

# AGENCIES' RECORDKEEPING RESPONSIBILITIES

## Title 38 PUBLIC RECORDS

### Chapter 1 Custody and Protection

**38-1-10. Disposal of records.**-- No public official may mutilate, destroy, sell, loan, or otherwise dispose of any public record without the consent of the public records administration program of the secretary of state.

**38-1-11. Assistance of the public records administration program.**-- The public records administration program of the secretary of state shall have the right to examine the condition of public records and shall give advice and assistance to public officials in the solution of their problems of preserving, creating, filing, and making available the public records in their custody. When requested by the program, public officials shall assist the program in the preparation of records control schedules of public records in their custody approved by the head of the agency having custody of the records. Upon review and approval of the schedules by the program, the program shall, subject to the availability of necessary space, staff, and other facilities for those purposes, make available space in its record center for the filing of semi-current records so scheduled and in its public records repository for noncurrent records of permanent value and shall render such other assistance as needed, including the microfilming of records so scheduled.

### Chapter 3 Public Records Administration

**38-3-6. Public records custody and disposal.**-- (a) Each agency shall prepare and submit to the program, in accordance with the rules and regulations of the program, record control schedules for all public records in the custody of the agency.

(b) The offices of the attorney general and the auditor general will advise the program on the legal and fiscal values of records covered by proposed records control schedules.

(c) Those records which are determined by an agency not to be needed in the transaction of current business but which, for legal or fiscal requirements, must be retained for specific time periods beyond administrative needs, shall be sent to the records center. The records will be kept in the center until time for disposition as provided in record control schedules.

(d) Public records possessing permanent value as determined by approved records control schedules shall be transferred to the public records repository when no longer needed by an agency in transaction of current business.

(e) Title to any record placed in the records center shall remain in the agency placing the record in the center.

(f) Title to any record transferred to the public records repository as authorized in this chapter, shall be vested in the program.

(j) No public record shall be destroyed or otherwise disposed of by any agency without prior notice to the program.

**38-3-7. Agency responsibilities.**-- It shall be the duty of each agency to:

(1) Cooperate with the program in complying with the provisions of this chapter.

(2) Establish and maintain an active and continuous program for the economical and efficient management of public records.

## Title 42 STATE AFFAIRS AND GOVERNMENT

### Chapter 8.1 State Archives

**42-8.1-10. Determination of value.**-- Every public officer who has public records in his or her custody shall consult periodically with the state archivist together with the state auditor, and the attorney general, and those officers shall determine whether the records are of permanent legal or historical value. Those records unanimously determined not to be of permanent legal or historical value shall be disposed of by such method as specified by §38-3-6. A list of all records so disposed of, together with a statement certifying compliance with §38-3-6, signed by the archivist, shall be filed and preserved in the office from which the records were drawn.

**42-8.1-17. Duties of agencies.**-- It shall be the duty of each agency of the state and political subdivision thereof to:

- (1) Cause to be made and preserved records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal rights of the government and of the persons directly affected by agency's activities;
- (2) Cooperate fully with the division in complying with the provisions of this chapter;
- (3) Establish and maintain an active and continuing program for the preservation of records of permanent legal or historical value and assist the division to implement the provisions of this chapter;
- (4) Establish necessary safeguards against the removal or loss of records. These safeguards shall include notification to all officials and employees of the agency that no records in the custody of the agency are to be alienated or destroyed except in accordance with the provisions of this chapter, §§ 38-1-10 and 38-3-6;
- (5) Designate an agency records officer who shall establish and operate an archives and records management program for the agency in cooperation with the division of state archives and the public records administration.

**42-8.1-18. Penalties.**-- Any officer or employee who violates the provisions of this chapter is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding one thousand dollars (\$1,000) or by imprisonment for not more than one year.

### DEFINITIONS

"Public record" or "public records" shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, magnetic or other tapes, electronic data processing records, computer stored data (including electronic mail messages, except specifically for any electronic mail messages of or to elected officials with or relating to those they represent and correspondence of or to elected officials in their official capacities) or other material regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. (§38-2-2 (4)(i))

"Agency" or "public body" shall mean any executive, legislative, judicial, regulatory, administrative body of the state or any political subdivision thereof; including, but not limited to the leadership of the general assembly, chairman in the house and senate, public officials elected or appointed and any department, division, agency, commission, board, office, bureau, authority, any school, fire, or water district, or other agency or quasi-public agency of state or local government which exercises governmental functions, any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency. (§42-8.1-2 (1))