

**Office of the Secretary of State
Washington State Archives**

Records Retention Cost-Benefit Analysis

History of Rule

Pursuant to RCW 40.14, "public records" shall include any paper, correspondence, completed form, bound record book, photograph, film, sound recording, map drawing, machine-readable material, compact disc meeting current industry ISO specifications, or other document, regardless of physical form or characteristics, and including such copies thereof, that have been made by or received by any agency of the state of Washington in connection with the transaction of public business, and legislative records as described in RCW 40.14.100."

Pursuant to RCW 40.14.020, "All public records shall be and remain the property of the state of Washington. They shall be delivered by outgoing officials and employees to their successors and shall be preserved, stored, transferred, destroyed or disposed of, and otherwise managed, only in accordance with the provisions of this chapter." Additionally, the Office of the Secretary of State (OSOS) adopted records retention definitions in 1993 under WAC Chapter 434 to ensure that public records were properly preserved for future reference and potential permanent retention. These rules require agencies to retain records according to standards established by the applicable records committee (Local Records Committee, created in RCW 40.14.070 and the State Records Committee created in RCW 40.14.050).

State and local government agencies that conduct business transactions using email (thereby creating and receiving emails that are public records) are responsible for meeting their legal requirements for managing those public records in the same way that they are responsible for meeting their legal requirements to manage public records in other formats. An important aspect of an agency meeting their legal requirements is ensuring that they are adequately funding the compliance with those legal requirements.

Proposed Changes

The OSOS is proposing new sections to WAC Chapter 434 to clarify existing requirements, and to ensure that agencies understand their roles and responsibilities in preserving all public records, including electronic records. The new rules provide further definition of an 'electronic record', and clarify that a print copy of an electronic record is not a substitute for the original (native) format. The proposed rules do not add requirements for records retention; they shed light on existing requirements and create a process for transfer of archival electronic records to the Digital Archives.

Cost Analysis

Several agencies have embarked on projects to develop in-house electronic records management systems to help automate the process of records retention, recognizing their legal requirement, as well as the historical benefits to retain these records.

The Office of the Attorney General (AG) is a strong proponent of records retention. The AG's office has experienced first-hand the importance of easy, complete access to their records. In 1996, Washington joined several other states in a suit filed against the tobacco companies, alleging illegal targeting and marketing to minors and violating Washington's consumer protection and antitrust laws. This suit resulted in a settlement for Washington State of approximately \$4.5 billion through 2025 to help rectify the harm caused by tobacco. The total tobacco settlement is the largest financial recovery in legal history.

This financial recovery, benefiting the citizens of Washington State, was won in part through the ability to recover and produce records. As described in a white paper by Jeffrey Bean from the Washington State Attorney General's office (June 8, 1999) many of the documents required by the Attorney General's office were "aged and ripened well beyond their retention period – many from the 1950s, some from the 1940s, and some even earlier." Much of the documentation was obtained through the Division of Archives and Records Management. A well organized records management system, for records in *any* format, improves the ability to produce documentation and evidence that can ultimately result in a legal settlement.

The AG's office has invested approximately \$200,000 to-date on developing strong business practices within their office which ensure all staff are retaining paper and electronic records appropriately. The agency has also requested an additional \$250,000 for the 2009-2011 budget to purchase a product which will help them index and apply life cycles to documents maintained on their file servers, to help make the retrieval process more efficient for their 1,600 employees.

The City of Bellevue has also worked to comply with existing electronic public records retention requirements as well as enhance their work process. They have invested in a records management system, spending \$1.3 million to-date on the system. Bellevue expects to spend roughly \$250,000 for annual maintenance and replace their 16 servers, at fluctuating costs, once every three years. The City sees the benefits that will come from being able to find all relevant records for e-discovery and public records requests.

The Washington State Digital Archives provides another option for agencies to store records, at virtually no cost, other than staff time, to prepare the records for transmittal. Digital Archives will maintain and preserve archival public records for agencies and provide mechanisms to transfer archival records to the Digital Archives. Storing records at the Digital Archives provides one central location for researchers and citizens to access unrestricted government records. Other public benefits include remote access 24 hours a day, seven days a week and reduced time and travel costs.

Born digital records present special challenges for preservation and long-term access. The Digital Archives provides increased efficiency for citizens and state and local agencies through improved searchability, a central location, and a reduction in duplicate systems and resources.

Nonquantitative benefits

Other cost-benefits cannot be quantified. These include:

Avoiding Legal Fines and Sanctions

All state and local government agencies have a legal obligation to establish and follow records retention schedules for all records regardless of format, physical form, or characteristics. Failure to meet this obligation results in audit findings, legal costs, and lack of public trust.

Agencies face legal fines and sanctions in the event of:

- failure to retain records that are required to be retained in accordance with the state records retention requirements, or
- failure to produce public records requested in the course of a public disclosure request or in litigation.

Failure to provide a record to a requester can result in monetary sanctions under the Public Disclosure Act of up to \$100 per document per day.

Improved Public Access

Implementing a sound records management system saves time and money in providing records to the public. Sound management of electronic records improves public access.

Public Trust in Government

When public records are difficult to access, the public's trust in government diminishes. Greater accessibility and availability of government records improves public trust in government.

Preservation of State and Local History

As government records are increasingly generated and stored in computer-based information systems, the State faces the challenge and responsibility of managing and preserving electronic records for Washington's history.