are likely to be contained in email and telling them here is the general time range for different documents so they can organize their emails, but how well that is followed is questionable. They have enough troubles with getting Agencies to understand when someone leaves someone else needs to take a copy of that email, because we don't know who needs to get it and we can't automatically transfer it. Even if you did not clean it out, getting it to someone else so that they would have control and be able to manage that email would be a good first step.

Joe Hoage – depending on the number of employees that have been there, that might take longer than the two (2) weeks you have left to go through every single email.

Jim Corridan – one of the things that is going to be in the guidance material is kind of a file management plan – how do I do this, what are some options. Another thing he wanted to mention in the Scope section is in that second paragraph that list will likely be modified. There are things that are being included in here that we do not have the capacity to handle or manage, i.e. social media, text messages, voicemail, so they likely will not be left in this description. It is beyond our ability to even provide the tools so that they could manage those if they wanted to.

Jim Corridan – if there are no other comments on this policy, I think we have gotten feedback.

Jim Corridan made a motion to table Electronic Records Policy #12-01. Lisa Berry Tayman - she would like a chance to review this as it is – her only concern is you do not have a legal holds specified that turns off the retention in case something does happen.

Steve Key – no real problems at this point as it sits – a definite change from where it was and we have the policy and guidance. He has had conversation with Jim Corridan and they seem to be on the same page – what their concerns were as far as how the definition of records would coordinate between the retention schedules and the Access to Public Records Act. The impression he has is that the Commission is trying to work that out so there is not confusion when this is sent out. We would like to continue to give input on this.

Jerry Bonnet – would the Commission's webpage be the place for the current editions.

Jim Corridan – yes, there is site that is called electronic records.

Caroline Bradley made a motion that the Electronic Records Policy #12-01 be tabled, seconded by Pam Bennett. Motion passed.

2. EMAIL RETENTION POLICY #5-01

Jim Corridan – most significant thing for you to read is probably the section on Details, because this is talking about whom it is covering and probably the most significant component.

Joe Hoage – one thing he was thinking about – what if he gets an email today and it is something he does not have to keep and he deletes it and goes into his trash folder – and he still would be able to get access to that trash folder, but has he deleted it or do he has to also make the step of cleaning out his trash folder.

Caroline Bradley - you have to clean out your trash folder and hope it does not get backed up for it to be really gone.

Jerry Bonnet – he thinks if you put something in the trash you waive your privileges to it, so an investigator can go through your trash.

Caroline Bradley – you can completely delete it immediately, a hard delete.

Joe Hoage – he thinks some people think that is all you have to do, delete it and goes to trash folder, but we need to make it clear you have to delete it and clear out your trash folder as well. The scary thing about all of this is there is so much more individual responsibility as opposed to you have a couple filing cabinets full of stuff and now you are entrusting employees and obviously there will always be some kind of skepticism about everybody doing what is right, so he thinks that is something to be sure and look at.

Jim Corridan and Joe Hoage are working on an education program hopefully with State Department of Personnel - in January they hope to have on-line training, so that people will understand the public records piece of this because if it goes back to everyone is responsible for public records now and everyone is responsible for retention, and it is very important to roll out a training program so they understand the obligations, the rules and they understand how to react.

Joe Hoage said it is like the Sexual Harassment Training that everyone has to take now - it will be a records and ethics type program that you will have to take once every year or something like that.

Jim Corridan made a motion to approve the Email Retention Policy, seconded by John Jacob.

Caroline Bradley wanted to remind everyone that Ethics does require that the Commissioners or board members take their training, but not contractors.

Steve Key, Hoosier State Press Association, need to do a tweak in the Details section where you talk about transitory non-record materials, in the next line it says all other email is subject to state and federal public records law and that would indicate that transitory non-record materials would not be subject to the public records law. Mr. Key said that should be made clear that even the transitory non-record and personal materials if on a computer is still subject to the access laws and just not subject to the retention laws.

Caroline Bradley – most recent version it is good that it be included the no expectation of privacy statement and putting this in would probably be a wise move.

Joe Hoage stated it might be something you want to bold.

Caroline Bradley stated you might want to remind people that what you put in there can come back out.

Pam Bennett made a motion to table the Email Retention Policy #05-01, seconded by Jim Corridan. Motion passed.

12-07-11-05

DIRECTOR'S REPORT

Jim Corridan stated a written report was sent in the packets to the OCPR Committee.

12-07-11-06

AGENCY REQUESTS-RECORDS RETENTION AND DISPOSITION SCHEDULES(S)

Jim Corridan stated all Retention Schedules listed on the Agenda have previously been approved by the Oversight Committee on Public Records. They are being readopted today, because as of July 1, 2012, a new statute allows the Oversight Committee on Public Records to adopt retention schedules that will go into effect statewide for local units of government. In order to have one system across the State, they all need to be readopted so they will go in effect in 30 days across Indiana. There is one (1) change to the County/Local General Retention Schedule (GEN) and it is GEN 10-14 on page 3 of 8. This is a very specific case and concerns cancelled checks. Most banks now provide a copy of the cancelled checks via the bank statement, but they do not return the physical checks any longer. What we are saying is, and this was done with consultation with State Board of Accounts, if you get the checks back the policy has been to keep them for 10 years, if you do not get the checks back, and you only have your statements which have a copy of the checks, the rule for statements is you can destroy them after three (3) years. You can go ahead and get rid of these after three (3) years, assuming the State Board of Accounts has done your audit. The bank is in possession of your cancelled checks, not the actual governmental unit, so you cannot hold the governmental unit accountable for what the bank holds.

Joe Hoage asked what would happen if a county would not adopt a retention schedule and Jim Corridan stated now they do not have the option.

The Oversight Committee on Public Records took the following action regarding retention and disposition schedules.

1. COUNTY/LOCAL GENERAL RETENTION SCHEDULE (GEN)

A motion was made by Connie Smith and seconded by Pam Bennett to approve Schedule No. 1 as submitted. Motion carried.

2. COUNTY AUDITOR (AU)

A motion was made by Caroline Bradley and seconded by Pam Bennett to approve Schedule No. 2 as submitted. Motion carried.

3. NON-JUDICIAL COUNTY CLERK (CL)

A motion was made by John Jacob and seconded by Joe Hoage to approve Schedule No. 3 as submitted. Motion carried.

4. COUNTY RECORDER (RE)

A motion was made by Jim Corridan and seconded by Pam Bennett to approve Schedule No. 4 as submitted. Motion carried.

5. COUNTY TREASURER (TR)

A motion was made by Caroline Bradley and seconded by Pam Bennett to approve Schedule No. 5 as submitted. Motion carried.

6. COUNTY CORONER (CO)

A motion was made by Jim Corridan and seconded by Pam Bennett to approve Schedule No. 6 as submitted. Motion carried.

7. COUNTY PROSECUTOR (PR)

A motion was made by Pam Bennett and seconded by Caroline Bradley to approve Schedule No. 7 as submitted. Motion carried.

8. CITIES AND TOWNS (CT)

A motion was made by Jim Corridan and seconded by John Jacob to approve Schedule No. 8 as submitted. Motion carried.

9. SPECIAL DISTRICTS (SD)

A motion was made by Pam Bennett and seconded by Caroline Bradley to approve Schedule No. 9 as submitted. Motion carried.

10. TOWNSHIP TRUSTEE (TT)

A motion was made by Connie Smith and seconded by John Jacob to approve Schedule No. 10 as submitted. Motion carried.

11. PUBLIC LIBRARIES (LIB)

A motion was made by Pam Bennett and seconded by Jim Corridan to approve Schedule No. 11 as submitted. Motion carried.

12. CARE OF INDIANA PUBLIC SCHOOL RECORDS: A RECORD CREATOR'S GUIDE

A motion was made by Pam Bennett and seconded by Micah Vincent to approve Schedule No. 12 as submitted. Motion carried.

12-07-11-07

None

12-07-11-08

ADJOURNMENT

There being no further business, Pam Bennett moved that the meeting be adjourned. John Jacob seconded. Motion carried. Meeting adjourned at 2:40 p.m.