

Managing Government Records: A Cooperative Undertaking

An Introduction to Kentucky's
Public Records Management Law

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Introduction

Managing Government Records: A Cooperative Undertaking

All public employees need appropriate records to do their jobs. Proper record keeping and sound records management help assure effective and efficient administration of programs, fulfill legal responsibilities, provide an adequate audit trail, and record the history and intent of public policy. Employees of publicly-funded institutions have a responsibility under Kentucky law to see that information created and maintained in government offices -- **public records**, as defined by statute -- is organized and accessible for use. This requirement is outlined in the Commonwealth of Kentucky's Open Records Act (Kentucky Revised Statute [KRS] 61.870-884). The Act explicitly recognizes the connection between managing government records and making them accessible to the public, barring any statutory restrictions.

Implementation of a records management program involves the participation of agency personnel, led by the agency's Records Officer, working in cooperation with staff from the Kentucky Department for Libraries and Archives (KDLA) and the State Libraries, Archives, and Records Commission (the Commission). Under KRS 171.410-740, the head of a public agency, KDLA, and the Commission each have different responsibilities to help ensure that records are created and well-managed and that permanently valuable records are preserved, protected, and accessible.

What are public records?

Public records are defined by KRS 171.410 (1) as *"all books, papers, maps, photographs, cards, tapes, disks, diskettes, recordings, and other documentary materials, regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency."*

Public records are recorded information created or received by a state or local government agency in any format, which documents a transaction or activity by or with any public official or employee of that agency.

What is a public agency?

For public records management purposes, a **public agency** is defined by KRS 171.410 (4) as *"every state or local office, state department, division, bureau, board, commission and authority; every legislative board, commission, committee and officer; every county and city governing body, council, school district board, special district board, municipal corporation, and any board, department, commission, committee, subcommittee, ad hoc committee, council or agency thereof; and any other body which is created by state or local authority and which derives at least twenty-five percent (25%) of its funds from state or local authority."*

Do agencies have to document their activities?

Under the terms of KRS 171.640, agency heads are assigned explicit responsibility for ensuring that records containing adequate and proper documentation of the organizational functions, policies, decisions, procedures, and essential transactions of the agency are created and preserved. This includes records designed to furnish information necessary to protect the legal and financial rights of the government and of persons directly affected by a government agency's activities.

What is records management?

Records management is the systematic control of recorded information, regardless of format, from original creation to ultimate disposition. Every office creates records, which may be paper, microfilm, electronic, or some other format.

These records can be a burden to maintain. Records management allows an organization to:

- Meet its legal and regulatory responsibilities;
- Decide which records to keep and which to destroy;
- Ensure an adequate documentary record of its functions, policies, decisions, procedures, and essential transactions;
- Identify and properly control records of continuing or archival value;
- Operate effectively, economically, and efficiently; and
- Provide the right information to the right person, at the right time, at the lowest possible cost.

Who has responsibility for public records management in Kentucky?

A publicly-funded agency is required to have a records management program and to work with KDLA and the Commission to implement that program.

All state and local government employees are responsible for the records they create and maintain, and all employees can make a major contribution to good records management in their agencies on a daily basis.

Kentucky law (KRS 171.410 - 740) assigns oversight of the management of state and local government records to KDLA. The statutes also set out specific responsibilities delegated to the head of any public agency and to the Commission.

What are the records management responsibilities of an agency head?

Under KRS 171.680, an agency head is required to establish and maintain an active, continuing program for the economical, efficient management of the agency's records. KRS 171.680 (2), mandates that this program should include:

- Effective controls over the creation, maintenance, and use of records in the conduct of current business;
- Cooperation with KDLA in applying standards, procedures, and techniques designed to improve the management of records;
- Promotion of the maintenance and security of records deemed appropriate for preservation;
- Facilitation of the segregation and disposal of records of temporary value; and
- Compliance with the provisions of KRS 171.410-740 and the rules and regulations produced by the Department.

What are the responsibilities of a Records Officer?

A Records Officer is the person named by the agency head to serve as the official liaison with KDLA on records management issues and to coordinate records management within the agency (725 KAR 1:010). Agencies should contact KDLA's State Records Branch to submit proper documentation of the appointed Records Officer. The Records Officer typically works with that agency's staff to compile or update a Records Retention Schedule in *draft* form, prior to its review by KDLA personnel and the Commission. The schedule is subject to detailed analysis at this stage, including an assessment by legal and audit staff.

In addition to maintaining a current Agency Retention Schedule, the Records Officer coordinates records management practices in the agency by inventorying, analyzing, and advising the staff on records management procedures; participates in the agency's information technology planning process; oversees the transfer of records and publications; and supervises the destruction of records that is authorized to occur within the agency. The Records Officer should note the authorization for said destruction and the amount of records destroyed, per 725 KAR 1:010, Section 2 (2).

What is the function of the State Libraries, Archives, and Records Commission?

The Commission, under KRS 171.420 and 171.670, has the authority to review and approve all records retention schedules submitted by state and local public agencies through the Department. In this task, it considers the importance and potential uses of the record to the creating agency and the value of information within a particular record. It also analyzes recommendations jointly developed by agencies and KDLA's Archives and Records Management Division as to how long particular records should be kept, and determines any further disposition that should take place. The Commission is concerned with preserving information of continuing value and making timely disposition of information of temporary value.

The Commission also advises the Department on a range of other matters relating to archives and records management.

What is the Commission's responsibility and who are its members?

In all cases, the Commission has final and exclusive authority to determine the ultimate disposition of Kentucky's public records. Per KRS 171.420, its decisions are binding on all parties concerned, and those decisions can only be modified or otherwise changed by its own actions.

The Commission is a seventeen-member body composed of:

- The state librarian or his or her designee, who shall be the chairperson of the commission;
- The secretary of the Education and Workforce Development Cabinet or his or her designee, who shall serve as vice chairperson;
- The Auditor of Public Accounts or his or her designee;
- The state law librarian or his or her designee;
- The director of the Legislative Research Commission or his or her designee;
- The Attorney General or his or her designee;
- The executive director of the Kentucky Military Heritage Commission or a designee of the commission;
- The executive director of the Commonwealth Office of Technology or his or her designee;
- The president of the Kentucky Association of School Librarians or his or her designee;
- The executive director of the Kentucky Historical Society or his or her designee;
- The executive director of the Kentucky Library Association or his or her designee;
- The president of the Council on Postsecondary Education or his or her designee;
- Four (4) citizens at large appointed by the Governor, including one (1) member representing library users with disabilities, one (1) member representing disadvantaged persons, and two (2) members representing library users; and
- One (1) member, who shall not be an elected official, appointed by the Governor

from a list of three (3) persons, with one (1) name submitted by each of the presidents of the Kentucky League of Cities, the Kentucky Association of Counties, and the Kentucky Association of School Administrators.

The Commission meets and approves new and revised schedules four (4) times a year. The meetings are held on the second Thursday of each March, June, September, and December.

What is records retention scheduling?

Records retention scheduling is the systematic process of identifying, describing, and analyzing each record and each electronic records system created by an agency. This leads to a preliminary assessment of the administrative, legal, fiscal, and future historical or research value of each record type. These values, and any special directions for the management or disposition of this information during and after its active office life, are documented in a draft Records Retention Schedule. Draft schedules are submitted to the Commission, for its review.

What is a records retention schedule?

A current and accurate records retention schedule represents a comprehensive inventory of the information holdings of a government agency and is the basis for an agency's records management program. A records retention schedule is a list of each record type, termed a "record series," and each electronic records system created by a public agency. A record series is either a document or a set of documents maintained together because they relate to a particular subject or function, result from the same activity, take the same form, or because of some other relationship arising out of their creation, receipt, or use.

A schedule shows the title of each record type, a unique number by which it can be identified, a description of the record series and its contents, and disposition instructions explaining how long to maintain the record and what to do with it once the retention period has ended.

Approved records retention schedules furnish public agencies with clear legal authority to make disposition of their records accordingly, and with a strong resource for management control. They help public officials and employees identify which records must be retained permanently and which records may be destroyed after a certain period of time. They also help an agency ensure that adequate documentation of its activities has been created and is being maintained, as required by statute.

Schedules ensure accountability for the information being produced, serve as a critical asset in a state agency's strategic information technology planning, and provide agencies with a valuable resource with which to respond to information requests under Kentucky's Open Records Law. Without an approved Records Retention Schedule, state or local agencies do not have the legal authority to destroy any of its records,

regardless of format, and can incur substantial costs or liabilities if such destruction does occur (KRS 519.060).

Having a schedule approved by the Commission is an important first step for an agency as it develops a records management program. For a records management program to be fully implemented, however, an approved schedule must be used on a regular basis by agency personnel.

When an agency finds it must create new records or electronic systems or when it determines that certain records or systems are obsolete and are no longer being created, the schedule must be revised to reflect these changes. Once new or revised schedules are approved by the Commission, per KRS 171.420 and 171.670, agencies may apply schedules to their records management needs, with the confidence that they have the legal authority to make disposition of their records when following the directions contained in the schedule.

Records retention schedules for state and local government agencies are available on KDLA's website.

What is disposition?

As it is used in this document, the term "disposition" refers to what is done with records when those records are no longer needed for current business. Disposition possibilities include transferring records from one agency to another when functions are officially transferred, transferring records to the State Records Center, destroying temporary records at an approved time, or transferring records of historical value to the State Archives.

What about the proper storage and protection of records?

Another important role delegated to the agency is ensuring the proper storage of records. Under KRS 171.690, whenever an agency head determines that substantial economies or increased operating efficiency can be achieved, the agency head is directed to provide for the storage, processing, and servicing of appropriate records in the State Records Center maintained and operated by KDLA, or in a location maintained and operated by the agency itself that has been approved by KDLA.

Providing for the protection of records is another essential responsibility delegated to government agencies. As directed by KRS 171.710, the agency head is required to establish such safeguards against removal or loss of records as she or he believes necessary and as may be required by KDLA rules and regulations. These safeguards must include making it known to all officials and employees of the agency that no records are to be transferred, turned over to another entity, or destroyed except in accordance with the law, and calling their attention to the penalties provided by law for the unlawful removal or destruction of records.

The agency head is also directed to notify KDLA of any actual, impending, or threatened unlawful removal, defacing, alteration, or destruction of records in the custody of the agency that come to his/her attention, and with the Department's assistance, to initiate action through the Office of the Attorney General for recovery of any records which may have been unlawfully removed and for any other redress as may be provided by law. Penalties are established in statute for violations of the key elements of Kentucky's public records management law. For state employees, these can include dismissal from state government. Kentucky's tampering with public records statute (KRS 519.060) and laws dealing with unlawful access to a computer (KRS 434.845 - 850) and misuse of computer information (KRS 434.855) describe various records-related offenses punishable as felonies under the Kentucky Penal Code.

How are state agency publications managed?

A state publication or report is any published material, regardless of format, issued for general distribution, which documents agency-related functions or activities. As such, a state publication may be considered a "published record." State government agencies publish hundreds of reports, newsletters, and studies each year, either in traditional paper format or on websites. At times, a state publication may provide the only documentation of an agency or program's activities. State publications complement the information contained in agency files to present a full accounting of agency activity over time.

Under KRS 171.450 and 725 KAR 1:040, Section 2, state agencies must forward three (3) copies of all publications produced for general public distribution to the KDLA, Archives and Records Management Division, unless the publication is submitted electronically. Agencies only need to forward one (1) copy of an electronic publication.

What is the role of the Office of the Attorney General?

All records produced by a public agency are subject to the provisions of the Open Records Act (KRS 61.870 – 884). Certain records and confidential information are exempt from inspection; these exemptions are stated in KRS 61.878. If, in the course of an open records investigation, the Office of the Attorney General determines that an agency has not appropriately managed its records, per KRS 171.410 – 740, the matter may be referred to KDLA for a records management review.

KRS 15.257 (1) requires the Office of the Attorney General to distribute to all county judge/executives, mayors, county attorneys, city attorneys, superintendents of public school districts, presidents of each state public postsecondary educational institution, and attorneys of public school districts and postsecondary educational institutions throughout Kentucky written information that explains the procedural and substantive provisions of the Open Records Act together with information required by KRS 171.223 to be prepared by the KDLA concerning proper retention and management of public records. This distribution occurs whenever there is a change in the Open Meetings or Open Records Act.

What records management services does KDLA provide?

Under the provisions of KRS 171.450, KDLA is responsible for managing and controlling records, in whatever medium, created by state and local government agencies in the Commonwealth. Specifically, as provided in KRS 171.410 - 740, KDLA establishes standards, procedures, and administrative regulations for recording, managing, preserving, and reproducing government-created or maintained records. Chapter 1 of 725 KAR provides further explanation of records management in Kentucky government.

KDLA works in close collaboration with government agencies and their records officers to prescribe policies, principles, and administrative regulations to be followed by state and local government agencies in managing their records; provides records analysis and scheduling assistance to agencies; furnishes technical assistance to agencies whose records have been damaged in disasters; and provides records management training and educational programs for public agencies.

KDLA also serves as the central repository for archival public records in Kentucky and creates finding aids for records in archival custody. Records housed at the State Archives are made available for research through the Department's Archives Research Room. At the State Records Center, KDLA offers centralized high-density, low-cost storage and access services for government records of non-permanent retention. KDLA also sets rules governing the transfer of records from one agency to another.

Where should I go for assistance or more information?

All public records management services are provided through the Department's Archives and Records Management Division, which can be reached at (502) 564-8300.

There are many helpful resources and information available on the KDLA website: <https://kdla.ky.gov>.