

STATE ARCHIVES AND RECORDS COMMISSION
Minutes of the Quarterly Meeting
March 12, 2015
Department for Libraries and Archives

The State Archives and Records Commission met at 10:00 a.m., March 12, 2015, in the Board Room, Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky.

Members present: Wayne Onkst, Chair; Mary Margaret Bell, representing Citizens-at-Large; David Gregory, representing regional colleges and universities; Jeremy Rogers, representing Citizens-at-Large; Louise Jones, representing the Kentucky Historical Society; and Dave Schroeder, representing the Kentucky Library Association.

Representatives present: Amy Howard, representing Thomas Zawacki, Secretary, Education and Workforce Development Cabinet; Amye Bensenhaver, representing Jack Conway, Attorney General; Brian Lykins, representing Adam H. Edelen, Auditor of Public Accounts; Jennifer Frazier, representing John D. Minton, Jr., Chief Justice, Supreme Court; Kara Smothermon, representing Jane Driskell, State Budget Director; and Glenn Thomas, representing Jim Fowler, Commissioner, Commonwealth Office of Technology.

Members not present or represented: Richard Belding, representing Citizens-at-Large; Terry Birdwhistell, representing the University of Kentucky; Roger Hamperian, representing Citizens-at-Large; Marcia Seiler, Acting Executive Director, Legislative Research Commission; and Debra Batliner, representing local governments.

Archives and Records Management Division staff present: Barbara Teague, Director, Archives and Records Management Division; Jerry Carlton, Manager, Local Records Branch; Jim Cundy, Manager, State Records Branch; Glen McAninch, Manager, Electronic Records Management Branch; Pam Compton, Records Analyst; Joe Isaac, Records Analyst.

Guests Present: Alaina Myers, Personnel Cabinet; John Nix, Personnel Cabinet; Lawrence Trageser, Taylorsville; John Davidson, Kentucky Housing Corporation; and Jackie Chism, Kentucky Housing Corporation.

Onkst called for introductions by those present.

Jones made a motion to accept the minutes of the previous Commission meeting, seconded by Bell. The vote by members and representatives present was unanimous.

RECORDS RETENTION SCHEDULES

Personnel Cabinet

Isaac was the Records Analyst working on the Schedule additions and revisions. **Additions to the Schedule:** Series 06538, Adoption Benefit Program File; and Series 06553, Time and Attendance Management Reports. **Revision to the Schedule:** Series 04431, Insurance Refund File from "Retain for ten (10) years, then destroy," to "Retain in agency six (6) years, then destroy." *Staff also made administrative changes to three (3) series without changing retention or disposition:* Series 04432, Group Life Insurance Files; Series 04893, KEHP Health Insurance and Flexible Spending Account Enrollment Application; and Series 06080, Payroll Reports.

During the First Extraordinary Session of the 1956 Kentucky General Assembly, the Division of Personnel of the Department of Finance was abolished and the Department of Personnel was created. It was headed by a Commissioner appointed by the Governor. Chief among its responsibilities then, as now, was the certification of applicants for state jobs. Approximately four years later, a uniform Merit System for the Executive Department was created. On December 13, 1995, Executive Order 95-19 elevated the Department of Personnel to cabinet status and all powers and responsibilities of the Department of Personnel were transferred to the Personnel Cabinet. Upon expiration of the order, Executive Order 96-909 was issued on July 11, 1996, to create the Personnel Cabinet and this was confirmed by 1998 SB 139. Currently, the Personnel Cabinet is organized as follows: Office of the Secretary; Office of Administrative Services; Office of Legal Services; Office of Employee Relations; Office of Diversity and Equality; Office of Governmental Services; Center of Strategic Innovation; Ky Public Employees Deferred Compensation; Department of Human Resources Administration; and the Department of Employee Insurance.

Teague said that the Advisory Committee had asked about the fifty-year retention period proposed for Series 06553, Time and Attendance Management Reports. Personnel Cabinet staff members do receive requests for information going back to the 1960s, which accounts for the lengthy retention period.

Bell made a motion to approve the Schedule additions and revisions, seconded by Frazier. The vote by members and representatives present was unanimous.

Finance and Administration Cabinet – Kentucky Housing Corporation

Isaac was the Records Analyst working on the revised Schedule. **Additions to the Schedule:** Series 06536, Tenant Files – Tenant Based Programs; Series 06550 Tenant Files – Project-Based Contract Administration; Series 06537, Owner Files; Series 06551, Housing Assistance Payment (HAP) Contract Files; Series 06540, 1099 IRS Forms for

Housing Assistance Payments; Series 06541, Section Eight Management Assessment Program File; Series 06552, Housing Assistance Payment (HAP) Voucher Reports; Series 06542, Single Family Loan Files; Series 06543, Lender Agreements; Series 06544, Housing Education and Counseling Files; Series 06545, Hardest Hit Funds Loan Files; Series 06546, Homeownership Protection Center; Series 06547, Hardest Hit Funds Treasury Audit Work Papers; and Series 06548, Specialized Housing Program Files. **Revision to the Schedule:** Series 05452, Loan Files, from "Destroy five (5) years after the close or termination of the loan," to "Destroy seven (7) years after the close or termination of the loan."

To promote and improve the health, welfare, and prosperity of the people of the Commonwealth of Kentucky, the Kentucky Housing Corporation (KHC) was established as a result of the passage of HB 27 during the 1972 General Assembly. KRS Chapter 198A specifies KHC's creation, purpose, and powers. Among its powers, the KHC can provide low-cost housing to low- and moderate-income families, make insured construction loans to sponsors of land development and residential housing, purchase insured mortgage loans made to sponsors and to families of low and moderate income, and lease and sublease residential housing to families of low and moderate income.

This is a complete revision of the records retention schedule for the Housing Corporation.

Current Schedule date: December 8, 2005

Proposed Schedule date: March 12, 2015

Isaac said that 24 CFR 982.158 had been added as an access restriction for Series 06552, Housing Assistance Payment (HAP) Voucher Reports, based on the advice of and attorney at the Housing Corporation.

Isaac said that the Housing Corporation does issue reports that present data represented by these records in the aggregate.

Schroeder made a motion to approve the revised Schedule, seconded by Thomas. The vote by members and representatives present was unanimous.

Local Government General Records Retention Schedule

Carlton was the Records Analyst working on the Schedule additions and revision. **Additions to the Schedule:** Payroll: Series L6886, W-9 Form (Request for Taxpayer Identification Number and Certification). Personnel: Series L6887, Employee Disciplinary File. **Revision to the Schedule:** Series L6707, Body-Worn Camera Recordings, from "Retain non-evidentiary recordings for sixty days (60) days, then destroy. Evidentiary recordings used in any investigation, pending investigation, litigation, or open records

request must be maintained until all investigative or legal activity is completed, then destroy," to "Retain all recordings of DUI-related incidents for fourteen (14) months if there is no appeal or if they do not document the actual happening of an accident involving a motor vehicle or after a decision has been made not to prosecute. Destroy upon order from District Court. If the actual happening of an accident is recorded, retain twenty-six (26) months if there is no appeal. Destroy upon order from District Court. Retain non-evidentiary recordings for thirty (30) days, then destroy. If recordings used in any investigation, pending investigation, litigation, or open records request become part of a case file, maintain recordings for the approved retention period of that case file, then destroy."

The Local Government General Records Retention Schedule was created in 1999 and has been updated periodically since that time. This schedule lists those record series that may be found throughout local government agencies. Local governments in Kentucky include, but are not limited to, all 120 counties and their many offices, over 400 incorporated cities, 173 school districts, 15 Area Development Districts and at least 2000 Special Purpose Government Entities.

Carlton said that disciplinary actions against local government employees are included in Series L5034, Personnel File, with a retention period of five years after termination of employment. Advisory Committee members had recommended a change in retention to sixty years from date of hire for both Series L6887, Employee Disciplinary File, and for disciplinary actions maintained in Series L5034, Personnel File.

In response to a question by Lykins, Carlton said that disciplinary actions is maintained either as a separate file or as part of the Personnel File, but not both.

Bell asked whether the description of Series L5034, Personnel File, included a reference to disciplinary actions. Carlton said it did.

Bell asked whether a ten-year retention period would be more appropriate for disciplinary actions. She also pointed out that there was no distinction between major and minor violations that resulted in disciplinary actions.

Onkst asked why sixty years had been chosen originally. Lykins suggested that it had been to cover at least the length of an employee's career. Howard said that this would also help ensure the file would be available to future employers. Teague said that the Advisory Committee members, after a lengthy discussion, had agreed that the sixty-year retention period was more fitting for disciplinary records.

Rogers said that the Committee members had also contrasted this with the Personnel Cabinet's handling of disciplinary records, which they maintain as part of Series 04522,

Master Personnel Folder, with a retention period of fifty years after most recent date of separation.

Bell asked whether L2639, Complaints Against Staff – Substantiated, and L6454, Complaints Against Staff – Unsubstantiated, both on the Public School District Retention Schedule, would be affected by what is being proposed. Substantiated complaints have a retention period of five years after termination of employment. Unsubstantiated complaints have a retention period of two years. Carlton said they would not be affected. Teague said that the proposed change represents the result of the formal disciplinary process. Bell said that the disciplinary record would be kept separately from the investigation record.

Carlton said that the proposed retention period Series L6707, Body-Worn Camera Recordings, would bring those recordings into line with recordings made by cameras in vehicles. These files would also involve high storage cost and staff time to manage the files. Advisory Committee members had also wanted the disposition to include a statement that the recordings may become a part of a different Series, such as an investigation file, and should then take on the retention period of that Series. Carlton said that felony case files have an eighty-year retention period and maintaining these recordings for eighty years is unrealistic, especially given the obsolescence and deterioration of technology. Frazier said that the recordings may be analogous to evidence, which, while part of a court case, is destroyed after a certain period of time. The case file itself is permanent.

In response to a question by Frazier, Carlton said that “Destroy upon order from District Court” in the disposition of Series 6707, Body-Worn Camera Recordings, was taken directly from statute. “Retain all recordings of DUI-related incidents for fourteen (14) months if there is no appeal or if they do not document the actual happening of an accident involving a motor vehicle or after a decision has been made not to prosecute” is also in statute.

In response to a question by Howard, Carlton said that a recording would have evidential value if a relevant complaint or arrest took place within the thirty-day time period.

Bensenhaver said that if maintaining the recordings for the same retention period as investigative files is impossible, the phrase should not be in the disposition instructions. Lykins said that there may be other electronic records that are part of court case files and present this issue. Frazier said that the permanent retention period applied only to the paper file.

Thomas suggested that “If recordings used in any investigation, pending investigation, litigation, or open records request become part of a case file, maintain recordings for

the approved retention period of that case file, then destroy” be removed from the disposition of L6707, Body-Worn Camera Recordings, and “Evidentiary recordings used in any investigation, pending investigation, litigation or open records requests must be kept until all investigative or legal activity is completed” be included.

Frazier said that there may be multiple versions of a given recording. Carlton said that he could include instructions that agencies destroy the original and all copies of the recording.

Thomas made a motion to approve the Schedule additions and revision, removing “If recordings used in any investigation, pending investigation, litigation, or open records request become part of a case file, maintain recordings for the approved retention period of that case file, then destroy” from the disposition of L6707, Body-Worn Camera Recordings, and including “Evidentiary recordings used in any investigation, pending investigation, litigation or open records requests must be kept until all investigative or legal activity is completed. Then destroy the original and all copies of the recording,” seconded by Lykins. The vote by members and representatives present was unanimous.

Onkst noted that David Gregory, representing regional colleges and universities, had come into the meeting during the discussion on the Local Government General Records Retention Schedule.

Legislative Branch – Legislative Ethics Commission

Compton was the Records Analyst working on the revised Schedules. **Revisions to the Schedule:** Series 04404, Statement of Financial Disclosure File, from “Retain in Agency two (2) years after the legislator leaves office, or the candidate loses his bid for election. Transfer to State Records Center ten (10) years. Destroy after audit,” to “Retain in Agency last five (5) years of completed forms as long as filer is active, and after individual ceases to be a member of the General Assembly or no longer employed in that position, retain an additional three (3) years, then destroy. Total retention is eight (8) years. If the candidate loses his bid for election or ceases to be in the position requiring a Financial Disclosure Statement, retain in Agency three (3) years, then destroy.” *Staff also made administrative changes to six (6) series without changing retention or disposition:* Series 04402, Employer’s Registration Statement File; Series 04403, Legislative Agent’s Registration Statement File; Series 04405, Complaint File; Series 04406, Permanent Complaint/Adjudicatory Proceeding File; Series 04407, Attorney Litigation Working File; and Series 04408, Advisory Opinion File.

In 1993, the Kentucky Legislative Ethics Commission (KLEC) was established by an extraordinary session of the General Assembly that enacted the Code of Legislative Ethics. The Commission is an independent authority within the Legislative Department of state government. It is charged with the enforcement of the Code and is composed

of nine (9) citizen members. The Code regulates conduct by legislators, lobbyists and the employers of lobbyists. Before 1993 a Board of Ethics made up of legislators oversaw legislative ethics while oversight of lobbyists was with the Office of the Attorney General. KLEC has jurisdiction over legislative agents (lobbyists), employers (individuals or entities who engage legislative agents), and members of the General Assembly. The legislative ethics law covers four (4) broad subject matters: registration of legislative agents and employers; Statements by legislative agents and employers documenting lobbying expenditures and expenses, and financial transactions; conduct of members of the General Assembly; and financial disclosure statements of the General Assembly, legislative candidates, and key legislative staff. Kentucky Revised Statutes 6.601 to 6.849 governs KLEC and provides the Code of Legislative Ethics. Kentucky Administrative Regulations 2 KAR 2:010 to 2 KAR 2:040 specify forms for registration and financial reporting required by the Code.

This is a complete revision of the records retention schedule for the Legislative Ethics Commission.

Current Schedule Date: September 8, 1994

Proposed Schedule Date: March 12, 2015

Compton said that the proposed change to Series 04404, Statement of Financial Disclosure File, will bring retention of that Records Series into line with statutory requirements.

Jones made a motion to approve the revised Schedule, seconded by Rogers. The vote by members and representatives present was unanimous.

Department of Law – Office of the Attorney General – Boards and Agencies

Compton was the Records Analyst working on the new Schedule. **Addition to the Schedule:** Series 06539, Attorney Legislation Bill and Regulation Research/Drafting File.

The elective office of Attorney General is established by the Constitution of Kentucky. Sections 91 and 93 of the Constitution provide that the duties of the Attorney General, as well as other constitutional officers, shall be prescribed by law. Other sections of the Constitution that pertain to the Attorney General include Section 94 (petition to have Governor declared disabled); Section 87 (service as acting Governor); Section 92 (qualifications); Section 95 (time of election); and Section 96 (compensation). KRS Chapter 15 provides with specificity the duties of the Attorney General and the functions of the Department of Law. KRS 15.020 establishes the following duties: Act as the chief law officer of the Commonwealth, and the agencies and political subdivisions thereof; Act as the legal adviser of all state officers and governmental agencies and

furnish opinions upon request pertaining to their official duties; Prepare drafts of written instruments for public use; Exercise all common law duties of the Office of the Attorney General as may be modified by statutory law; Appear for the Commonwealth in all cases in the Supreme Court or Court of Appeals of interest to the Commonwealth, and commence all actions or enter his appearance in all cases, hearings and proceedings in and before all other courts, tribunals, or commissions in or out of state; and Attend to all litigation and legal business in or out of state required of him by law, or in which the Commonwealth has an interest, and any litigation or legal business that any state officer or agency may have in connection with, or growing out of, his or its official duties, except where it is made the duty of the commonwealth's attorney or county attorney to represent the Commonwealth. The assistant attorneys general assigned to represent Boards and Agencies assist with drafting legislation and regulations, provide legal representation in litigation and administrative adjudication, attend Board meetings, and provide advice on all legal matters.

In response to a question by Frazier, Compton said that the retention period of eight years would allow attorneys to review past work. The file is only used within the Attorney General's Office.

Rogers made a motion to approve the Schedule addition, seconded by Bell. The vote by members and representatives present was unanimous.

Education and Workforce Development Cabinet – Department of Education – Office of Administration Support

Isaac was the Records Analyst working on the Schedule revisions. **Revisions to the Schedule:** Series 02555, School Bus Accident Summary, from "Retain permanently," to "Retain one (1) copy of the Accident Summary in agency permanently. Retain Annual School Bus Accident Reports submitted by school districts in agency until matching year's summary is distributed, then destroy." *Staff also made administrative changes to one (1) series without changing the retention or disposition:* Series 02560, School Bus Driver's Data Sheet.

The structure of the Department of Education was significantly changed in 1990 with enactment of HB 814 and HB 940. The Workforce Development Cabinet was created in HB 814, which required the Department to transfer to the new cabinet the State Board of Adult Vocational Education and Vocational Rehabilitation; Office of Vocational Rehabilitation; and Adult Basic Education programs. HB 940, the Kentucky Education Reform Act of 1990 (KERA), was enacted in response to a 1989 Kentucky Supreme Court decision that held Kentucky's system of common schools to be unconstitutional. KERA provided that positions in the Department of Education were to be abolished, that all employees were to be terminated at the close of business June 30, 1991, and directed the new commissioner of Education to reorganize the Department with new

positions, as of July 1, 1991. On June 28, 1991, the Commissioner issued Executive Order 91-DOE-01, which reorganized the Department of Education. The Kentucky Board of Education hires the Commissioner of the Department of Education, who serves as the chief state school officer. The Department was reorganized again December 16, 1998, pursuant to Executive Order 98-1671 and again July 19, 2010 with an Executive Order from the Governor to come later. The current organizational structure is as follows: Office of the Commissioner; Office of Guiding Support Services and General Counsel; Office of Administration and Support; Office of Knowledge, Information and Data Services; Office of Next-Generation Schools and Districts; Office of Assessment and Accountability; and Office of Next-Generation Learners.

In response to a question by Frazier, Isaac said that no information is lost between the Summary reports and the reports of specific incidents.

Schroeder made a motion to approve the Schedule revisions, seconded by Thomas. The vote by members and representatives present was unanimous.

Kenton County Airport Board – Cincinnati/Northern Kentucky International Airport

Carlton was the Records Analyst working on the Schedule additions. **Additions to the Schedule:** Series L6884, Parking Card Authorizations; and Series L6885, Parking Tickets.

Cincinnati/Northern Kentucky International Airport, sometimes called the Greater Cincinnati Airport is located in Boone County, Kentucky, United States and serves the Greater Cincinnati metropolitan area. It was established in 1942 as a training facility for the military. It became a commercial airport in 1947 and has grown since then. Despite being located in Boone County, the airport operations are governed by the neighboring Kenton County Airport Board. Because it is governed by this board it is considered a local government agency. The airport's revenue does not come from taxes but from fees collected by those using the airport. The airport's code, CVG, comes from the nearest major city at the time of its opening, Covington, Kentucky. Cincinnati/Northern Kentucky International Airport covers an area of 8,000 acres.

Carlton presented the Schedule additions.

Frazier made a motion to recommend the Schedule additions to the Commission for its approval, seconded by Bell. The vote by members present was unanimous.

Lexington/Fayette Urban County Government – Council Clerk

Carlton was the Records Analyst working on the Schedule addition. **Addition to the Schedule:** Series L6890, Personal Information Security Breach Investigation/ Notification File.

Lexington/Fayette Urban County Government (LFUCG) was formed by the merger of the City of Lexington and Fayette County. The merged government officially chartered January 1, 1974 after a referendum was approved by the citizens of both governments. A government - wide records retention schedule was approved by the Archives and Records Commission on September 9, 2004. There have been numerous additions and changes to the schedule since that time.

Louisville/Jefferson County Metro Government

Carlton was the Records Analyst working on the Schedule addition. **Addition to the Schedule:** Series L6891, Personal Information Security Breach Investigation/ Notification File.

Louisville and Jefferson County merged into the Louisville/Jefferson County Metro Government in January 2003. This took place after special legislation was passed whereby a county with a first class city could merge into one government. A referendum was on the ballot in 2001 and was passed by voters in Jefferson County. Under the new government some of the existing incorporated municipalities joined the new merged government.

The additions for the Lexington/Fayette Urban County Government and Louisville/Jefferson County Metro Government were considered together. Carlton presented the Schedule additions.

Thomas made a motion to approve the Schedule additions, seconded by Frazier. The vote by members and representatives present was unanimous.

Public School District

Carlton was the Records Analyst working on the Schedule additions. **Additions to the Schedule:** Personnel: Series L6888, Employee Disciplinary File; and Series L6889, Personal Information Security Breach Investigation/ Notification File.

The first attempt to assemble a school district – wide records retention schedule was made in 1988. The Archives and Records Commission approved the schedule that year. In 1999 a complete revision of the schedule was approved by the Commission. This schedule included K through 12 and the school district central office in one schedule. In

March of 2003 the Commission once again approved a revision of the entire schedule. In June 2012 another complete revision was presented to the Commission where it was approved. The 173 school districts in the Commonwealth produce an overwhelming amount of paper and electronic records. We continue to work with school districts providing records management training and direct service.

Carlton presented the Schedule additions.

Schroeder made a motion to approve the Schedule additions, seconded by Jones. The vote by members and representatives present was unanimous.

State University Model

Cundy was the Records Analyst working on the Schedule addition and revisions. **Addition to the Schedule:** Series U0138, Personal Information Security Breach Investigation/Notification File. **Revisions to the Schedule:** Series U0120, Research Data (Sponsored or Non-Sponsored), from "Destroy five (5) years after submission or publication of the final project report for which the data were collected, whichever is longer, and audit. NOTE: If retention requirements specified in funding agency's regulations are longer, the agency requirements will apply. Also, at the discretion of the university, some data may be retained longer for use in subsequent projects," to "Destroy five (5) years after submission or publication of the final project report for which the data were collected, whichever is longer, and audit. If retention requirements specified in funding agency's regulations are longer, the agency requirements will apply. At the discretion of the university, some data may be retained longer for use in subsequent projects. If records are part of a research misconduct investigation, retain until seven (7) years after end of the investigation, then destroy;" Series U1802, Research Approval Files - Human Subjects, from "Destroy five (5) years after completion of the activity, unless otherwise specified by the terms of the grant contract," to "Retain until six (6) years after the study is closed, then destroy. If records are part of a research misconduct investigation, retain until seven (7) years after end of the investigation, then destroy;" and Series U1803, Research Approval Files - Non-Human Subjects, from "Destroy five (5) years after completion of the activity, unless otherwise specified by the terms of the grant contract," to "Retain for three (3) years, then destroy. Retain records that relate directly to proposed activities and proposed significant changes in ongoing activities reviewed and approved by the Institutional Animal Care Use Committee (IACUC) for the duration of the activity and for an additional three (3) years after completion of the activity. If records are part of a research misconduct investigation, retain until seven (7) years after end of the investigation, then destroy."

The State University Model Records Retention Schedule covers records that are common among Kentucky's public university campuses and its Community and

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Technical College System. This is part of the ongoing effort to revise the State University Model Records Retention Schedule.

Cundy presented the Schedule addition and revisions.

Bell made a motion to approve the Schedule addition and revisions, seconded by Gregory. The vote by members and representatives present was unanimous.

The next item was **other business**. Carlton, discussed Local Records Grants. There is \$430,000 in the Local Records Branch's Fee Account. Three-hundred thousand dollars will be cut to help balance the Commonwealth's budget. Over \$300,000 in grants will be given out in June.

Teague announced that Glen McAninch, who had been with the department since 1987, would be retiring May 1, 2015. She thanked Glen for all his work toward making the department's electronic records program one of the leading state archival electronic programs in the country.

Teague said that Commission members and representatives were welcome to attend a tour of the new State Records Center after the meeting. It was determined that less than a quorum of the members or representatives would be attending.

There being no further business, Onkst adjourned the meeting at 11:25.