

## A. PUBLIC RECORDS STATUTES

As noted in the Introduction and Glossary of Terms, your state likely recognizes a distinction between “public records,” which may include correspondence, office records, personnel records, etc., and “government publications,” which may be compiled as a means to disseminate government information of educational or public interest. This section addresses statutes that concern public records and, in particular, those that focus on record keeping requirements and retention. The compilation of statutes for your state may combine record keeping requirements with public access provisions or freedom of information laws. Those statutes are addressed in Sections B & C.

1. Does your state have “public records statutes,” as referred to in the paragraph above?

Yes  
 No

a. If “Yes,” cite your state’s public records statutes and the administrative regulations that supplement them.

California Public Records Act (CPRA), Cal. Gov’t Code §§ 6250-6270 (Deering, LEXIS through 2001 Sess.).

Legislative Open Records Act, Cal. Gov’t Code §§ 9070-9080 (Deering, Lexis through 2001 Sess.).

State Records Management Act, Cal. Gov’t §§ 14740-14768 (Deering, LEXIS through 2001 Sess.).

The Online Disclosure Act of 1997, Cal. Gov’t Code §§ 84600-84612 (Deering, Lexis through 2001 Sess.).

Cal. Gov’t §§ 1220-12236 (Deering, LEXIS through 2001Sess.) is the statutory authority for the Local Government Records Program.

Cal. Gov’t §§ 68150-68153 (Deering, LEXIS through 2001Sess.) provides the statutory requirements for management of court records for all the state’s courts.

b. If “No,” skip this whole section.

Additional comments:

Each of these groups of statutes delineates public record keeping requirements of the identified governmental entities.

2. The public records statutes/regulations apply to which of the following branches?

Executive

- Legislative
- Judicial
- Administrative (applying to all agencies, no matter what branch of government)
- Other

a. Briefly explain your answer and cite to applicable statutes/regulations.

CPRA applies to both state and local agencies. “State agency” is defined as “every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.” Cal. Gov’t Code § 6252 (a) This statute excludes the legislative and judicial branches from CPRA.

“Local agency” is defined as “a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission; or agency thereof; other local public agency; or nonprofit entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952.” Cal. Gov’t Code § 6252(b).

CPRA provides that “public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record,” except for stated exceptions in the act. Cal. Gov’t Code § 6253.

While CPRA provides that every agency “may” adopt regulations stating the procedures that are to be followed when making its records available, it requires 38 specifically named state agencies, special districts, and other boards and commissions to establish written guidelines for making their records accessible to the public and requires that these guidelines be posted “in a conspicuous public place at the offices of these bodies, and a copy of these guidelines be available upon request free of charge to any person requesting that body’s records.” Cal. Gov’t Code § 6253.4.

As mentioned above, the judicial and legislative branches are specifically excluded from CPRA. They are covered in the other statutes cited in q.1 *supra*, and discussed where relevant below.

Additional comments:

3. Cite to public records statutes/regulations where “public record” is defined.

CPRA defines “public records” as “any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. ‘Public records’ in the custody of, or maintained by, the Governor’s office means any writing prepared on or after January 6, 1975.” Cal. Gov’t Code § 6252(e).

“Writing” is further defined in CPRA as “handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.” Cal. Gov’t Code § 6252(f).

Additional comments:

The Legislative Open Records Act does not specifically define “public record.” However, the act defines “legislative records” as “any writing prepared on or after December 2, 1974, which contains information relating to the conduct of the public’s business prepared, owned, used, or retained by the Legislature.” Cal. Gov’t Code § 9072(c).

The State Records Management Act defines “record” or “records” as “all papers, maps, exhibits, magnetic or paper tapes, photographic films and prints, punched cards, and other documents produced, received, owned or used by an agency, regardless of physical form or characteristics.” Cal. Gov’t Code § 14740.

The sections pertaining to the management of trial court records do not specifically define “public record.” However, “court record” is defined in Cal. Gov’t Code § 68151(a) as:

- (1) All filed papers and documents in the case folder; but if no case folder is created by the court, all filed papers and documents that would have been in the case folder if one had been created.
- (2) Administrative records filed in an action or proceeding, depositions, paper exhibits, transcripts, including preliminary hearing transcripts, and tapes of electronically recorded proceedings filed, lodged, or maintained in connection with the case, unless disposed of earlier in the case pursuant to law.
- (3) Other records listed under subdivision (j) of Section 68152, which include in forma pauperis applications; arrest warrants; bench warrants; bonds; coroner’s inquest reports; court orders not associated with an underlying case, such as orders for the destruction of court records for telephone taps, or to destroy drugs; court reporter notes; electronic recordings; indexes; judgments; minutes; naturalization indexes; ninety-day evaluations; register of actions or dockets; and search warrants

4. Do the public records statutes/regulations address electronic records separately vis-à-vis print records?

Yes  
 No

- a. If “Yes,” cite to and briefly discuss statutes/regulations addressing electronic records; how are they treated differently?

CPRA provides that electronic public records not exempt from disclosure and which are held by any agency covered by the act, will be made available in electronic form when requested by any person. Cal. Gov’t Code § 6253.9.

Cal. Gov’t Code §10248(a) requires the Legislative Counsel to make specific types of records pertaining to the business of the state legislature available in electronic form to the public:

- (1) The legislative calendar, the schedule of legislative committee hearings, a list of matters pending on the floors of both houses of the Legislature, and a list of the committees of the Legislature and their members.
- (2) The text of each bill introduced in each current legislative session, including each amended, enrolled, and chaptered form of each bill.
- (3) The bill history of each bill introduced and amended in each current legislative session.

- (4) The bill status of each bill introduced and amended in each current legislative session.
  - (5) All bill analyses prepared by legislative committees in connection with each bill in each current legislative session.
  - (6) All vote information concerning each bill in each current legislative session.
  - (7) Any veto message concerning a bill in each current legislative session.
  - (8) The California Codes.
  - (9) The California Constitution.
  - (10) All statutes enacted on or after January 1, 1993.
- All of these legislative records are available online to the public on the official legislative web site.

The Online Disclosure Act, Cal. Gov't Code §§ 84600-84612, requires that statements and reports of political campaigns and lobbying financial disclosures required by Proposition 9, the Political Reform Act of 1974, which must be filed with the Secretary of State, are to be filed in both paper and electronically.

Persons required to make these online filings are listed in Cal. Gov't Code §84605:

- (a) Any candidate, including judicial candidates and officeholders, committees or other persons working with a state elective office or state measure with contributions of \$50,000 or more.
- (b) Any general purpose committee, including those of political parties and small contributor committees with cumulative donations or expenditures of \$50,000 or more, which exist to support or oppose any candidate for elective state office or state measure.
- (c) Any slate mailer organization with a total of \$50,000 or more in payments.
- (d) Any lobbyist, lobbying firm, lobbyist employer or other persons who receive payments, expenses, contributions, gifts, or other items of \$5,000 or more in a calendar quarter.
- (e) The Secretary of State is also required to disclose online any late contribution or late independent expenditure reports filed by under Cal. Gov't Code §§ 84203-84204.

Additional comments:

5. Do the public records statutes/regulations address retention of records?

Yes  
 No

a. If "Yes," cite to and briefly summarize the retention provisions.

Trial court records have various retention requirements, depending on the type of record. Cal. Gov't Code § 68152 lists the types of records and specifies the retention periods for each type. Some records are retained permanently: adoption; change of name; eminent domain; paternity; real property actions if the action affects title or an interest in real property; capital felony records (murder with special circumstances where the prosecution seeks the death penalty; search warrants issued as part of a capital felony case; court reporter notes relating to a capital felony case unless destruction is authorized by the California Supreme Court; probate, including probated wills; some coroner's inquest reports; superior court judgments other than those in a limited civil case; case indexes; and naturalization indexes.

The State Records Management Act requires every state agency to establish Records Retention Schedules, which when approved, become the legal authority for the agency to dispose of official public records. Cal. Gov't Code §§ 14740-14774.

- b. If "Yes," also cite to and discuss any provisions/regulations that address retention of electronic records; cite to any other source of law supplementing them: attorney general opinions, court decisions, administrative rules or guidelines.

CPRA requires that every final enforcement order not exempt from disclosure issued by the California Environmental Protection Agency and a number of specifically named entities within the CEPA be displayed on the agency's web site, for not less than a year. Cal. Gov't Code § 6253.8.

The Online Disclosure Act addresses the issue of PPA with the following requirement: "Maintain all filed data online for 10 years after the date it is filed, and then archive the information in a secure format." Cal. Gov't Code § 84602(f).

Additional comments:

As mentioned in q.4 *supra*, Cal. Gov't Code §10248(a) states that a record of all statutes enacted on or after January 1, 1993, along with other specifically named legislative records, will be made available in electronic format. Although retention is not specifically addressed, the use of a specific year (1993) could be inferred to mean that all such named items added after that date will be retained on the legislative web site permanently.

The statutes retaining to trial court records state that "electronic recordings" made as the official record of the oral proceedings under the California Rules of Court may be destroyed any time after the final disposition of the case in infraction and misdemeanor proceedings. Electronic recordings in all other criminal proceedings must be retained 10 years, and in all other proceedings, the retention period is 5 years. Cal. Gov't Code § 68152(j)(8). Electronic recordings not made as the official record of oral proceedings may be destroyed any time, either before or after the final disposition of the case.

- 6. Do the public records statutes/regulations or other sources of law supplementing them (particularly a declaration of legislative intent or a relevant attorney general opinion) declare the public policy of the state and address the scope of citizens' access to public records or acknowledge the state's responsibility to permanently maintain public records?

Yes  
 No

- a. If "Yes," cite to and provide relevant language.

CPRA begins with a clear statement of legislative intent: "In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to

information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.” Cal. Gov’t Code § 6250.

The Legislative Open Records Act clearly states that promoting public access to legislative information is the purpose of the Act: “The Legislature finds and declares that access to information concerning the conduct of the people’s business by the Legislature is a fundamental and necessary right of every citizen in this state.” Cal. Gov’t Code § 9070.

The Online Disclosure Act states: “Public access to campaign and lobbying disclosure information is a vital and integral component of a fully informed electorate.” Cal. Gov’t Code § 84601(b).

The act further states: “Advances in technology have made it viable for disclosure statements and reports required by the Political Reform Act to be filed online and placed on the Internet, thereby maximizing availability to the public.” Cal. Gov’t Code § 84601(c).

Additional comments:

7. Is a public records administrator, a public records commission or other officer/government entity responsible for administering the public records statutes/regulations?

Yes  
 No

a. If “Yes,” cite to applicable statutes/regulations and identify the responsible officer/government entity.

There are a number of officials and agencies responsible for administering the public records statutes in California:

The Secretary of State is responsible for several public records programs. The Online Disclosure Act requires the Secretary of State to implement the intent of the Legislature by consulting with the Fair Political Practices Commission and to “develop online and electronic filing processes” to carry out the reporting requirements of the act. Cal. Gov’t Code § 84602.

Also, under Cal. Gov’t Code § 12221: “The Secretary of State is the custodian of the public archives of the state.” In 1999, the Secretary of State became responsible for establishing the Local Government Records Program, discussed in part G *infra*.

The Director for the Department of General Services is required to establish and administer the State Records Management Program under the State Records Management Act. Cal. Gov’t Code §§ 14740-14774. The Director administers the program by publishing the *State Administrative Manual* and the *California Acquisition Manual*. As mentioned above, this act is applicable to state agencies only. Both the State Records Management Program and the Local Government Records program are discussed further in part G *infra*.

The Legislative Counsel, with the advice of the Assembly Committee on Rules and the Senate Committee on Rules, is responsible for carrying out the electronic publication of the legislative records listed in Cal. Gov't Code § 10248.

- b. If "Yes," also cite to and discuss any source of law requiring the responsible officer/government entity to permanently maintain government information; cite attorney general opinions, court decisions, and administrative rules or guidelines.

Additional comments:

- 8. Has any public records legislation/administrative regulation been proposed calling for "permanent public access" to electronic public records?

Yes  
 No

- a. If "Yes," cite to and briefly discuss the legislation/proposed regulation; what was the outcome?

While the Legislative Open Records Act does not use the term "permanent public access," it states the following:

[T]he information in subdivision (a) [of Cal. Gov't Code § 10248(a) discussed above] shall be made available to the public by means of access by way of the largest nonproprietary, nonprofit cooperative public computer network. The information shall be made available in one or more formats and by one or more means in order to provide the greatest feasible access to the general public in this state. Any person who accesses the information may access all or any part of all the information . . ." Cal. Gov't Code § 10248(b).

Subdivision (c) of the statute also provides that "any documentation that describes the electronic digital formats of the information identified in subdivision (a) and is available to the public shall be made available by means of access by way of the computer network specified in subdivision (b)."

Subdivision (d) requires that any personal information provided by a person who accesses the information will be maintained only for the purpose of providing service to the person, thus protecting individual privacy.

Subdivision (e) states that the Legislature may not impose a fee or other charge as a condition of accessing the information.

Subdivision (f) provides that electronic public access shall be in addition to other electronic or print distribution of the information. It is not intended to eliminate other forms of distribution of legislative information already in use.

As mentioned in q. 6 *supra*, the Online Disclosure Act addresses the issue of PPA with the following requirement:

"Maintain all filed data online for 10 years after the date it is filed, and then archive the information in a secure format." Cal. Gov't Code § 84602(f).

- b. If "Yes," also cite to documents from the legislative or regulatory history.

1993 Cal. Stat. 1235 (A.B.1624) added Cal. Gov't Code §10248.

Chapter 1235, § 1 provides:

“The Legislature finds and declares that it is now possible and feasible in this electronic age to more widely distribute legislative information by way of electronic communication in order to better inform the public of matters pending before the Legislature and its proceedings. The Legislature further finds that it is desirable to make information regarding these matters and proceedings available to the citizens of this state, irrespective of where they reside, in a timely manner and for the least possible cost.”

Additional comments:

9. Has litigation under the public records statutes resulted from the state's failure to “permanently” maintain a public record?

Yes

No

- a. If “Yes,” cite to and briefly discuss each case.

Additional comments:

10. Discuss any unique circumstances in your state relevant to “permanent public access” of public records under public records statutes/regulations.

## **B. FREEDOM OF INFORMATION ACT**

A state's freedom of information act (or law) generally addresses public access to “public records.” As noted under Section A above, the compilation of statutes for your state may combine record keeping requirements and public access provisions.

1. Does your state have a “freedom of information act,” as referred to in the paragraph above?

Yes

No

- a. If “Yes,” cite your state's freedom of information act (or law) statutes and the administrative regulations that supplement them.

The Legislative Open Records Act, specifically states that “access to information concerning the conduct of the people's business by the Legislature is a fundamental and necessary right of every citizen in the state.” Cal. Gov't Code § 9070.

The Online Disclosure Act of 1997 states: “Public access to campaign and lobbying disclosure information is a vital and integral component of a fully informed electorate.” Cal. Gov't Code § 84601(b).

Cal. Gov't Code §10248, added by 1993 Cal. Stat. 1235, § 1 of this chapter provides:

“The Legislature finds and declares that it is now possible and feasible in this electronic age to more widely distribute legislative information by way of electronic communication in order to better inform the public of matters pending before the Legislature and its proceedings. The Legislature further finds that it is desirable to make information regarding these matters and proceedings available to the citizens of this state, irrespective of where they reside, in a timely manner and for the least possible cost.”

b. If “No,” skip this whole section.

Additional comments:

Although the phrase “freedom of information” is not used in CPRA, there is substantial body of case law, as well as secondary authority, which states that the act, Cal. Gov’t Code §§ 6250-6270, was modeled after the federal Freedom of Information Act, and its purpose is to increase freedom of information by ensuring public access to state and local agency public records.

2. The freedom of information act statutes/regulations apply to which of the following branches?

- Executive
- Legislative
- Judicial
- Administrative (applying to all agencies, no matter what branch of government)
- Other

a. Briefly explain your answer and cite to applicable statutes/regulations.

As discussed in q.2 of part A *supra*, CPRA applies to both state agencies and certain local entities. Cal. Gov’t Code §§ 6250-6270.

The Legislative Open Records Act applies to the legislature. Cal. Gov’t Code §§ 9070-9080.

The Online Disclosure Act requires lobbyists, candidates for elective office, including current officeholders, to make available campaign donation and other reports required by the act. Cal. Gov’t Code §§ 84600-84612. This act applies to judicial candidates and current members of the bench seeking reelection, as well as elective offices for all other branches.

Additional comments:

For those agencies covered under CPRA, Cal. Gov’t Code § 6254 specifies which records are exempt from disclosure. This is a fairly lengthy list, to summarize briefly: preliminary drafts, notes, or interagency or intra-agency memos that are not usually retained in the ordinary course of business; records pertaining to pending litigation to which the public agency is a party; personnel, medical, or similar files of agency employees for which the disclosure would constitute an unwarranted invasion of personal privacy; personnel files; job applications; test questions, scoring keys, and other exam data used for a licensing examination; and library circulation records are all exempt from disclosure under CPRA.

3. Cite to freedom of information law statutes/regulations where “public record” is defined.

CPRA defines “public records” as “any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. ‘Public records’ in the custody of, or maintained by, the Governor’s office means any writing prepared on or after January 6, 1975.” Cal. Gov’t Code § 6252(e).

Additional comments:

For other statutes where “record” is defined, see q.2 of part A *supra*.

4. Do the freedom of information act statutes/regulations address electronic records separately vis-à-vis print records?

Yes  
 No

a. If “Yes,” discuss whether the freedom of information act statutes/regulations had been amended at any time to cover electronic records; cite to and provide amending language.

The California Public Records Act was originally passed in 1968. It was amended in 2000 to include electronic records. See b. *infra*.

The Legislative Open Records Act was passed in 1975. In 1993, Cal. Gov’t Code § 10248 was added to the sections pertaining to duties of the Legislative Counsel. This section addresses the publication of specific legislative documents in electronic format. See b. *infra*.

The Online Disclosure Act was added by 1997 Cal. Stat 866. It specifically mandates online access to the disclosure statements and reports required by Proposition 9, the Political Reform Act of 1974. See b. *infra*.

b. If “Yes,” also cite to and briefly discuss statutes/regulations addressing electronic records; how are they treated differently?

CPRA provides that electronic public records not exempt from disclosure and which are held by any agency covered by the act, will be made available in electronic form when requested by any person. Cal. Gov’t Code § 6253.9, added by 2000 Cal. Stat. 982 § 2 provides:

(a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this chapter that is in electronic format shall make that information available in an electronic format when requested by any person and, when applicable shall comply with the following:

(1) The agency shall make the information available in any electronic format in which it holds the information.

(2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for the provision of other agencies. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.

Cal. Gov't Code §10248 requires the Legislative Counsel to make available online specific records pertaining to the business of the state legislature to be made available in electronic form to the public. [Note: these types of records are listed in q.4a of part A *supra*.] This statute was added by 1993 Stat. 1235 §2.

The Online Disclosure Act states: “Advances in technology have made it viable for disclosure statements and reports required by the Political Reform Act to be filed online and placed on the Internet, thereby maximizing availability to the public.” Cal. Gov't Code § 84601(c). This act was added by 1997 Cal. Stat. 866.

Additional comments:

5. Do any freedom of information act statutes/regulations assure “permanent public access” of electronic public records?

Yes  
 No

- a. If “Yes,” cite to and discuss any provisions/regulations that address “permanent public access”; cite to any other source of law supplementing them: attorney general opinions, court decisions, administrative rules or guidelines.

Additional comments:

The term “permanent public access” does not appear in any of the statutes previously discussed, although “public access” does. However, as discussed above, the existence of these laws could lead to the inference that the intent of the California government is to provide permanent public access for the records covered under the statutes, regardless of format.

6. Do the freedom of information act statutes/regulations or other sources of law supplementing them (particularly a declaration of legislative intent or a relevant attorney general opinion) declare the public policy of the state and address the scope of citizens’ access to public records or acknowledge the state’s responsibility to permanently maintain public records?

Yes  
 No

- a. If “Yes,” cite to and provide relevant language.

The Online Disclosure Act, Cal. Gov't Code §§ 84600-84612, requires lobbyists, candidates for elective office, including current officeholders, to make available campaign donation and other reports required by the act. Public access to the information is addressed in the act: “Public access to campaign and lobbying disclosure information is a vital and integral component of a fully informed electorate.” Cal. Gov't Code § 84601(b).

Additional comments:

See discussion in q.6 of part A *supra*.

7. Has any freedom of information legislation/administrative regulation been proposed calling for “permanent public access” of electronic public records?

Yes  
 No

- a. If “Yes,” cite to and briefly discuss the legislation/proposed regulation; what was the outcome?
- b. If “Yes,” also cite to documents from the legislative or regulatory history.

Additional comments:

8. Has litigation under the freedom of information act resulted from the state’s failure to “permanently” maintain a public record?

Yes  
 No

- a. If “Yes,” cite to and briefly discuss each case.

Additional comments:

9. Discuss any unique circumstances in your state relevant to “permanent public access” of public records under freedom of information act statutes/regulations.

### C. PUBLIC ACCESS LAWS

The term “public access law” is intended to be a catchall for all other statutes that address the permanency and public accessibility of government information. The type of law appropriately falling under this section is most likely to be a statute that governs availability and access of *government publications*. An example of such a statute is the “Free Public Access to the Code of Maryland Regulations Act,” whose title alone explains much about its purpose.

1. Does your state have any “public access laws,” as referred to in the paragraph above?

Yes  
 No

- a. If “Yes,” cite each of your state’s public access law statutes and the administrative regulations that supplement them.

The Office of State Publishing is responsible for publishing and making available for sale to the public the index to the state Constitution and laws. Cal. Gov’t Code § 14884.

The State Printer heads the Office of State Printing in the Department of General Services. Cal. Gov’t Code §§ 14870-14877. See part F *infra*.

The State Printer is responsible for printing the state publications that are distributed through the depository program. Cal. Gov't Code §§ 14900-14912. See part I *infra*.

The State Records Appraisal Program was developed by the State Archives to identify those state agency records which should be retained permanently. This program works in conjunction with the Statewide Information and Records Management Program (SIRM), which is located with the Procurement Division of the Department of General Services. Overall policy development and coordination of the State Records Management Act is the responsibility of SIRM. Cal. Gov't Code §§ 14740-14768.

The State Records Management Act requires the head of each state agency to:  
“Establish and maintain an active, continuing program for the economical and efficient management of the records and information collection practices of the agency. . . Information collected by the agency shall, as far as is expedient, be collected and tabulated in a manner which maximizes the usefulness of the information to other state agencies and the public.” Cal Gov't Code § 14750(a).

- b. If “No,” skip this whole section.

Additional comments:

- 2. For each public access law, specify the branches to which it applies.

- Executive
- Legislative
- Judicial
- Administrative (applying to all agencies, no matter what branch of government)
- Other

- a. Briefly explain your answer and cite to applicable statutes/regulations.

Cal. Gov't Code § 14900 provides for public access to state publications:  
“It is the policy of the State of California to make freely available to its inhabitants all state publications by distribution to libraries throughout the state, subject to the assumption by such libraries of the responsibilities of keeping such documents readily accessible for use, and of rendering assistance in their use to qualified patrons without charge.”

Additional comments:

- 3. For each public access law, cite to and discuss provisions/regulations addressing the particular form of government information addressed by the law.

Cal. Gov't Code §§9700-9795 mandates the printing of a number of government publications including the State Constitution, all bills, session laws, current codes, Daily Journals of the Senate and Assembly, and the Legislative Manual. § 9791 addresses the distribution of these publications by the Department of General Services. Cal. Gov't Code §§ 14900- 14912 requires that they be distributed as part of the state depository program, discussed in part I *infra*.

See also q. 4 *infra* for discussion of Cal. Gov't Code § 10248(a).

Additional comments:

4. For each public access law, do the applicable statutes/regulations address electronic information separately vis-à-vis print information?

Yes  
 No

- a. If "Yes," cite to and briefly discuss statutes/regulations addressing electronic information; how is it treated differently?

Cal. Gov't Code §10248(a) requires the Legislative Counsel to make specific types of records pertaining to the business of the state legislature available in electronic form to the public:

- (1) The legislative calendar, the schedule of legislative committee hearings, a list of matters pending on the floors of both houses of the Legislature, and a list of the committees of the Legislature and their members.
- (2) The text of each bill introduced in each current legislative session, including each amended, enrolled, and chaptered form of each bill.
- (3) The bill history of each bill introduced and amended in each current legislative session.
- (4) The bill status of each bill introduced and amended in each current legislative session.
- (5) All bill analyses prepared by legislative committees in connection with each bill in each current legislative session.
- (6) All vote information concerning each bill in each current legislative session.
- (7) Any veto message concerning a bill in each current legislative session.
- (8) The California Codes.
- (9) The California Constitution.
- (10) All statutes enacted on or after January 1, 1993.

Additional comments:

5. For each public access law, do the applicable statutes/regulations specifically address permanency of the information?

Yes  
 No

- a. If "Yes," for each public access law, cite to and briefly discuss the permanency provisions.

The Secretary of State is responsible for ensuring the permanency of electronic records handled by the office, including those intended for permanent preservation in the State Archives.

Summarizing Cal. Gov't Code § 12168.7:

(a) In this statute, the California Legislature requires the adoption of uniform statewide standards for the purpose of storing and recording permanent and nonpermanent documents in electronic media.

(b) In order to ensure that uniform statewide standards remain current and relevant, the Secretary of State, in consultation with the Department of General Services, shall approve and adopt appropriate standards established by the American National Standards Institute or the Association for Information and Image Management.

(c) The standards specified in subdivision (b) shall include a requirement that a trusted system be utilized, for the purposes of this section and others [citing numerous statutory provisions] “trusted system” means a combination of techniques, policies, and procedures for which there is no plausible scenario in which a document retrieved from or reproduced by the system could differ substantially from the document that is originally stored.

(d) In order to develop statewide standards as expeditiously as possible and until such time that such standards are adopted, state officials shall ensure that microfilming, electronic data imaging, and photographic reproduction are done in compliance with the minimum ANSI standards or those of the Association for Information and Image Management for recording of permanent records or nonpermanent records.

Additional comments:

6. For each public access law, do the applicable statutes/regulations specifically address accessibility of information?

Yes

No

a. If “Yes,” cite to and briefly discuss the accessibility provisions.

Additional comments:

7. For each public access law, do the applicable statutes/regulations or any other source of law supplementing them (particularly a declaration of legislative intent or a relevant attorney general opinion) declare the public policy of the state and address the scope of citizens’ access to government publications or acknowledge the state’s responsibility to permanently maintain government publications?

Yes

No

a. If “Yes,” cite to and provide relevant language.

Cal. Gov’t Code § 14900, cited in q.2 *supra*.

Additional comments:

8. Has any public access legislation/administrative regulation been proposed calling for “permanent public access” of electronic publications?

Yes  
 No

- a. If “Yes,” cite to and briefly discuss the legislation/proposed regulation; what was the outcome?  
b. If “Yes,” also cite to documents from the legislative or regulatory history.

Additional comments:

9. Has litigation under any public access law resulted from the state’s failure to “permanently” maintain a government publication?

Yes  
 No

- a. If “Yes,” cite to and briefly discuss each case.

Additional comments:

10. Discuss any unique circumstances in your state relevant to “permanent public access” of government publications under public access laws.

#### **D. STATE OFFICE FOR TECHNOLOGY AND CHIEF INFORMATION OFFICER**

1. Does your state have an office for technology (or department of information technology, department of information service, or equivalent) and/or a chief information officer (or equivalent)?

Yes  
 No

- a. If “Yes,” provide the complete official name for the office and/or officer; cite to the statute giving that information.

On September 20, 2002, the Governor appointed Professor J. Clark Kelso “Special Advisor on Information Technology and Chief Information Officer for the State of California.”

- b. If “No,” skip this whole section.

Additional comments:

The California Department of Information Technology (DOIT) was a department in the executive branch. The DOIT was created in 1995. It ceased operating on July 1, 2002, when the authorizing legislation, Cal. Gov’t Code §§ 11700-11785, expired and proposed legislation for its continuing existence did not survive in the legislature. For more information about the DOIT’s demise, see q. 11 *infra*.

2. Cite the “enabling” statute that created and defines the powers/responsibilities of the office/officer; when was the statute first enacted?

Additional comments:

3. Does the office/officer have power to promulgate administrative regulations?

Yes  
 No

- a. If "Yes," cite the body of administrative regulations promulgated by the office/officer.

Additional comments:

4. The office/officer has jurisdiction over which branches?

Executive  
 Legislative  
 Judicial  
 Administrative (applying to all agencies, no matter what branch of government)  
 Other

- a. Briefly explain your answer and cite to applicable statutes/regulations.

Additional comments:

As of early 2003, the Chief Information Officer appears to be mainly an advisory position. According to the September 20, 2002 press release from the Office of the Governor:

"Professor Kelso will be responsible for providing leadership on information technology policy and for working collaboratively with other information technology leaders throughout State government. He will continue to lead the Information Technology Management Initiative, established by the Governor's May 31 Executive Order (D-57-02) and will make recommendations to the Governor for the oversight, procurement, management and operations of the State's information technology systems."

5. Are the powers/responsibilities of the office/officer defined differently for electronic government information vis-à-vis print government information?

Yes  
 No

- a. If "Yes," cite to and briefly discuss applicable statutes/regulations addressing electronic government information; how is it treated differently?

Additional comments:

6. Do applicable statutes/regulations for the office/officer set forth powers/responsibilities relating to "permanent public access" of government information?

Yes  
 No

- a. If “Yes,” cite to and discuss any provisions/regulations that address those powers/responsibilities; cite to any other source of law supplementing them: attorney general opinions, court decisions, administrative rules or guidelines.

Additional comments:

7. Does any relevant source of law acknowledge in any way the state’s responsibility to permanently maintain government information?

Yes  
 No

- a. If “Yes,” briefly discuss that recognition; cite to and provide relevant language.

Additional comments:

See q.5 in part C *supra*, for related discussion.

8. Whether or not a supporting source of law can be identified, does the office/officer acknowledge responsibility to permanently maintain government information?

Yes  
 No

- a. If “Yes,” briefly discuss when and how that responsibility was acknowledged; cite to any supporting source of law.

Additional comments:

9. Has the office/officer undertaken any special initiatives or projects involving “permanent public access” of government information?

Yes  
 No

- a. If “Yes,” briefly describe those special initiatives or projects; discuss their effectiveness and actual accomplishments.

Additional comments:

10. Has any litigation involving the office/officer resulted from the state’s failure to “permanently” maintain government information?

Yes  
 No

- a. If “Yes,” cite to and briefly discuss each case.

Additional comments:

11. Discuss any unique circumstances in your state relevant to the office for technology and/or chief information officer.

In late 2001 and early 2002, the DOIT and the Governor's office came under significant criticism from the state legislature after media scrutiny revealed that the agency had entered into a number of technology contracts during 2000 and 2001; the IT companies which had contracted with the DOIT subsequently failed to provide promised services and technology, with the cost of the losses to the state totaling more than \$95 million dollars.

During the same time period, the State Auditor issued reports as a result of two audits which were highly critical of the DOIT and its leadership, *Information Technology: The State Needs to improve the Leadership and Management of its Information Technology Efforts* (Bureau of State Audits, June 27, 2001); and *Enterprising Licensing Agreement: The State Failed to Exercise Due Diligence When Contracting with Oracle, Potentially Costing Taxpayers Millions of Dollars* (Bureau of State Audits, April 16, 2002).

Both of these reports are available on the Bureau's web site at <http://www.bsa.ca.gov/>.

On June 11, 2002, the DOIT Director resigned. The department ceased to exist on July 1, 2002, as the statutes authorizing its creation and operation became inoperative, and proposed legislation to continue the department's existence failed.

As of July 1, 2002, the DOIT website was no longer accessible and calls to the agency's phone numbers were not answered. Within days, calls to the agency received the taped message: "You have reached a number that is no longer in service." According to Kristine Ogilvie, Senior Librarian at the State Library, the staff had knowledge of the DOIT's impending demise, so they were able to capture most of the documents on the website prior to its disappearance.

Under Executive Order D-59-02 (July 1, 2002), the Governor ordered all state agencies to immediately take responsibility for planning and managing their own technology projects. The executive order assigned overall fiscal management responsibility for technology spending to the Department of Finance, which is to consult with the Department of General Services in drafting management memoranda to be distributed to the agencies. How this will impact the implementation of the DOIT Technology plan, discussed in part E *infra*, remains to be seen.

## **E. STATE TECHNOLOGY PLANS**

1. Does your state have a current official information technology plan (or equivalent)?

Yes  
 No

a. If "Yes," describe what government entity was responsible for creating the plan; cite to the source of its authority.

On September 8, 2000, the Governor issued Executive Order D-17-00, known as the eGovernment Initiative. The order states, in part: "The Governor's Office shall work with the State and private sectors to assure that state agencies and departments implement electronic technologies that will

allow the people of California to receive government services and interact with State government, including a statewide Internet portal that offers a single, convenient access point for state government information and services.”

As mandated in EO D-17-00, agencies were directed to submit eGovernment implementation plans to the Department of Information Technology, identifying services to be provided online to citizens. During the succeeding months, the DOIT drafted a strategic plan, which was published in late 2001, and entered into the ill-fated contracts which led to its ultimate demise.

The strategic plan, which was available on the DOIT web site until its “disappearance,” cited as authority for its existence 1995 Cal. Stat. 508, the session law authorizing the creation of the department, subsequently codified at Cal. Gov’t Code §§ 11710-11714.

b. If “Yes,” also provide complete bibliographic information about the plan; when was it published?

The Legislative Analyst’s Office issued a report on the eGovernment Initiative in early 2001: “*E-Government in California: Providing Services to Citizens Through the Internet*,” (LAO, January 24, 2001), available online at: [www.lao.ca.gov/2001/012401\\_egovernment.htm](http://www.lao.ca.gov/2001/012401_egovernment.htm). The report presents a summary of current e-government efforts taking place nationwide, comparing the current efforts underway in California, and offers a number of recommendations to the Legislature to consider in enacting future legislation to ensure that e-government priorities are carried out appropriately and in a fiscally responsible manner.

The *Department of Information Technology Strategic Plan 2001-2004* (California Department of Information Technology, 2001).

c. If “No,” skip this whole section.

Additional comments:

2. The technology plan covers which branches?

- Executive
- Legislative
- Judicial
- Administrative (applying to all agencies, no matter what branch of government)
- Other

a. Briefly explain your answer and cite to applicable statutes/regulations.

Additional comments:

While the LAO report does not cite any specific statutory or regulatory authority other than EO D-17-00, it was included as part of the state budget plan for fiscal 2001-02, which was approved by the Legislature and signed by the Governor.

3. Does the current plan include a section on permanency and public accessibility of electronic government information?

- Yes

No

- a. If "Yes," cite to and provide relevant language of the plan.

Additional comments:

Neither the eGovernment Initiative nor the DOIT strategic plan mention "permanency" or "public accessibility of electronic government information." Instead, the focus is on the online delivery of government services such as filing income taxes, renewing vehicle registrations or driver's licenses, filing a complaint against a business or professional licensed and regulated by the state, etc. In fact, the LAO report provides a very specific definition of eGovernment: "the process of transacting business between citizens and government agencies."

4. Discuss any unique circumstances in your state relevant to technology planning or the current information technology plan.

As mentioned above and in part D *supra*, the scandal and demise of the DOIT in July 2002, has raised considerable questions about the permanency and public accessibility of electronic government information in California. There have been a number of recent examples of the state government's eagerness to quickly remove online information that may not be politically popular, such as the immediate elimination of the DOIT web site from public view without any reference as to the reason (authorizing legislation for the agency expired).

#### **F. STATE PRINTING OFFICE AND STATE PRINTER**

1. Does your state have an official printing office (or equivalent) and/or an official printer (or equivalent)?

Yes  
 No

- a. If "Yes," provide the complete official name for the printing office and/or official printer; cite to the statute giving that information.

"All state printing shall be done in the Office of Printing. State work only shall be done in the Office of State Printing. The Office of State Printing may also be known as the Office of State Publishing." Cal. Gov't Code § 14850.

- b. If "No," skip this whole section.

Additional comments:

2. Cite the "enabling" statute that created and defines the powers/responsibilities of the printing office/official printer.

"There is in the Department of General Services a State Printer, who shall be appointed by the Governor, upon recommendation of the director, and shall serve at the pleasure of the director." Cal. Gov't Code § 14872.

The powers and responsibilities of the office and the State Printer are covered in a number of statutes. Cal. Gov't Code §§ 14850-14894. Among the listed duties:

“On or before the 15<sup>th</sup> day of September of each year, the department shall make a written report to the Governor, embracing a record of the complete transactions of the Office of State Printing for the preceding fiscal year.” Cal. Gov't Code § 14859.

“The department shall execute promptly all order for printing or binding received from the various state agencies.” Cal. Gov't Code § 14870.

“The department shall take charge of and is responsible for all manuscripts and other matter delivered to it for printing.” Cal. Gov't Code § 14873.

“The department has general supervision of the distribution of all public documents and other publications printed for any state agency and the custody of all state documents and other publications subject to public distribution, except those printed for the special use of the Legislature, the Governor, or elective officers of the state. The department shall fix the price and dispose of or sell the documents and publications.” Cal. Gov't Code § 14880.

“The department may accept for distribution or disposal documents and other publications from the Legislature, the Governor, or the elective officers of the state, when requested to do so. The department shall fix the price and dispose of or sell the documents and publications.”

Cal. Gov't Code § 14881.

“The department may compile and publish such documents, pamphlets, bulletins or other publications as it deems are for the best interests of the state or for public information.”

Cal. Gov't Code § 14882.

Additional comments:

There are additional responsibilities of the State Printer with regard to depository program publications under Cal. Gov't Code §§ 14900-14913, discussed in part I *infra*.

3. Does the printing office/official printer have power to promulgate administrative regulations?

Yes

No

a. If “Yes,” cite the body of administrative regulations promulgated by the printing office/official printer.

Additional comments:

4. The printing office/official printer has jurisdiction over which branches?

Executive

Legislative

Judicial

Administrative (applying to all agencies, no matter what branch of government)

Other

a. Briefly explain your answer and cite to applicable statutes/regulations.

Cal. Gov't Code §§ 14880-14886, *see id* q.2 *supra*.

Under the depository library program, see Part I *infra*, the State Printer is responsible for the publication and distribution of all state publications from all branches.

Additional comments:

5. Briefly discuss the functions of the printing office/official printer.

The functions of the office and the State Printer are covered in a number of statutes. Cal. Gov't Code §§ 14850-14894. Among the listed duties:

(1) Preparation of an annual report to the Governor “embracing a record of the complete transactions of the Office of State Printing for the preceding fiscal year.” Cal. Gov't Code § 14859.

(2) Carrying out approved printing and binding orders from state agencies. Cal. Gov't Code § 14870.

(3) Supervision for the distribution of all public. Cal. Gov't Code § 14880.

(4) Disposal of documents and other publications from the Legislature, Governor, or elective officers of the state. Cal. Gov't Code § 14881.

(5) General authority to compile and publish “such documents, pamphlets, bulletins or other publications as it deems are for the best interests of the state or for public information.” Cal. Gov't Code § 14882.

(6) Also, the Office of State Publishing is responsible for providing print services to the State Legislature, including maintaining the Legislative Bill Room. Cal. Gov't Code § 9790.

Also, the office is given authority to “revise, reduce or decline to execute any order, or part of any order, which it deems unnecessary or unwarranted by law, and which will tend to consume unnecessarily the appropriation for support of the Office of State Printing.” Cal. Gov't Code § 14885. This statute would seem to give the OSP extraordinarily wide powers to refuse to print some public documents, even if the requesting agencies wanted them printed.

Then:

- a. Describe your state's use of in-house agency publishing and/or commercial publishing of government information.

While Cal. Gov't Code § 14850 mandates that all state printing be done in the Office of State Printing, § 14860 provides that in the event that the office is not equipped to fill an order for printing, it must notify the state agency which has made the printing request. The agency is then required to go through the Office of Procurement to have the printing request filled by a commercial company.

- b. What percentage of official state government documents are printed by the printing office/official printer?

According to Jackie Jones, spokesperson for the State Printer's Office, approximately 65% of all state documents are published through the office. She admitted that this is an educated guess, as

there is currently no mechanism in place to compare how often the State Printer's Office is utilized by other agencies versus their use of commercial companies.

- c. To what extent is the printing office/official printer involved in the electronic dissemination of government information?

According to Ms. Jones, the State Printer's Office has limited involvement in the dissemination of electronic government information. Upon request of individual agencies, the department will create an electronic version of any document it has already received to print for posting on their websites. However, since other agencies do not always use the State Printer's Office, they have no way of determining how much government information is actually being produced in electronic format at this time.

Additional comments:

6. Are the powers/responsibilities of the printing office/official printer defined differently for electronic government information vis-à-vis print government information?

Yes

No

- a. If "Yes," cite to and briefly discuss applicable statutes/regulations addressing electronic government information; how is it treated differently?

Additional comments:

None of the statutes relating to the Office of State Publishing and the State Printer specifically address electronic government information. In fact, the statutes repeatedly refer to publication by means of print format. However, on the OSP web site, there is a "Welcome" message from State Printer. In the message, he states:

"The Office of State Publishing is one of the most innovative leaders in state government in the move from the printing-on-paper world to the electronic communication age. OSP works in partnership with other state agency offices in this transition to improve service to the public and cut the cost of state government for taxpayers.

Although OSP stays focused on the future, it recognizes and sustains its past technology. The printed word is still a critical part of the OSP mission in meeting the needs of California citizens and government."

Geoff Brandt, Acting State Printer, at <http://www.osp.dgs.ca.gov/About+OSP/Welcome.htm> (January 28, 2003).

The message then goes on to cite some statistics relating to number of print publications distributed by the office, some of which are also available online: the Governor's budget, all legislative bills, ballot pamphlets, tax forms, and DMV handbooks. Since the statutes relating to the Office of State Printing and the State Printer have not been amended to specifically include or exclude the dissemination of publications in electronic format, it is not possible to make any determination as to whether the responsibilities exist.

7. Do applicable statutes/regulations for the printing office/official printer set forth powers/responsibilities relating to “permanent public access” of government information?

Yes

No

- a. If “Yes,” cite to and discuss any provisions/regulations that address those powers/responsibilities; cite to any other source of law supplementing them: attorney general opinions, court decisions, administrative rules or guidelines.

Additional comments:

8. Does any relevant source of law acknowledge in any way the state’s responsibility to permanently maintain government information?

Yes

No

- a. If “Yes,” briefly discuss that recognition; cite to and provide relevant language.

Additional comments:

9. Whether or not a supporting source of law can be identified, does the printing office/official printer acknowledge responsibility to permanently maintain government information?

Yes

No

- a. If “Yes,” briefly discuss when and how that responsibility was acknowledged; cite to any supporting source of law.

Additional comments:

10. Has the printing office/official printer undertaken any special initiatives or projects involving “permanent public access” of government information?

Yes

No

- a. If “Yes,” briefly describe those special initiatives or projects; discuss their effectiveness and actual accomplishments.

Additional comments:

11. Has any litigation involving the printing office/official printer resulted from the state’s failure to “permanently” maintain government information?

Yes

No

- a. If “Yes,” cite to and briefly discuss each case.

Additional comments:

12. Discuss any unique circumstances in your state relevant to the official printing office and/or official printer.

## **G. STATE ARCHIVES AND STATE ARCHIVIST**

This section addresses your state’s official archives and state archivist. If these responsibilities are by law under the auspices of your state library and state librarian, please move on to Section H.

1. Does your state have an official archives (or equivalent) and/or an official archivist (or equivalent)?

Yes  
 No

- a. If “Yes,” provide the complete official name for the archives and/or archivist; cite the statute giving that information.

Under Cal. Gov’t Code § 12221: “The Secretary of State is the custodian of the public archives of the state.” The California State Archives is a division of the Secretary of State’s office, which is headed by a Chief of the Archives and Museum Division.

- b. If “No,” skip this whole section.

Additional comments:

2. Cite the “enabling” statute that created and defines the powers/responsibilities of the archives/archivist.

Cal. Gov’t Code §§ 12220-12236 outline the powers and responsibilities of the Secretary of State in administering the State Archives. Among those are the following:

“The Secretary of State shall maintain and properly equip safe and secure vaults for the preservation, indexing, and use of the archives.” Cal. Gov’t Code § 12222.

“The Secretary of State shall receive into the archives any item that is required by law to be delivered to or filed with him.” Cal. Gov’t Code § 12223.

“As used in this article, “item” includes but is not limited to any paper, document, book, map, or other type of record.” Cal. Gov’t Code § 12221.

“The Secretary of State may receive into the archives any item that he deems to be of historical value and shall receive into the archives any other item from a state agency if directed to do so by the Department of General Services.” Cal. Gov’t Code § 12224.

“The Keeper of the Archives is responsible for the preservation and indexing of material deposited in the State archives, and shall make the material readily available for use.” Cal. Gov’t Code §12227.

Additional comments:

3. Does the archive/archivist have power to promulgate administrative regulations?

Yes

No

a. If "Yes," cite the body of administrative regulations promulgated by the archive/archivist.

Additional comments:

While the Secretary of State has the power to promulgate regulations, the Chief of the Archives and Museum Division does not. A review of the state code of regulations did not reveal any regulations relating to the State Archives Division.

4. The archive/archivist has defined responsibilities for which branches?

Executive

Legislative

Judicial

Administrative (applying to all agencies, no matter what branch of government)

Other

a. Briefly explain your answer and cite to applicable statutes/regulations.

Additional comments:

There are two major programs administered by the State Archives, under the authority of the Secretary of State, which are of particular relevance to this survey: The State Records Appraisal Program and the Local Government Records Program.

The State Records Appraisal Program was created to carry out the requirements of the State Records Management Act, Cal. Gov't Code §§ 14740-14774. Under the Act, the head of each agency is required to establish and maintain an "economical and efficient" records management program, which collects information that will be "collected and tabulated in a manner which maximizes the usefulness of the information to other states and the public." Cal. Gov't Code § 14750.

The State Records Appraisal Program was developed by the State Archives to identify those state agency records which should be retained permanently. This program works in conjunction with the Statewide Information and Records Management Program (SIRM), which is located with the Procurement Division of the Department of General Services. Overall policy development and coordination of the State Records Management Act is the responsibility of SIRM. Cal. Gov't Code §§ 14740-14768. A description of these two programs with links to administrative manuals and guidelines is at: [http://www.ss.ca.gov/archives/level3\\_recmgmt.html](http://www.ss.ca.gov/archives/level3_recmgmt.html).

Additional information about the State Records Program is also available through the Procurement Division link at the Department of General Services web site *at* <http://www.pd.dgs.ca.gov/recsctr/default.htm>.

The Secretary of State is also responsible for the Local Government Records Program, which is administered by the State Archives. The purpose of this program is to establish guidelines for

local government records retention and to provide archival support to local agencies. As mandated by the statute, the *Local Government Records Management Guidelines* are available on the Secretary of State web site. Both the California Public Records Act and Cal. Gov't Code § 12236 are cited as authority for the Program (California Secretary of State, Archives and Museum Division, *Local Government Records Management Guidelines*, August, 2001).

Both of these programs are described in detail and provide appropriate links to relevant documents, statutes, and other information on the Secretary of States web site at <http://www.ss.ca.gov/archives/>.

5. Briefly discuss the functions of the archive/archivist.

As the official archivist, the Secretary of State was directed by California's first Legislature, in 1849-50, to receive "all public records, registered maps, books, papers, rolls, documents and other writings. . . which appertain to or are in any way connected with the political history and past administration of the government of California. . ."

The California State Archives. . . continues to serve in the spirit of those early instructions, providing a repository for the state's permanent governmental records as well as other materials documenting California history," at <http://www.ss.ca.gov/archives/archives.htm>.

Additional comments:

6. Are the powers/responsibilities of the archive/archivist defined differently for electronic government information vis-à-vis print government information?

Yes  
 No

a. If "Yes," cite to and briefly discuss applicable statutes/regulations addressing electronic government information; how is it treated differently?

The Secretary of State is required to adopt ANSI or AIIM standards to ensure that statewide guidelines remain current and relevant for the purpose of storing and recording permanent and nonpermanent documents in electronic media. Cal. Gov't Code § 12168.7, See *id.* q. 5 Part C.

Additional comments:

7. Do applicable statutes/regulations for the archive/archivist set forth powers/responsibilities relating to "permanent public access" of government information?

Yes  
 No

a. If "Yes," cite to and discuss any provisions /regulations that address those powers/responsibilities; cite to any other source of law supplementing them: attorney general opinions, court decisions, administrative rules or guidelines.

Additional comments:

8. Does any relevant source of law acknowledge in any way the state's responsibility to permanently maintain government information?

Yes  
 No

- a. If "Yes," briefly discuss that recognition; cite to and provide relevant language.

"[T]he California State Archives (CSA), a division of the Secretary of State's office, has developed a State Records Appraisal Program that identifies state agency records with permanent retention value. The records so identified are maintained at the State Archives and are made available for public inspection and research, pursuant to the Public Records Act (Government Code 6250 et seq.) and the Information Practices Act (Civil Code 1798 et seq.)." California Secretary of State, State Archives, State Records Appraisal Program (2000), at [http://www.ss.ca.gov/archives/level3\\_recgmt.html](http://www.ss.ca.gov/archives/level3_recgmt.html).

Additional comments:

9. Whether or not a supporting source of law can be identified, does the archive/archivist acknowledge responsibility to permanently maintain government information?

Yes  
 No

- a. If "Yes," briefly discuss when and how that responsibility was acknowledged; cite to any supporting source of law.

The statement on the official State Archives web site, cited in q. 5 *supra*, specifically mentions being "a repository for the state's permanent governmental records."

Additional comments:

In December 1999, then Secretary of State Bill Jones published his *California eGovernment Plan: A Statewide Technology Initiative*, available online at [http://www.ss.ca.gov/executive/bj\\_tech\\_plan.htm](http://www.ss.ca.gov/executive/bj_tech_plan.htm). This document purports to a blueprint for delivering government services to the citizens of California via online technology, streamlining the cost of those services, etc., but it does not address the issue of permanently maintaining government information. There is some indication that the Governor's eGovernment Initiative in 2000 was influenced by the Secretary of State's plan, published almost a year earlier.

10. Has the archive/archivist undertaken any special initiatives or projects involving "permanent public access" of government information?

Yes  
 No

- a. If "Yes," briefly describe those special initiatives or projects; discuss their effectiveness and actual accomplishments.

Additional comments:

11. Has any litigation involving the archive/archivist resulted from the state's failure to "permanently" maintain government information?

Yes  
 No

- a. If "Yes," briefly discuss the circumstances of each case and its outcome, and provide citations to any court decisions.

Additional comments:

12. Discuss any unique circumstances in your state relevant to the official archive and/or official archivist.

## H. STATE LIBRARY AND STATE LIBRARIAN

This section addresses your state's official library and state librarian. There is no separate section that addresses the official law library and state law librarian, if any. If your state has an official library *and* an official law library (and/or official librarian *and* official law librarian), it may be appropriate to address those government entities and/or persons separately.

1. Does your state have an official library (or equivalent) and/or an official librarian (or equivalent)?

Yes  
 No

- a. If "Yes," provide the complete official name for the library and/or librarian; cite to the statute giving that information.

The California State Library is a division of the State Department of Education. The powers and duties of the State Librarian, as well as the general operations of the State Library are found in Cal. Educ. Code §§ 19300-19336 (Deering, LEXIS through 2001 Sess.).

- b. If "No," skip this whole section.

Additional comments:

3. Cite the "enabling" statute that created and defines the powers/responsibilities of the library/librarian.

Cal. Educ. Code § 19300 states:

The Legislature hereby declares that it is in the interest of the people and of the state that there be a general diffusion of knowledge and intelligence through the establishment and operation of public libraries. Such diffusion is a matter of general concern inasmuch as it is the duty of the state to provide encouragement to the voluntary lifelong learning of the people of the state.

The Legislature further declares that the public library is a supplement to the formal system of free public education, and a source of information and inspiration to persons of all ages, and a resource

for continuing education and reeducation beyond years of formal education, and as such deserves adequate financial support from government at all levels.

The division shall be in charge of a chief who shall be a technically trained librarian and shall be known as the “State Librarian.” Cal. Educ. Code § 19302.

The State Librarian shall be appointed by and hold office at the pleasure of the Governor, subject to confirmation by the Senate.” Cal. Educ. Code § 19303.

While the entire chapter enumerates the responsibilities of the State Librarian and the State Library, Cal. Educ. Code § 19320 (a)-(n), list some of the powers and duties of the State Librarian. Briefly, the State Librarian is responsible for the administering the state depository program; collecting, preserving, and disseminating information regarding the history of the state; providing advisory, consultive and technical assistance to other libraries; making studies and surveys of public library needs; and adopting rules and regulations for the allocation of federal funds in state public libraries.

Additional comments:

3. Does the library/librarian have power to promulgate administrative regulations?

Yes  
 No

a. If “Yes,” cite the body of administrative regulations promulgated by the library/librarian.

Under Cal. Educ. Code § 19320(a), the State Librarian is specifically authorized to “[m]ake rules and regulations, not inconsistent with law, for the government of the State Library.” Title 5 of the California Code of Regulations contains the administrative regulations promulgated by the State Librarian:

Regulations pertaining to the California Library Services Act, Cal. Code Regs. tit. 5 §§ 20100-20265.

The Library of California Act regulations, Cal. Code Regs. tit. 5 §§ 20300-20332.

Regulations pertaining to the California Reading and Literacy Improvement and Public Library Construction and Renovation Bond Act of 2000, Cal. Code Regs. tit. 5 §§ 20430- 20444.

Additional comments:

4. The library/librarian has defined responsibilities for which branches?

Executive  
 Legislative  
 Judicial  
 Administrative (applying to all agencies, no matter what branch of government)  
 Other

a. Briefly explain your answer and cite to applicable statutes/regulations.

Additional comments:

Under Cal. Educ. Code § 19320, the State Librarian is given broad authority to develop and promote library services throughout California, working with both state departments and agencies, and with local public library systems.

5. Briefly discuss the functions of the library/librarian.

In California, the role of the State Librarian is to support the education and information needs of the public. It is for this reason that the State Library was made a division within the Department of Education. This supporting role is defined in Cal. Educ. Code § 19300, which provides a broad policy statement:

The Legislature hereby declares that it is in the interest of the people and of the state that there be a general diffusion of knowledge and intelligence through the establishment and operation of public libraries. Such diffusion is a matter of general concern inasmuch as it is the duty of the state to provide encouragement to the voluntary lifelong learning of the people of the state.

The Legislature further declares that the public library is a supplement to the formal system of free public education, and a source of information and inspiration to persons of all ages, and a resource for continuing education and reeducation beyond the years of formal education, and as such deserves adequate financial support from government at all levels.

Additional comments:

6. Are the powers/responsibilities of the library/librarian defined differently for electronic government information vis-à-vis print government information?

Yes

No

a. If “Yes,” cite to and briefly discuss applicable statutes/regulations addressing electronic government information; how is it treated differently?

Additional comments:

7. Do applicable statutes/regulations for the library/librarian set forth powers/responsibilities relating to “permanent public access” of government information?

Yes

No

a. If “Yes,” cite to and discuss any provisions/regulations that address those powers/responsibilities ; cite to any other source of law supplementing them: attorney general opinions, court decisions, administrative rules or guidelines.

Additional comments:

Under Cal. Educ. Code § 19320(h), the State Librarian “**may** . . . collect, **preserve** and disseminate information regarding the history of the state” [emphasis added]. While this might arguably be

said to acknowledge responsibility for permanently maintaining some government information, it is not very specific.

8. Does any relevant source of law acknowledge in any way the state's responsibility to permanently maintain government information?

Yes  
 No

- a. If "Yes," briefly discuss that recognition; cite to and provide relevant language.

Additional comments:

9. Whether or not a supporting source of law can be identified, does the library/librarian acknowledge responsibility to permanently maintain government information?

Yes  
 No

- a. If "Yes," briefly discuss when and how that responsibility was acknowledged; cite to any supporting source of law.

In his message on the State Library web site, the State Librarian addresses the responsibility of the State Library to assure the public has permanent access to government information:

“ . . . Libraries provide access to information and knowledge, and are how we record our time, achievements and failures for future generations. . . Democratic values depend on the free flow of information and knowledge with each individual assured the right and the privilege and the ability to choose and to pursue any direction of thought, study, or action. Libraries are also our collective memory, since history and human experience are best preserved in writing. . . The library collections we build, the access we provide, and the technologies we embrace will carry the people of California into a productive and creative future. . .” Dr. Kevin Starr, *Greetings From the State Librarian* (California State Library, Sept. 2, 1997) at <http://www.library.ca.gov/html/starr.html>.

Additional comments:

10. Has the library/librarian undertaken any special initiatives or projects involving “permanent public access” of government information?

Yes  
 No

- a. If "Yes," briefly describe those special initiatives or projects; discuss their effectiveness and actual accomplishments.

Additional comments:

11. Has any litigation involving the library/librarian resulted from the state's failure to “permanently”

maintain government information?

Yes

No

- a. If "Yes," cite to and briefly discuss each case.

Additional comments:

12. Discuss any unique circumstances in your state relevant to the state library and/or state librarian.

## I. STATE DEPOSITORY LIBRARY LAWS

States often have a depository library program patterned after the federal model for disseminating federal government publications.

1. Does your state have a "depository library program," as referred to in the paragraph above?

Yes

No

- a. If "Yes," cite your state's depository library law statutes and the administrative regulations that supplement them.

The distribution of state publications through the state depository program is covered under Cal. Gov't Code §§ 14900-14912.

The responsibilities of the Office of State Publishing and the State Printer in producing the publications to be distributed through the depository program are covered by Cal. Gov't Code §§ 14880-14886.

The responsibilities of the state agencies for compiling and producing public documents for the depository program are covered under Cal. Gov't Code §§ 14890-14894.

- b. If "No," skip this whole section.

Additional comments:

2. Do the depository library statutes/regulations address electronic government information separately vis-à-vis print government information?

Yes

No

- a. If "Yes," cite to and briefly discuss statutes/regulations addressing electronic government information; how is it treated differently?
- b. If "No," explain whether or not the statutes/regulations have been construed to cover electronic government information?

The statutes outlining the responsibilities of the state depository program have essentially remained unchanged since the late 1960's-1970's. Information provided by the California State Library in a survey for the April 2002 Western State Documents Librarians' Conference leads to the conclusion that the depository program has been effectively overlooked as a means of distributing electronic government information:

Kristine Ogilvie, Senior Librarian at the State Library, provided the following statistics:

**1105** -- Number of titles received by the depository program (any 12 month period)

**1085** – print titles

**20** – electronic titles

When asked to estimate the percentage of titles the depository program was not supplied with, Ms. Ogilvie provided the following:

**95%** of the total state publications

**25%** -- print titles

**70%** -- electronic titles

The California Depository survey can be accessed *at*

<http://www.sdstatelibrary.com/westcodocs/profiles/index.htm>

Additional comments:

3. Do any depository library statutes/regulations assure "permanent public access" of electronic government information?

Yes

No

- a. If "Yes," cite to and discuss any provisions/regulations that address "permanent public access"; cite to any other source of law supplementing them: attorney general opinions, court decisions, administrative rules or guidelines.

Additional comments:

4. Do the depository library statutes/regulations or any other source of law supplementing them (particularly a declaration of legislative intent or a relevant attorney general opinion) declare the public policy of the state and address the scope of citizens' access to government information or acknowledge the state's responsibility to permanently maintain public records?

Yes

No

- a. If "Yes," cite to and provide relevant language.

Cal. Gov't Code § 14900 provides that:

"It is the policy of the State of California to make freely available to its inhabitants all state publications by distribution to libraries throughout the state, subject to the assumption by such

libraries of the responsibilities of keeping such documents readily accessible for use, and of rendering assistance in their use to qualified patrons without charge.”

Additional comments:

5. Have depository libraries as a whole undertaken any special initiatives or projects involving “permanent public access” of government information?

Yes

No

- a. If “Yes,” briefly describe those special initiatives or projects; discuss their effectiveness and actual accomplishments.

Additional comments:

Kristine Ogilvie at the State Library stated that several projects have been proposed but “it is mostly in the talking stages.” State Library staff print out government documents when they discover that the documents are only available online but there is no procedure in place. In particular, she cited the example of trying to catch reports and documents of commissions and boards before a specific group sunsets or dissolves. Kristine also mentioned the example of the Department of Information Technology. The day the statutory authority for the department expired on July 1, 2002, the agency website disappeared with all the documents on it. Luckily, however, library staff knew about the forthcoming demise and had captured most of the information on the website.

6. Please determine the absolute number or percentage of titles:

15%-20% Formerly distributed in print, now distributed exclusively in electronic format.

25% Never before distributed, now distributed in electronic format.

Additional comments:

These figures were provided by Kristine Ogilvie at the State Library.

7. Discuss the depository library program’s effectiveness and actual accomplishments in disseminating, preserving and providing access of electronic government information?

Additional comments:

According to Ms. Ogilvie, while the program is doing a very good job of timely acquisition, cataloging and distribution of tangible [print] state publications; the program’s primary flaw is its present lack of resources to take a leadership role in reacting to web/online publishing.

## **J. COOPERATIVE ARRANGEMENTS**

One can imagine any number of cooperative arrangements to assure “permanent public access.” A well-known example is the partnership between the Texas Electronic Depository program (involving the Texas State Library and Archives Commission) and the University of North Texas Libraries (see description for program C304 at Computers in Libraries 2002 on the Information Today website). A hypothetical example

of a less formalized cooperative arrangement is where a state's highest court relies on the state bar association to publish the court's decisions.

1. To secure PPA, has any state agency or other government entity (judicial, legislative or executive) partnered with any not for profit, educational, or for profit organization outside of government?

Yes

No

- a. If "Yes," describe each partnership, noting whether it is funded by a grant or through a government appropriation; give a brief history and summary of accomplishments.

Additional comments:

In 1999, the Legislature passed the Library of California Act, Cal. Educ. Code §§ 18800-18870, an ambitious plan to promote "[r]esource sharing, cooperation, and collaboration among all California libraries of all types." It is intended promote the use of technology in order to bring together public, academic, and special library resources throughout the state. Under the administration of the State Library's Library Development Services Program, the Library of California is "a multitype resource sharing program where participating public, college and university, school, and special libraries are linked electronically so Californians can access and use the collections from these libraries to obtain the information they need for work, school, or lifelong learning regardless of the library they choose to use," *Overview of the California State Library*, May 13, 2002, at <http://www.library.ca.gov/html/cslgen2.html>.

However, in reviewing the statutory language of the act, there is no mention of ensuring permanent public access to government information as one of the goals in creating the Library of California. Permanent public access is not mentioned in any of the materials pertaining to the Library of California available on the State Library web site: the LOC strategic plan, the priorities statement, and the mission and values statement.

2. Does the state rely on any cooperative activities that are not actually formalized?

Yes

No

- a. If "Yes," describe each relationship and cooperative activity; give a brief history and a summary of accomplishments.

Additional comments:

There is a major cooperative project which should be mentioned, although it does not specifically incorporate permanent public access of electronic government information as one of its goals: the California Digital Library, founded in 1997, by the University of California, as "a library without walls." The mission of CDL is to "advance scholarship and research, foster excellence in teaching and learning, and promote service to the public through: developing and providing continuous access to digital content and services; and facilitating and supporting scholar-led innovations in scholarly communication." *CDL Mission and Strategic Goals*, at <http://www.cdlib.org/about/planning/mission.html> (last updated Jan. 10, 2002).

3. Does any state agency or other government entity secure “permanent public access” through any other type of cooperative arrangement?

Yes

No

a. Describe each cooperative arrangement; give a brief history and a summary of accomplishments.

Additional comments:

## K. FACTORS TO BE CONSIDERED IN FUTURE ADVOCACY OR REFORM EFFORTS

1. If “permanent public access” is neglected in your state, carefully examine existing public records statutes, freedom of information statutes, public access laws, etc., and respond to the following:

a. If possible, cite to and discuss one or two specific places in statutes or other sources of law where the state legislature or a responsible agency might naturally insert basic reform language.

Lobbying for an amendment to the California Public Records Act, to include permanent public access to public records: possible amending Cal. Gov’t Code § 6250 by inserting “permanent” so the statute would read: “In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that **permanent** access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.”

Similarly, the Legislative Open Records Act could be amended, so that Cal. Gov’t Code § 9070 would read: “The Legislature finds and declares that **permanent** access to information concerning the conduct of the people’s business by the Legislature is a fundamental and necessary right of every citizen in this state.”

b. If specific places to insert reform language are not obvious, very briefly discuss what state agency or other government entity might naturally be made responsible for “permanent public access.”

As mentioned in part J *supra*, the California Digital Library Project, which is administrated through the University of California, could be made responsible for permanent public access of electronic government information. Under state law, the UC system’s budget is approved by the state legislature, and under the state constitution, the Governor appoints the UC Board of Regents (Cal. Const. Art. IX, §9). As a state-funded project, CDL already has an existing infrastructure, including staffing and technology, to take on this responsibility.

The question is whether those responsible for administrating the CDL project have the political strength to successfully promote PPA as a goal for the good of all California residents. A strong and potentially successful lobbying effort in a state so large and complex as California will require the joint efforts of both law librarians and non-law librarians to promote CDL as an appropriate venue. Partners in this effort should include: the Library of California Board, the State Librarian,

and State Law Librarian. Professional organizations which would participate should include the three regional AALL chapters NOCALL, SCALL and SANDALL; the Council of California County Law Libraries; and the California Library Association. Other groups outside the library community will likely need to be brought into this effort to form a coalition: government “watch-dog” groups such as the California chapter of the ACLU, the California First Amendment Coalition, and even the State Bar have an interest in promoting PPA.

Additional comments:

In preparing this survey, staff of the State Library and the State Printer’s Office expressed concern about the current lack of mandates to ensure permanent public access of electronic government information in California. Although the extent to which they might be able to actively lobby for change is uncertain, they did express interest in receiving a copy of this survey when it is published to share with their respective “powers that be.”

2. Discuss known failed efforts in your state to achieve “permanent public access”; how might new efforts succeed?

Additional comments:

## **L. DIRECTORY**

This section asks you to collect directory-type information for important state officials involved in the dissemination of government information.

Provide official contact information for:

Chief Information Officer:

Clark Kelso  
Department of Finance  
State Capitol Room 1145  
Sacramento, CA 95814  
Telephone: (916) 445-5343  
E-Mail: [clark.kelso@dof.ca.gov](mailto:clark.kelso@dof.ca.gov)

State Printer:

Geoff Brandt, Acting State Printer (as of January 2003)  
Office of State Publishing  
Department of General Services  
344 North Seventh Street  
Sacramento, CA 95814  
Telephone: 916-376-1858 or  
800-963-7860  
E-Mail: [geoff.brandt@dgs.ca.gov](mailto:geoff.brandt@dgs.ca.gov)  
<<http://www.dgs.ca.gov/osp>>

State Archivist:

Walter P. Gray, Chief

Archives and Museum Division  
Office of the Secretary of State  
1020 "O" Street  
Sacramento, CA 95814  
Telephone: (916) 654-4653  
Administration Fax: (916) 653-7134  
E-Mail: [wgray@ss.ca.gov](mailto:wgray@ss.ca.gov)  
Archives information and reference: (916) 653-7715  
Reference Desk Fax: (916) 653-7363  
<[http://www.ss.ca.gov/archives/archives\\_contacts.htm](http://www.ss.ca.gov/archives/archives_contacts.htm)>  
Contacts for the State Archives' State Records Appraisal Program are Sydney Bailey, Archivist, [sbailey@ss.ca.gov](mailto:sbailey@ss.ca.gov), Telephone: (916) 653-6734, or Linda Johnson, Archivist, [ljohnson@ss.ca.gov](mailto:ljohnson@ss.ca.gov), Telephone: (916) 653-1911.

State Librarian of California:  
Dr. Kevin Starr  
Library and Courts Building I  
914 Capitol Mall, Room 220  
Sacramento, CA 95814  
Telephone: (916) 654-0174  
Fax: 916-654-0064  
E-Mail: [csl-adm@library.ca.gov](mailto:csl-adm@library.ca.gov)  
<<http://www.library.ca.gov>>

State Law Librarian  
Mark A. Linneman  
Witkin State Law Library  
Library and Courts Building I  
914 Capitol Mall, Room 305  
Sacramento, CA 95814  
Telephone: (916) 653-3883  
Fax: (916) 654-2039  
E-Mail: [mlynneman@library.ca.gov](mailto:mlynneman@library.ca.gov)

State Attorney General (on freedom of information act issues, etc.):  
Bill Lockyer  
Telephone: (916) 445-9555  
Although there is no specific information on making freedom of information complaints to the Attorney General's office, there is a Public Inquiry Unit to which questions can be submitted:  
California Department of Justice  
Attorney General Public Inquiry Unit  
P.O. Box 944255  
Sacramento, CA 94299-2550  
Telephone: (800) 952-5225 or (916) 322-3360  
Questions and complaints can also be submitted on the AG's web site:  
<<http://caag.ca.us/contact/index.htm>>

## M. IMPORTANT STATE RESOURCES

Provide URLs or other finding information for:

1. Official state home page:

My California: <[http://www.ca.gov/state/portal/myca\\_homepage.jsp](http://www.ca.gov/state/portal/myca_homepage.jsp)>

2. State agency portal

Unfortunately, there is currently no “easy to enter” URL for the state agency index. The quickest way to get to the state agency index is from the My California home page. Arrow down to the bottom of the page to “Quick Hits” on the right. The State Agency Index is one of the links.

- a. Does the portal have a searching capability similar to FirstGov? Yes

3. Legislative website

<<http://www.leginfo.ca.gov> >

- a. Does the website cover the current year only?

No, goes back to the 1993-94 legislative session.

- b. Are services free or fee-based?

Free

4. Judicial websites

<<http://www.courtinfo.ca.gov>>

4. Regulatory agency websites:

There are too many (several hundred) to list on this survey. The State Agency Index link on the My California homepages will link the researcher to the alphabetical listing of state agencies.

6. Freedom of Information Service Hotline –

Questions can be addressed to the Public Inquiry Unit in the Attorney General’s Office:  
(916) 322-3360 or (800) 952-5225

Questions and complaints can also be submitted on the AG’s web site:

<<http://caag.ca.us/contact/general.htm>>

- a. Does the state have an ombudsman for freedom of information act issues?

No

- b. Is the state attorney general’s office the public’s contact for freedom of information act issues?

Yes