



# MINUTES

## Local Government Public Records Study Committee

November 6, 2014

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### MEMBERS PRESENT:

Senator Mary Jo Wilhelm, Co-chairperson  
Senator Chris Brase  
Senator Jake Chapman  
Senator Thomas G. Courtney  
Senator David Johnson

Representative Bobby Kaufmann,  
Co-chairperson  
Representative Dean Fisher  
Representative Mary Gaskill  
Representative Charles Isenhardt  
Representative Guy Vander Linden

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## MEETING IN BRIEF

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Organizational staffing provided  
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Minutes prepared by Ed Cook,  
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- I. Procedural Business
- II. Fair Information Practices—State Records and Archives
- III. State Records Retention Technology
- IV. Iowa Public Information Board
- V. Local Government Record Retention Policies and Guidelines
- VI. Public Comment
- VII. Committee Discussion/Action
- VIII. Materials Filed With the Legislative Services Agency



## Local Government Public Records Study Committee

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### **I. Procedural Business**

The November 6, 2014, meeting of the Local Government Public Records Study Committee was called to order by Temporary Co-chairperson Representative Bobby Kaufmann at 10:01 a.m., Thursday, November 6, 2014. The meeting was held in Room 116 of the State Capitol. The meeting was adjourned at 2:28 p.m.

The Committee adopted rules and elected Senator Mary Jo Wilhelm and Representative Bobby Kaufmann Co-chairpersons of the Committee.

### **II. Fair Information Practices—State Records and Archives**

#### **A. Overview**

Ms. Pam Griebel, Assistant Iowa Attorney General, and Mr. Jeffrey L. Dawson, State Government Records Archivist, Department of Cultural Affairs, discussed Iowa's State Records and Archives Act (Iowa Code chapter 305), Iowa's Fair Information Practices Act (Iowa Code section 22.11), and State Records Commission electronic records guidelines and email retention policies utilized by state executive branch agencies. In general, while both the State Records and Archives Act and the Fair Information Practices Act deal with government records, the focus of each is different; the State Records and Archives Act focuses on the retention, storage, and disposition of records while the Fair Information Practices Act focuses on the process for accessing government records by the public.

#### **B. Fair Information Practices Act**

Iowa's Fair Information Practices Act, codified in Iowa Code section 22.11, requires all state agencies subject to the Administrative Procedures Act to adopt rules providing for what is defined by each agency as personally identifiable information, which agency records are confidential, and procedures for public access to agency records. As a result of the legislation enacting this requirement, a task force was created in 1985 to draft uniform rules suitable for adoption by most state agencies. The uniform rules do not contain a specific provision for electronic records and accordingly the guidelines adopted apply to all records, regardless of format. In response to a question from the committee, all agencies will eventually be required to review these rules based on recent legislation requiring a review of all administrative rules every five years.

Ms. Griebel noted that the requirements of this Act are limited to executive branch state agencies subject to the Administrative Procedures Act, and therefore are not a requirement for political subdivisions. However, if a political subdivision decides to adopt information policies consistent with the intent of the Fair Information Practices Act, the political subdivision must follow the procedure outlined in Iowa Code section 22.12.

#### **C. State Records and Archives**

Ms. Griebel commented that the State Records and Archives Act, codified in Iowa Code chapter 305, governs the scheduling, retention, and final disposition, to include destruction, of state government records as defined in the Act. The Act defines a record, more narrowly than Iowa



Code chapter 22, to include any document, regardless of form, made or received in connection with the transaction of official business of state government. If a record meets this definition, the record cannot be destroyed except as specifically provided under the law. Agencies covered under the Act include all executive and legislative branch departments, offices, commissions, boards, or other units, except the Department of Transportation and Regents institutions, which create their own records programs. The Act does not apply to political subdivisions.

The State Records Commission adopts policies, standards, and guidelines relating to the creation, organization, maintenance, public access to, and final disposition of government records, including the adoption of the records series retention and disposition schedules that specify the length of time a records series must be maintained and the manner in which a records series is disposed of through destruction or permanent retention. Once these policies, standards, and guidelines are adopted by the commission, the Department of Cultural Affairs administers the State Archives and Records Program, headed by the State Archivist. The department staffs the State Records Commission, recommends records series retention and disposition schedules for state agencies, maintains the State Records Manual adopted by the commission, manages the State Records Center (the centralized storage facility for agency use in storing inactive records prior to final disposition), and develops procedures for the transfer of records to and from the records center, the destruction of “temporary” records, and the transfer of records with archival value to the physical and legal custody of the state archives. State agencies are responsible for creating and maintaining agency records, designating records officers, inventorying all records, drafting proposed records series retention and disposition schedules, and protecting vital operating records.

Mr. Dawson provided information to the committee relative to the state archives program, to include assisting and training state agencies relative to record retention and storage and operating the State Records Center. Mr. Dawson noted that records management is important as records constitute the corporate memory of past decisions and transactions of government. In considering issues of storage and retention of records, the “life cycle” of a record needs to be considered. A record begins when information is recorded and remains active through completion of matters documented by the record. Once completed, a record is deemed inactive, and retained based on an analysis of the administrative, legal, and fiscal need of the record. The record needs to be retained as long as necessary to carry out business related to that record, to protect the liability of the state as well as the rights of individuals, and to document money owed to or by the state. The recordkeeping agency has the responsibility for determining the minimum length of time to retain the record prior to the record being destroyed. Typically, though, this content review is based on a series of records, such as all accounts receivable records, not based on an individual record review. The disposition of records is determined by the State Records Commission generally pursuant to a proposal by the applicable agency. Records are preserved when the State Records Commission determines the records have sufficient historical, research, evidential, or informative value and the records have been transferred to the legal and physical custody of the State Archives. Once records are transferred to the State Archives, the State Archivist controls all public access to the stored records. All other records, which account for well over 90 percent of records, are scheduled to be destroyed, which may be after six months, 60 years, or even longer, depending on identified routine need. Nonpermanent records may be sent by the applicable



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agency to the State Records Center for storage. While stored, the agency retains legal custody of its records and controls all public access to the stored records. Mr. Dawson noted the substantial amount of paper public records that are stored annually at the State Records Center. Senator Chapman raised the question of whether the state, or individual agencies, have the means and resources to digitally preserve these paper records and to maintain these digitized records in an electronic format permanently to reduce the substantial storage space and costs of paper records.

Ms. Griebel discussed the retention of electronic records and noted that the state policy on email retention is contained in Iowa Administrative Code 671-15.1 and 15.2 as well as the State Records Commission recommended guidelines for the retention of state records in electronic form. State agencies have the responsibility to ensure that nonpermanent records created and maintained in an electronic system are accessible for the prescribed record retention period. Generally, if the agency can keep the electronic record accessible into the future, any format of storage is acceptable.

### **III. State Records Retention Technology**

Mr. Robert von Wolfradt, State Chief Information Officer, discussed records retention and the need to focus on electronic system records and not just on hard copy or physical records. He noted that approximately 70,000 records center boxes store approximately 2,000 pages per box which makes up only about 27 percent of the pages stored on disaster recovery system tapes alone. Electronic record sources include records generated on agency network drives, laptops, thumb drives, smart phones, tablets, CDs and DVDs, agency licensing systems, and email and text messages.

Mr. von Wolfradt discussed the need to identify new system approaches relating to the management and sharing of public records, including acquiring an enterprise content management system to securely index and integrate public and state business records. An electronic management system is scheduled to be deployed in January of 2015 to assist the Department of Natural Resources and a few other state agencies to manage, catalogue, and make certain departmental records relating to audio and video images publicly accessible. Concerning e-mail storage and retention, he noted that the office is currently working on procurement of a statewide e-mail enterprise solution. All of these records management solutions should be made available to local governments. Concerning storage, he commented that how to safeguard documents and information and how to share it serve different purposes. He also noted the importance of collaborating with the State Archivist and the Director of Cultural Affairs to provide consistency in retention rules and the management of hard copy and electronic records, and to address funding issues.

### **IV. Iowa Public Information Board**

#### **A. Presentation**

Mr. Keith Luchtel, Executive Director, and Ms. Margaret Johnson, Deputy Director, Iowa Public Information Board (IPIB), provided information and made comments on public records issues frequently addressed by IPIB including issues relating to the definition of a public record, the time period a legal custodian of a public record has in which to respond to a public records request, and the confidential nature of certain public records including preliminary draft documents and



employment applications. Mr. Luchtel also noted that the issues encountered by the board that are most applicable to this committee's charge involve requests for public access to documents that are composed, received, or stored on privately owned electronic devices of governmental officials or employees. He stated that while a lack of information technology resources makes it difficult for certain governmental bodies to comply with requests for electronic documents, it is the content of the message or document that must be looked at in responding to a public records request. If the record concerns public business relating specifically to the public duties of an official or employee, the record generated is considered to be public and subject to a public records request regardless of whether the electronic device is government-owned or privately owned. Ms. Johnson commented that IPIB has received several inquiries about the accessibility of e-mails from local elected officials and that the lack of a uniform local policy on email retention is problematic.

## **B. Committee Discussion**

Committee members noted the difficulty in dealing with the mixture of public and private business that may be conducted on personal and government-issued phones. Committee members expressed concern about the cost and difficulty of extracting government business records from electronic devices while maintaining the privacy rights of the public official relative to nongovernmental business. Concerns were also raised about overbroad records requests and the fear that the definition of what constitutes a public record is so broad as to impinge on legitimate privacy rights of individuals. Other committee members noted that ultimately, public business, however conducted, needs to be accessible to the public so as to ensure an informed citizenry.

## **V. Local Government Record Retention Policies and Guidelines**

### **A. Overview**

Mr. Jamie Cashman, Government Relations Manager, Iowa State Association of Counties, Mr. Gabe Johanns, Information Technology Director, Franklin County, and Mr. Dustin Miller, Director of Government Affairs, Iowa League of Cities, provided information relating to city and county record management and retention practices.

### **B. Counties**

Mr. Cashman noted that there is no law requiring counties to retain county records. The Iowa County Records Retention Manual, recently updated, is intended to provide guidance for local county officials in managing records created and received in the course of county business and includes information outlining a schedule for the destruction of records that are no longer required to be retained, taking into account state and federal laws and regulations.

Mr. Johanns spoke about the fiscal impact of requiring emails and other electronic records to be archived at the county level. He stated that counties across the state have insufficient resources for large projects associated with long-term archival of records, and data for the 2014-2015 fiscal year indicates that only four counties will not spend from their carryover funds. A number of counties do not have any funds allocated for information technology and only 51 counties have access to information technology services. The initial purchase price of an electronic archiving system will be much higher on a per-user basis in smaller counties and there would not be a dedicated staff in place to adequately plan, test, and implement the required hardware and



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software. Counties and cities may also be required to purchase additional networking and server equipment and licensure to manage the additional load placed on their systems and ongoing maintenance may also be much higher on a per-user basis. An additional clerk may be necessary to handle the amount of documents that must be entered into the archival system.

### **C. Cities**

Mr. Miller stated that the Records Retention Manual for Iowa Cities has been in place since the early 1970s. This manual provides guidance to cities for managing and retaining records created and received in the course of city business, but there is no state law requiring cities to retain city records. The manual contains guidance relating to the management and destruction of electronic records including information relating to employee use of home computers and other personal electronic devices in conducting city business. Both large and small cities have issues relating to record retention, with larger city issues focusing on the large volume of records and public users while smaller city issues involve control and accessibility issues. Nonstandard electronic platforms for certain electronic documents can also create issues. Cities need a clear strategy in dealing with these issues. The financial burden of storing these records is a further complication.

### **VI. Public Comment**

Mr. John Etheredge, Johnson County Board of Supervisors, spoke to the committee about the large amount of paper records Johnson County retains and stores. He noted that House File 2366 passed during the 2014 Legislative Session now allows county auditors to store voter registration forms electronically, including the applicant's signature, and that has helped free up a large amount of record storage space. Mr. Etheredge indicated that more needs to be done to identify records that can be stored digitally so as to help reduce storage costs.

Ms. Angela McBride, Ombudsman's office, responded to questions from the committee and noted that the office does not have separate enforcement authority relative to public records requests. Prior to the formation of the Iowa Public Information Board, the office received over 300 complaints a year relative to public records issues.

### **VII. Committee Discussion/Action**

#### **A. Committee Comments**

Several committee members indicated that the legislature should examine the definition of public record in Iowa's Open Records Law (Iowa Code chapter 22) due to concerns about the broad nature of the definition and the perceived erosion of elected officials' personal privacy. Members expressed the need to balance the interests of the public in maintaining a strong commitment to open and transparent government while recognizing the cost burdens and privacy concerns relative to many record requests, including some concerns relative to public records requests that are overly broad and merely "fishing expeditions." Most committee members expressed the desire that technology solutions and funding options be examined relative to public records storage and retention with a focus on cost-effective solutions for smaller local offices. Committee members expressed the desire that the Iowa State Association of Counties and the Iowa League of Cities collaboratively work with elected officials to address public record retention policies and practices



as well as financial resources available to local governments that support such policies and practices.

## **B. Committee Action**

Committee members agreed that the co-chairpersons and staff should work to develop recommendations based upon comments from committee members and presenters for the committee to consider and approve for purposes of the final report of the committee.

## **VIII. Materials Filed With the Legislative Services Agency**

The following materials listed were distributed at or in connection with the meeting and are filed with the Legislative Services Agency. The materials may be accessed from the Committee Documents link on the committee's Internet web page:

<https://www.legis.iowa.gov/committees/meetings/documents?committee=21382&ga=ALL>

1. Local Government Public Records Study Committee — Meeting Notice.
2. Local Government Public Records Study Committee — Tentative Agenda.
3. Proposed Rules.
4. State Records Commission — Policy on Electronic Records Retention.
5. Pamela Griebel, Asst. Iowa Attorney General, and Jeffrey Dawson, State Government Records Archivist — State Records Management: State Archives and Records Act (Iowa Code chapter 305).
6. Pamela Griebel, Asst. Iowa Attorney General — Iowa's Fair Information Practices Act (Iowa Code §22.11).
7. Iowa League of Cities — Records Retention Manual (October 2012)
8. Rachele Hjelmaas, Senior Legal Counsel, Legislative Services Agency — Legislative Guide, Open Meetings and Public Records.
9. Local Government Public Records Study Committee Briefing.
10. Gabe Johanns, IT Director, Franklin County — Remarks
11. Iowa State Association of Counties — Iowa County Records Retention Manual (draft version as of Nov. 4, 2014).
12. Keith Luchtel, Executive Director, Iowa Public Information Board — The Iowa Public Information Board and Records Laws.
13. Robert von Wolfradt, State Chief Information Officer — State Records Retention Technology — Comments.
14. Save or Delete? Official Email Policies Vary By State (Pew Charitable Trusts — Stateline).