

From: London, Sarah [Sarah.London@vermont.gov]
Sent: Wednesday, December 07, 2016 4:15 PM
To: Hoffer, Doug
CC: Springer, Darren
Subject: RE: records retention
Attachments: Springer and London to Hoffer 12-7-16.pdf; 2016 Record Policy.pdf

Doug, please see attached response. Happy to discuss further at any point,
Sarah

From: Hoffer, Doug
Sent: Wednesday, December 07, 2016 12:19 PM
To: London, Sarah <Sarah.London@vermont.gov>
Cc: Springer, Darren <Darren.Springer@vermont.gov>
Subject: records retention

Sarah

Attached is a memo with some questions. I appreciate your help and look forward to hearing from you.

Thanks,
Doug

Doug Hoffer
Vermont State Auditor
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PETER SHUMLIN
Governor



State of Vermont
OFFICE OF THE GOVERNOR

December 7, 2016

Douglas R. Hoffer
Vermont State Auditor
132 State Street
Montpelier, VT 05633-5101

Dear Auditor Hoffer,

We agree that the retention of records with archival value is important, and this Administration has been working for well over a year with the Secretary of State's office to ensure that an unprecedented volume of correspondence directly from the Governor, as well as his staff, is maintained after the transition to the next Administration. This Governor's Office will be the first to send extensive email correspondence to archives. As you may recall from our discussion with you, Secretary Condos, and Deputy Attorney General Susanne Young on October 19, 2016, we are in the process of finalizing the customary MOU between the Governor, Secretary of State, and Attorney General that will identify categories of privileged records and the handling of such records from the Governor's Office as well as agencies and departments.

In regards to your questions:

1. The Governor's Office has made no written or electronic communication providing instructions to agencies on retention of documents. Agencies work directly with the Secretary of State's Office on such matters. The Governor's Office has a records retention policy and guidelines document, which is modeled from that of the Secretary of State's Office and was approved for circulation among staff by the Secretary of State's Office in June of this year. This document, and prior versions of such a document,¹ have been disseminated to staff in the Governor's Office. The Governor's Office has also provided copies of the document to agencies and departments in response to requests. As you will recall from our conversation on October 19, the Governor's Office defers to the state archivist and the Secretary of State as to how they wish to manage duplicate executive privilege records housed in agencies or departments.
2. No, other than the sharing of information described above.

¹ If you would like copies of the prior records policy documents of the Governor's Office going back to 2011, Sarah London is happy to provide them.

3. The Governor's Office fully expects that all contract documents will remain in agencies and departments consistent with record management practices approved by the Secretary of State.
4. No.
5. No.
6. As you will recall from our conversation on October 19, the Governor's Office staff are saving in PDF format all of the original content of all emails that are to be preserved consistent with records policy and the General Records Schedules. Some former staff emails are now unreadable in their "native" electronic format due to software changes. All of the original content of all preserved emails will be transferred to the Secretary of State's Office at the close of the Administration, except that emails and other records pertaining to litigation are being preserved separately under litigation holds issued by the Attorney General. The Governor's emails will remain in Outlook format and will be transferred in that format to the Secretary of State's Office. No redactions or alterations are being made to the content of any of the Governor's emails or to staff emails.

We hope this timely response allays your concerns, and we encourage you to contact us with further questions. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Darren Springer", with a long horizontal flourish extending to the right.

Darren Springer
Chief of Staff

A handwritten signature in black ink, appearing to read "Sarah London", with a long horizontal flourish extending to the right.

Sarah London
General Counsel

Vermont Governor's Office Records Management Policy and Guidelines

Effective Date: June 10, 2016

Policy:

This policy is to ensure that all Governor's Office staff comply with the records management requirements in statute and the Secretary of State's General Record Schedules outlined below.

The General Record Schedules (GRS) and this policy apply to management of public records of the Governor's Office *other than* records that fall under specific legal requirements for preservation and retention. An example of records that are not subject to this policy is the "Governor's official correspondence," which is governed by 3 V.S.A. § 4. Other examples of records that fall outside of this policy are the Governor's calendar, constituent correspondence, executive orders, proclamations, extraditions, and pardons. In addition, retention of Executive Code of Ethics Questionnaires is governed by Executive Order 9-11.

Public records may only be disposed of pursuant to "law or under a record schedule approved by the State Archivist pursuant to 3 V.S.A. § 117(a)(5)." 1 V.S.A. § 317a. A "record schedule" as defined at 3 V.S.A. § 117(a)(5) includes the GRS. Public records are "any written or recorded information, regardless of physical form or characteristics, produced or acquired in the course of public agency business." 1 V.S.A. § 317(b).

Provided that there are no specific laws requiring a longer retention period, the GRS are approved by the Vermont State Archivist for any public agency that creates or receives the records listed in the schedules. The GRS provide "consistency in recordkeeping by Vermont public agencies for common functions and activities carried out by more than one public agency. Any Vermont public agency may adopt any or all of the requirements in a general record schedule approved by the Vermont State Archivist and implement through their own internal policies and procedures."¹

The GRS are available online at: <https://www.sec.state.vt.us/archives-records/records-management/records-retention/general-record-schedules.aspx>

State agencies must submit a Notice of Adoption (VSARA-11) to the Vermont State Archives and Records Administration. Use of a GRS to destroy records is not permitted until this notification has been acknowledged by the Vermont State Archivist.

The Governor's Office Notice of Adoption of the General Record Schedules (VSARA-11) was filed with the Secretary of State's Office on January 10, 2011, and received and acknowledged by the State Archivist on January 11, 2011.

This policy supersedes previous policies circulated within this office.

¹ <https://www.sec.state.vt.us/archives-records/records-management/records-retention/general-record-schedules.aspx>

Records Management Guideline:

Transitory Records (GRS-1000.1000)

Transitory Records are only needed for a limited period of time in order to complete a routine action or prepare or update a formal or on-going record. They are not subject to any specific legal recordkeeping requirements, explicit or implied, and are administratively obsolete after the specific action or process to which they relate is complete. Drafts, notes, reference material, and similar records are examples of transitory records.

The following types of transitory records can and should be destroyed when no longer needed administratively, provided that the records are not subject to any specific legal requirements or a legal retention hold.

- **Routine Correspondence:**² Incoming and outgoing correspondence that is part of a regular function and has limited value or need after a routine action is completed.
- **Drafts:** Preliminary or tentative versions of a document that have no additional value to the drafter or office. Includes drafts that have been superseded by another document.
- **Notes:** Notes that have been taken to aid personal memory or for later review. Includes short, informal notes such as phone messages.
- **Publications and Reference Sources:** Information that is intended primarily for consultation and is for reference or informational purposes only.
- **Requests:** Requests and responses to forms, publications, records, and other office information that do not require any administrative review before, or further action after, the information is provided.
- **Worksheets:** Forms, checklists, and similar worksheets used to prepare or update other records or informally track a workflow.

² GRS-1000.1000 defines routine correspondence as: “any correspondence, produced or received, that is routine in nature and not subject to any specific legal requirements. Includes transmittal letters that do not add information to that contained in the transmitted material and correspondence from other agencies that is received or general informational purposes only.”

NOTE: Email accounts are where many transitory records reside and most, if not all, of the messages created or received by email are public records. (Use of your state email to send or receive personal messages is highly discouraged. You should only use your state account for state business.) Examples of transitory email records that can and should be destroyed when no longer needed administratively are: (1) inter-office correspondence and notes concerning routine processes and workflows, including simple requests for information; (2) out-of-office or meeting notifications; and (3) updates and other messages received for informational or reference purposes only.

Administrative Policy Records (GRS-1000.1102)

Administrative Policy Records relate to the administration of the office and the formulation or development of policy. They have the potential to have continuing value if they provide evidence of deliberations, decisions, and actions relating to policy or major administrative issues. Formal agreements, strategic plans, policies and procedures, and similar records are examples of administrative policy records.

The Governor and his senior staff are usually the creators or recipients of administrative policy records. In limited circumstances, others may create or receive administrative policy records.

The following records are archival and shall be permanently preserved. These records should be transferred to the Vermont State Archives at the conclusion of the Governor's term.

- **Formal Agreements**
- **Substantive Correspondence and Studies³**
- **Meeting Minutes**
- **Plans, Policies, and Procedures**
- **Annual and Similar Reports**

The following types of administrative policy records can be destroyed after retention requirements have been met, provided that the records are not subject to any specific legal requirements or a legal retention hold.

- **Agendas:** If the agenda is accurately reflected in the meeting minutes, retain for one year after the calendar year ends, then destroy.
- **Calendars (other than the Governor's):** Retain for one year after the calendar year ends,

³ GRS-1000.1102 defines substantive correspondence as: "any correspondence transmitted or received that has significant administrative value and/or documents policy development. Includes opinions and memoranda of decisions. Includes significant supporting material."

then destroy.

- **Legal Notices:** Retain for one year after the notice was issued, then destroy.
- **Press Releases:** Retain for one year after the calendar year ends, then destroy.

NOTE: Most administrative policy records are archival and need to be retained permanently. Email systems are not appropriate for the long-term management and preservation of these records.

Operational / Managerial Records (GRS -1000.1103)

Operational / Managerial Records relate to the internal management or operation of a specific program, process, or function required to be carried out by the office. They support day-to-day operations and internal workflows and processes. Informal agreements, calendars, internal reports, and similar records are examples of operational/managerial records.

The following types of operational/managerial records can be destroyed after retention requirements have been met, provided that the records are not subject to any specific legal requirements or a legal retention hold.

- **Informal Agreements:** Retain for three years after the agreement expires, then destroy.
- **Calendars (other than the Governor's):** Retain for one year after the calendar year ends, then destroy.
- **Procedures:** Retain for three years after the procedure has been superseded by a revised or new procedure, then destroy.
- **Internal Reports:** Retain for three years after the calendar year ends, then destroy.

Regardless of your position in the office, if you (1) received any of the above records for reference or informational purposes only, and (2) know that the individual or individuals responsible for the day-to-day operations of a specific program, process, or function are properly managing the records in accordance with GRS-1000.1103, your copies are duplicates and considered Transitory Records (GRS-1000.1000).

NOTE: Email is often used to share records internally. Any records that need to be shared should be stored in a place that is readily accessible to other office employees. If you are not using a system that can alert employees when a record is ready to be reviewed, accessed, or referenced, instead of attaching the file use the file as a URL. This will allow the recipient to access the file directly from its storage location. Do not leave spaces when naming your file folders or files – this will eliminate your ability to use the file path as a URL. By sending a link instead of attaching a file, you not only save valuable space in your email system, but both you and your recipients can treat the email correspondence as transitory.

Appointment Records (GRS -1493.1004)

Appointment Records are recorded evidence of appointment or revocation decisions, including related substantive correspondence. Transitory records created or received as part of the appointing process may be weeded as appropriate in accordance with GRS-1000.1000 (Transitory Records).

The following types of appointment records can be destroyed after retention requirements have been met, provided that the records are not subject to any specific legal requirements or a legal retention hold.

- **Applications** (any written application, request, proposal or nomination submitted for consideration as an appointee to a public body; includes all supporting materials, such as required approvals, letters of support, and background checks or waivers): Retain until obsolete, then destroy.
- **Legal notices** (notices required by law, including notices of vacancy, as well as documentation concerning the release or publication of such notices): Retain until appointment is complete or closed, plus one year, then destroy.
- **Press releases** (for release distributed to the press announcing a public body vacancy, draft, or appointment): Retain until calendar year ends, plus one year, then destroy.

The following records are archival and shall be permanently preserved. Unless deemed necessary to the continuing operations of the next Administration, these records should be transferred to the Vermont State Archives at the conclusion of the Governor's term.

- **Substantive correspondence** (correspondence that may contribute to the final decision on appointing an individual to a public body or revoking an appointment, including letters of resignation)
- **Decisions** (recorded evidence of appointment or revocation decisions that is in addition to and separate from oaths and formal written revocations of appointments; including substantive correspondence and relevant supporting material)

- **Oaths** (any type of written attestation administered by a public official that an appointee signs to signify that he or she is bound in conscience to perform a particular act truthfully and faithfully; includes certifications of oaths, Executive Code of Ethics acknowledgments, and revocations of oaths)
 - o Note that retention of Executive Code of Ethics Questionnaires is governed by Executive Order 9-11, which states: “Within thirty days of appointment and thereafter annually on June 30, every Appointee who earns \$30,000 or more per year shall file with the Secretary [of Civil and Military Affairs] an “Ethics Questionnaire” as prescribed in Exhibit B. These questionnaires shall be treated as confidential personnel documents as defined by 1 V.S.A. §317(c)(7) and kept as such during the gubernatorial administration in which the appointee serves, or for one year after the appointee leaves office, whichever first occurs, at which point they will be destroyed.”
- **Registers** (registries, recording books, databases, and similar records and systems that track appointees, including appointment status and other relevant information)