



Office of Administrative Hearings

Records Retention Schedule

Prepared by the State Records Branch
Public Records Division

Approved by the State Archives and Records Commission



This records retention schedule governs retention and disposal of records created, used and maintained by the Office of Administrative Hearings. **Government records in Kentucky can only be disposed of with the approval of the State Archives and Records Commission (the Commission). If records do not appear on a Commission-approved records retention schedule, agencies should not destroy those records.** This agency-specific schedule was drafted by Office of Administrative Hearings personnel and Archives and Records Management Division staff, and reviewed and approved by the Commission. This schedule provides the legal authority for the Office of Administrative Hearings to destroy the records listed, after the appropriate retention periods have passed.

Office of Administrative Hearings personnel should use this agency-specific schedule in combination with the *General Schedule for State Agencies (General Schedule)*, also approved by the Commission. The *General Schedule* applies to records that are created, used and maintained by staff at all or most state agencies. Agency-specific retention schedules are used only by specific agencies and apply to records that are created only by a particular state agency, or to records that a state agency is required to retain longer than the approved time period on the *General Schedule*. The *General Schedule* and agency-specific retention schedule should cover all records for the Office of Administrative Hearings.

This retention schedule applies to state agency records and information regardless of how it is created or stored. For example, information created and sent using e-mail is as much a public record as materials created or maintained in paper. Kentucky law defines public records, in part, as "documentary materials, *regardless of physical form or characteristics*, which are prepared, owned, used, in the possession of or retained by a public agency" (KRS 171.410[1]). This means that records management standards and principles apply to all forms of recorded information, from creation to final disposition, regardless of the medium. Records retention scheduling is important in developing, using, and managing computer systems and other electronic devices. Records management practices encourage cost-effective use of electronic media through accurate retention scheduling and legal destruction of records.

All state government employees are responsible for maintaining records according to the retention schedule, whether those records are stored electronically or in paper. Information must be accessible to the appropriate parties until all legal, fiscal, and administrative retention periods are met, regardless of the records storage medium.

This retention schedule covers the content of records created by the Office of Administrative Hearings, including records created or stored using computers and computer systems. The *General Schedule for Electronic and Related Records* applies to records related to computers or a computer system. Examples of these include system documentation and use records, backup files, or website format and control records.

Audits and Legal Action

Agency records may be subject to fiscal, compliance or procedural audit. If an agency should maintain records longer than the approved retention period, as may be the case with some federal audits, then all affected records should be retained until the audit has been completed and the retention period met. In no case should records that are subject to audit be destroyed until the audit has been completed and retention periods met, or the records have been officially exempt from any audit requirements.

Records may also be involved in legal or investigative actions, such as lawsuits, administrative hearings or open records matters. These records must be retained at least until all legal or

investigative matters have concluded, regardless of retention period. This includes all appeals of lawsuits.

Vital Records

Vital records are essential to the continued functioning of an agency during and after an emergency. Vital records are also essential to the protection of the rights and interests of an agency and of the individuals for whose rights and interests it has a responsibility. Vital records are identified in the retention schedule with a (V).

Confidential Records

While all records created, used and maintained by government agency personnel are public records, not all of those records are open to public inspection. Whether a record is open to public inspection is determined by the state's Open Records laws and other relevant state or federal statutes and regulations. Restriction of public inspection of confidential records may apply to the whole record or only to certain information contained in the record.

Kentucky's public records are considered open for public inspection unless there is some specific law or regulation that exempts them. Agency personnel who believe certain records are confidential should submit a citation from Kentucky Revised Statutes, Administrative Regulations, Code of Federal Regulations, or similar authority. **State agency heads have the responsibility to know all the appropriate confidentiality laws, statutes and regulations that apply to the records maintained by their agency and to see that those laws are enforced.** Even though a record series may or may not be marked confidential on a retention schedule, contradictory laws or regulations that are passed after the schedule has been approved must be honored.

Copies of Records

Agency personnel often make copies of records for internal use or reference purposes. Agencies should designate one copy as the official copy and make sure it is retained according to the records retention schedule. Agencies can destroy all other copies when no longer useful.

Updating the Retention Schedule

Per 725 KAR 1:010, the head of each state government agency is required to designate a member of his or her staff to serve as a records officer. The agency records officer represents that agency in its records-related work with the Archives and Records Management Division. The agency records officer is responsible for assisting the Archives and Records Management Division in drafting a records retention schedule, and in finding any schedule updates to bring before the Commission. The retention schedule should be reviewed on a regular basis to suggest appropriate changes to the Commission.

**Energy and Environment Cabinet
Office of Administrative Hearings**

The Office of Administrative Hearings is an independent administrative section of the Office of the Secretary, Energy and Environment Cabinet. The office holds administrative, adjudicatory hearings regarding air, water, waste and surface mining violations upon the filing of a petition or complaint and recommends to the cabinet secretary the final action that should be taken.

The Office of Administrative Hearings reports directly to the cabinet secretary. It is not affiliated with the cabinet's regulatory programs, inspectors, or the Office of Legal Services, who are, in effect, the "prosecutors" of environmental violations. The hearings are conducted by environmental administrative hearing officers, who are licensed attorneys and full-time employees.

RECORDS RETENTION SCHEDULE

Signature Page

Environmental & Public Protection
Agency

September 9, 2004
Schedule Date

Office of Administrative Hearings
Unit

Change Date

9/9/04
Date Approved by Commission

APPROVALS

The undersigned approve of the following Records Retention Schedule or Change:

Mark H York
Agency Head

9/2/04
Date of Approval

Jan P. Wingate
Agency Records Officer

9-1-04
Date of Approval

Richard L. Perry
State Archivist and Records Administrator
Director, Public Records Division

August 31, 2004
Date of Approval

[Signature]
Chairman, State Archives and Records Commission

9/02/04
Date of Approval

The undersigned Public Records Division staff have examined the record items and recommend the disposition as shown:

Deanna Moses
Records Analyst/Regional Administrator

8/31/04
Date of Approval

Jim Inge
Appraisal Archivist

8/31/04
Date of Approval

Deanna Moses
State/Local Records Branch Manager

8/31/04
Date of Approval

The determination as set forth meets with my approval.

Brian Lykins
Auditor of Public Accounts

9-9-04
Date of Approval

STATE ARCHIVES AND RECORDS COMMISSION
 Public Records Division
 Kentucky Department for Libraries and Archives

STATE AGENCY RECORDS
 RETENTION SCHEDULE

Energy and Environment Cabinet
 Administrative Hearings, Office of

Record Group
 Number
 1906

| Series | Records Title and Description | Function and Use |
|--------|---|---|
| 03229 | Administrative Hearing Case File (V) | This series documents the activities of each case where legal proceedings are initiated on issues relating primarily to surface mining, air, water or waste. Under the terms of KRS 151, 224 and 350, the Cabinet has the responsibility of implementing and enforcing agency programs. A Notice of Non-Compliance or a Notice of Violation document is prepared by a Cabinet inspector and given to a company. It alleges violation of the law. A Notice of Pre-Trial, Preliminary Hearing or Formal Hearing document is mailed to the parties informing them of the date and location of the hearing and the name of the hearing officer. A Complaint or Request for Hearing document initiates the hearing process, alleging that the that the company has violated the law and should be fined. A citizen or group of citizens may request a hearing concerning a Cabinet decision, e.g., a company is issued a permit or a permit is denied. After the hearing, the hearing officer (judge) prepares a report which recommends that the Cabinet Secretary take a determined action, e.g., fine the company. A party that disagrees with the hearing officer's report may file an exception stating why they feel the recommendations of the hearing officer are incorrect. The Secretary reviews the hearing officer's report and makes a written decision, which is the Order. A party has 30 days in which to file an appeal with Franklin Circuit Court. If the Cabinet is put into a position of enforcing the Secretary's Order, its Office of Legal Services would do so through Franklin Circuit Court. |
| | Access Restrictions | None |
| | Contents | Series contains: Notice of Violations, request for hearing or complaint, notice of pre-trial, Notice of Hearing, continuances, briefs, motions, hearing officer's order, interagency memoranda, correspondence, depositions, exhibits, hearing officer's report, exceptions, closure memoranda, proposed assessment |
| | Retention and Disposition | Retain in Agency until case closure and all appeals have been exhausted; transfer to the State Records Center for five (5) years; destroy. |