

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.

DEL. CODE ANN. tit. 29 § 501-526 (supp. 2000). (This subchapter may be cited as the “Delaware Public Records Law.”) 66 Del. Laws, c 211 (1988); 72 Del. Laws, c 91 (1999)

b. If “No,” skip this whole section.

Additional comments:

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.

Covers all branches of state and local governments.

“The Delaware Public Archives shall be responsible for establishing and enforcing the policies and guidelines for management and preservation of all public records of this State and the political subdivisions thereof.” DEL. CODE ANN. tit. 29, § 503(a) (Supp. 2000).

“Political Subdivision’ includes counties, cities, towns, districts, authorities and other public corporations and entities whether mandated by the Constitution or formed by an act of the General Assembly.” DEL. CODE ANN. tit. 29, § 502(3) (Supp. 2000).

“Agency’ means any office, department, board, commission or other separate unit of government of this State, including all branches of government: Executive, legislative and judicial.” DEL. CODE ANN. tit. 29, § 502(6) (Supp. 2000).

Additional comments:

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

DEL. CODE ANN. tit. 29, § 502(1) (Supp. 2000)

Additional comments:

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

Yes REGULATIONS: Electronic records have special guidelines.

No STATUTE: Print and electronic records are not really addressed separately BUT both “public record” and “electronic record” are defined and “electronic records” are included as part of the “public record” definition. DEL. CODE ANN. tit. 29, § 502 (1), (2) (Supp. 2000).

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

“Guidelines” (they call them “regulations”) have been adopted by the Delaware Public Archives which specifically deal with (1) electronic records and (2) maintaining and preserving records of web-based activities.

(<http://www.state.de.us/sos/dpa/govserv/records%20policies/index.htm#TopOfPage> If this page is not accessible directly, go to www.state.de.us/sos/dpa and click on “Services to Government” and then on “Records Policies.”)

Additional comments:

According to the Deputy State Records Administrator at the Delaware Public Archives, their mandate is to manage and preserve public records regardless of the medium, i.e. whether it is print, video, electronic, etc. and that is the approach they have taken.

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

Yes

No

- a. If “Yes,” cite to and briefly summarize the retention provisions.

§ 503 Duties of the Delaware Public Archives concerning public records.

(b) The Delaware Public Archives shall have the power, duty and authority to:

- (1) Establish and administer an archives and records management program for the application of efficient and economical methods to the creation, utilization, maintenance, retention, preservation and disposal of public records.
- (2) Analyze, develop, establish and coordinate standards, procedures and techniques of recordmaking and recordkeeping.
- (3) Preserve and administer in the Delaware Public Archives such records as may be transferred into its custody,.... DEL. CODE ANN. tit. 29, § 503 (Supp. 2000)

§ 504. Duties of public officials and employees concerning public records.

- (a) It shall be the responsibility of every public official and employee to:
- (1) Adequately document the transaction of public business and the services and programs for which such persons are responsible;
 - (2) Retain and adequately protect all public records in their custody; and
 - (3) Cooperate with the Delaware Public Archives and records officers in the establishment and maintenance of an active and continuous program for the economical and efficient management of public records.
- (b) No officer, member or employee of any agency of this State or any political subdivision thereof shall destroy, sell or otherwise dispose of any public record or printed public document in such person's care or custody or under such person's control without first having advised the Delaware Public Archives of their nature and obtained its consent. DEL. CODE ANN. tit. 29, § 505 (Supp. 2000).

§ 524. Records retention and disposition schedules.

- (c) The Delaware Public Archives shall ... establish records retention and disposition schedules setting forth the minimum length of time that records need to be retained. If any state or federal law or regulation provides a retention period different from that established herein, the retention period established by law or regulation shall govern. DEL. CODE ANN. Tit, 29, § 524 (Supp. 2000).

Note: Underlining is for purposes of emphasis and is not contained in the statute.

- 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.

When asked about whether or not the Delaware Public Archives (DPA) had promulgated regulations, the Deputy State Records Administrator of DPA directed the author to the agency's website, www.state.de.us/sos/dpa. Click on "Services to Government" and then on "Records Policies." These policies and guidelines are considered to be the DPA "regulations," along with the written retention schedules.

Of particular interest are the following:

- (1) Model Guidelines for Electronic Records. The statement of purpose for these guidelines say: "These guidelines are designed to ensure that electronic information systems also support the legal requirements for record keeping in Delaware." (www.state.de.us/sos/dpa, click on "Services to Government," "Records Policies," and "Model Guidelines for Electronic Records," page 1)

This set of guidelines on the website is a shortened version of the full guidelines that are contained in a document entitled "*Management of Electronic Records*" that is the final report of a 1996-97 federal grant whose purpose was to identify major issues and develop policies and procedures for the management of electronic records. The full guidelines were sent out to all state agencies and

local governments covered by the Delaware Public Records Law in June, 1998. (The author was sent a hard copy by Archives.)

An entire section of these guidelines is entitled “Retention of Electronic Records.” Among other things, it states that “The Delaware Public Archives works with agencies to determine the administrative legal, fiscal, evidential, and historical value of records created during business operations. The length of retention of electronic records is based on these factors, as well as other factors such as costs for maintaining electronic records and potential costs for migrating records to new systems and platforms. The Delaware Public Archives works with agencies to establish Retention Agreements for electronic records.” (www.state.de.us/sos/dpa, click on “Services to Government,” “Records Policies,” and “Model Guidelines for Electronic Records,” page 2)

The Deputy State Records Administrator at the Delaware Public Archives said that, in general, there is compliance with the guidelines.

Under “Legal Considerations,” the online guidelines state: “The Delaware Freedom of Information Act ... requires that data in electronic records systems be maintained so that it is available for public access, unless the information is specifically restricted. State and local government agencies should adopt procedures that protect restricted records from unauthorized access, ensure the integrity of all the data that the system holds, and allow for access to records open for public inspection consistent with this mandate.” (www.state.de.us/sos/dpa, click on “Services to Government,” “Records Policies,” and “Model Guidelines for Electronic Records,” page 6)

(2) Guidelines for Maintaining and Preserving Records of Web-Based Activities. This set of guidelines located on the Delaware Public Archives website is the first completed work product from another federally-funded grant. This project, called the “Three States Project” originally included Wyoming, North Carolina and Delaware. Just recently the State of Arizona has joined. This group has adopted as their operating procedure the thorough examination of each major area in the management and retention of public records. The first area they tackled was “web-based activities.” The final recommendations coming from that review have resulted in these guidelines. They were published and sent out to all agencies in February, 2002. These guidelines:

- Make clear that website resources are to be managed in the same way as all other public records and that they must comply with all provisions of the Delaware Public Records Law.
- Point out that the definition of a “public record” includes “any document book, photographic image, electronic data recording, paper, sound recording or other material regardless of physical form or characteristics” (Emphasis added).

Next issues to be considered by this 4-state working team are email, word processing documents and databases.

Information about the “Three State Project” is at www.state.de.us/sos/dpa/govserv/tsp.

Additional comments:

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.

FOIA. "It is vital in a democratic society that public business be performed in an open and public manner so that our citizens shall have the opportunity to observe the performance of public officials and to monitor the decisions that are made by such officials in formulating and executing public policy; and further, it is vital that citizens have easy access to public records in order that the society remain free and democratic. Toward these ends, and to further the accountability of government to the citizens of this state, this chapter is adopted and shall be construed." DEL. CODE ANN. tit. 29, §10001 (1997).

Delaware Public Records Law. "The General Assembly finds that public records are essential to the administration of state and local government. Public records contain information which allows government programs to function, provide officials with a basis for making decisions and ensure continuity with past operations. Public records document the legal responsibility of government, protect the rights of citizens and provide citizens with a means of monitoring government programs and measuring the performance of public officials. State and local government records also reflect the historical development of the government and of the citizens which it serves. Such records need to be systematically managed to ensure preservation of historically valuable materials, to provide ready access to vital information and to promote the efficient and economical operation of government." DEL. CODE ANN. tit. 29, §501(a) (1997).

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.

State Archivist and Records Administrator (who heads the Delaware Public Archives). DEL. CODE ANN. tit. 29, § 522 (Supp. 2000).

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.

“Permanent maintenance” never is discussed. However, the Deputy State Records Administrator with the Delaware Public Archives believes that the statutory language in the section of the Code establishing the legislative intent in forming the Delaware Public Archives equates to “permanency” although not necessarily public access. The applicable language is: “Such records need to be systematically managed to ensure preservation of historically valuable materials to provide ready access to vital information and to promote the efficient and economical operation of government.” DEL. CODE ANN. tit. 29 § 501(a). ”

However, he also mentioned two additional points:

- Not all government information or public records will be preserved in perpetuity. Through negotiated retention schedules that the DPA has with agencies, virtually all information is maintained over the short run. Over the long-run, decisions are made by government officials as to what materials are historically significant, archival or vital and these will be kept. Others will not be retained.
- Not all retained materials are or will be accessible to the public. Some information is exempt from FOIA and would continue to be exempt even if preserved. (personal discussion with Jim Frazier, Deputy State Records Administrator, Delaware Public Archives, 6/24/02).

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

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.

DEL. CODE ANN. tit. 29, Ch. 100 (1997)

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

Additional comments:

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

Executive
 Legislative
 Judicial
 Administrative (except for the Administrative Office of the Courts)
 Other

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

Under the "other," category "'Public body' means, unless specifically excluded, any regulatory, administrative, advisory, executive, appointive or legislative body of the State, or of any political subdivision the State ..." DEL. CODE ANN. tit. 29, §10002(a) (1997). (Underlining not in original.) This issue also is discussed in *Delaware Freedom of Information Act Policy Manual*, M. Jane Brady, Attorney General (1997), pp. 5-10 online at <http://www.state.de.us/attgen/foia.htm>.

Additional comments:

The following two sections are from the *Freedom of Information Act Policy Manual* available online through the Delaware Department of Justice:

The Delaware Supreme Court has emphasized the strong public policies underlying FOIA: to "ensure governmental accountability, inform the electorate, and acknowledge that public entities, as instruments of government, should not have the power to decide what is good for the public to know." *Delaware Solid Waste Authority v. The News-Journal Co.* Del. Supr., 480 A.2d 628, 631 (1984). (page 3, <http://www.state.de.us/attgen/foia.htm>)

“Consistent with these salutary purposes,” FOIA is “liberally construed” and any statutory exceptions “are strictly interpreted.” *Id.* See also *The News-Journal Co. v. McLaughlin*, Del. Ch., 377 A.2d 358, 362 (1977) FOIA “is to be liberally construed in favor of the citizens of the State.” (page 2, <http://www.state.de.us/attgen/foia.htm>)

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

DEL. CODE ANN. tit. 29, §10002(d) (1997)
Delaware Freedom of Information Act Policy Manual, M. Jane Brady, Attorney General (1997), 28-57; (Sup. 2001), 7-12, online at www.state.de.us/attgen/foia.htm.)

Additional comments:

“Public record” is information of any kind, owned, made, used, retained, received, produced, composed, drafted or otherwise compiled or collected, by any public body, relating in any way to public business, or in any way of public interest, or in any way related to public purposes, regardless of the physical form or the characteristic by which such information is stored, recorded or reproduced.” DEL. CODE ANN. tit. 29, §10002(d) (1997) (underlining not in original)

Also, as to regulations, according to the Deputy AG who has been assigned to FOIA for the past many years, each entity covered by FOIA must adopt regulations if they plan to charge more than the basic minimum fee for photocopying, e.g., if they want to add in the cost of finding and preparing the information. Two specific sets of regulations he mentioned are those adopted by the New Castle County government and those adopted by the State Department of Natural Resources and Environmental Control. The Deputy AG believes they do not.

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

Yes

No BUT, the statutory language seems to include electronic records in the definition of public records.

- 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 original FOIA statute applied only to “written or recorded information made or received by a public body relating to public business.” 60 Del Laws c. 641. According to the *Freedom of Information Policy Manual* written by Attorney General, “In 1985, the General Assembly amended the definition to bring it more in line with the increasing use of computer data bases by government agencies. DEL. CODE ANN. tit. 29, §10002(d) (1997)” p. 28

The Policy Manual goes on to say:

Like the federal FOIA, this definition “makes no distinction between records maintained in manual and computer storage systems It is thus clear that computer-stored records, whether stored in a central processing unit, on magnetic tape or in some other form, are still ‘records’ for purposes of FOIA.” *Yeager v. Drug Enforcement Administration*, 678 F.2d 315, 321 (D.C. Cir. 1982). “Although accessing information from computers may involve a somewhat different

process than locating and retrieving manually-stored records, those differences may not be used to circumvent the full disclosure policies of the FOIA. The type of storage system in which the agency has chosen to maintain its records cannot diminish the duties imposed by FOIA.” *Id.*

So, even though pc’s and the widespread use of the Internet were not contemplated at the time of these decisions or of the Act being amended to include the more expansive definition of “public records,” it appears that any sort of electronic document would be covered.

However, in speaking with John Flaherty, lobbyist for Delaware Common Cause, and a person who is on the forefront of any FOIA activity in the state, there has been no discussion in which he has been involved of either specifically including records or documents appearing on government web pages under FOIA or calling for PPA. Frankly, the notion of “permanent public access” was a new one for him. Right now, according to Flaherty, the biggest issue is fighting off all the people coming forward with proposals for limiting access to government information under the guise of “security.”

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

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:

Although there is no specific provision for “permanent public access,” the section in Delaware’s FOIA dealing with examination and copying of public records states as follows:

All public records shall be open to inspection and copying by any citizen of the State during regular business hours by the custodian of the records for the appropriate public body. Reasonable access to and reasonable facilities for copying of these records shall not be denied to any citizen. If the record is in active use or in storage and, therefore, not available at the time a citizen requests access, the custodian shall so inform the citizen and make an appointment for said citizen to examine such records as expediently as they may be made available. DEL. CODE ANN. tit. 29, §10003 (1997)

Author’s comment: By stating what should be done if the record is in storage and by not specifically saying that records will be available for a specified amount of time, one could argue that records once made will continue to be available.

However, the Deputy AG responsible for FOIA issues pointed out that under FOIA there is *no duty to create a document and, likewise, no duty to retain a document*. He said this position is in case law and referred me to the following section in the *Delaware FOIA Policy Manual*:

Under federal law, “[i]t is well settled that an agency is not required by FOIA to create a document that does not exist in order to satisfy a request.” *Yaeger*, 678 F.2d at 321 (citing *NLRB v Sears, Roebuck & Co.*, 421 U.S. 132, 161-62 (1975)). “A requestor is entitled only to records that an agency has in fact chosen to create and retain. Thus, although an agency is entitled to possess a record, it need not obtain or regain possession of a record in order to satisfy a FOIA request.” *Yaeger*, 678 F.2d at 321. See also *Kissinger v. Reporters Committee for Freedom of the Press*, 445 U.S. 136, 152 (1980) (“the Act does not obligate agencies to create or retain documents; it only obligates them to provide access to those which it in fact has created and retained.”).

While the AG’s Office has cited on several occasions that an agency is not required to create a document, e.g., by generating reports using data it may have, it appears they have not been asked to deal with the inaccessibility of a document that an agency has chosen not to retain. The Deputy AG also said that he believes that retention of documents – especially electronic ones -- is a Delaware Public Archives issue not a FOIA issue.

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 Statute addresses the scope of citizens’ access to public records, DEL. CODE ANN. tit. 29, §10001, §10002(d) (1997).

No Nothing mentioned acknowledging state’s responsibility to permanently maintain public records.

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

§ 10001. Declaration of policy.

It is vital in a democratic society that public business be performed in an open and public manner so that our citizens shall have the opportunity to observe the performance of public officials and to monitor the decisions that are made by such officials in formulating and executing public policy; and further, it is vital that citizens have easy access to public records in order that the society remain free and democratic. Toward these ends, and to further the accountability of government to the citizens of this State, this chapter is adopted, and shall be construed. DEL. CODE ANN. tit. 29, §10001, §10002(d) (1997)

Additional comments:

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

The state has no requirement to permanently maintain a public record.

- 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.

There are no unique circumstances.

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 – Not as referred to above.

- a. If “Yes,” cite each of your state’s public access law statutes and the administrative regulations that supplement them.
- b. If “No,” skip this whole section.

Additional comments:

The only other statute Delaware has regarding public access speaks primarily about public access to information. The brief language in this statute is complementary to FOIA but does not go nearly as far. It is the Administrative Procedures Act, particularly the section dealing with Public Information, DEL. CODE ANN. tit. 29, §10112 (1997). This section specifies that each Delaware agency (exempts the General Assembly, courts, municipalities, counties, school districts) “ ... shall make available promptly to the public upon request, for inspection, originals or legible copies of ... “ regulations, orders, decisions, opinions and licenses.

“Public records” are not defined nor is there any language about “permanent public access.”

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.

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.

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?

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.

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.

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.

Department of Technology and Information headed by a cabinet-level
Chief Information Officer. DEL. CODE ANN. tit. 29 § 9001C-9011C (Interim Supp. 2001)

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

Additional comments:

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

DEL. CODE ANN. tit. 29 § 9001C-9011C (Interim Supp. 2001)

Additional comments:

Formerly Delaware had an Office of Information Services (OIS). OIS is being transitioned into the new Department of Technology and Information. A new person has been hired to head the Department as the CIO. Right now the new department is staffing up and taking over more and more of the designated functions. The transition will be final on June 30, 2003.

The report to Governor Ruth Ann Minner which recommended creation of this department states that "this new organization will function largely as a 'General Contractor', whose mission is to assure delivery of technology capabilities, including more extensive management of relationships with strategic business partners. (*e-VOLUTION: Redefining Delaware's IT Management Strategy for the 21st Century*, Information Services Task Force, State of Delaware. May 8, 2001, online at: <http://www.state.de.us/dti/> under "Task Force Report.")

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.

None promulgated as yet

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.

The two statutes (the one establishing the Office of Information Services (DEL. CODE ANN. tit. 29, §6351, 6352, 6353, 6354, 6357, 6358 and 6360 (1997) and the one establishing the successor Department of Technology and Information (DEL. CODE ANN. tit. 29 § 9001C-9011C (Interim Supp. 2001)) when read together make it clear that all three branches are covered although it more

often just speaks of “all state agencies.” According to the Assistant Secretary of State, Rick Geisenberger, “all state agencies” means all three branches in this instance. Also, the Technology Investment Council that very recently was created to advise the Department includes as members the Chief Justice of the Supreme Court and the Controller General (from the Legislative Branch). The Council is headed by the CIO. 73 Del. Laws 217 (2002)

Additional comments:

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:

The Department of Technology and Information is dealing with policies and procedures governing the entire electronic information architecture for the State. It is not looking at the format or retention of content, but only at such issues as networking, systems, hardware and compatibility.

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:

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:

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

The Department of Information and Technology is a new state cabinet department that is not yet fully in place. The creation of this department and the position of CIO (cabinet-level position) was a major recommendation coming from the E-Government Steering Committee which reported its findings to the Governor on May 8, 2001. ("*e-VOLUTION: Redefining Delaware's IT Management Strategy for the 21st Century*", Information Services Task Force, State of Delaware. May 8, 2001, online at: <http://www.state.de.us/dti/> under "Task Force Report.")

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.

The former Office of Information Services; DEL. CODE ANN. tit. 29, § 6352 (7) (1997).

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

The new CIO and Director of the Department of Technology and Information would not provide the author with any information about the old plan since he said it is not something that they will be using. According to the CIO: Things are on hold for now and the plan he, his department and the Technology Investment Council will be developing will cover statewide strategy, not specific to any branch of Government. According to Tom Jarrett, CIO, "The plan will build upon our already strong focus on e-government that today allows the public access to government information but we still have a long way to go." (email communication with author, 6/26/02)

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 (probably also school districts)

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

Additional comments:

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:

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

We are in a transition period while the new Department of Technology and Information becomes fully operational and a new state technology plan is developed.

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 BUT ... not sure there really is an equivalency (see "additional comments" below)

No

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

Director, Division of Support Services within the Department of Administrative Services. DEL. CODE ANN. tit. 29, §8810(3)(i) (interim supp. 2001).

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

Additional comments:

Prior to a recent reorganization, the Division of Purchasing provided printing and graphics services to state agencies. The reorganization combined the Division of Purchasing and another Division. The printing responsibility now is part of this new agency, the Division of Support Services within the Department of Administrative Services. It appears to be strictly a "nitty-gritty" operation with no policy-making role.

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

"The Division of Support Services shall provide graphics and printing services, including but not limited to printing, duplicating, photography and photocopying to all state agencies." DEL. CODE ANN. tit. 29, §8810(3)(i) (interim supp. 2001).

Additional comments:

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 (could not get clear answer)
 Judicial (could not get clear answer)
 Administrative (applying to all agencies, no matter what branch of government)
 Other

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

This is an example in Delaware law where "all state agencies" is mentioned without a specification as to precisely what it means. In some places in the Code it literally means every single state agency in all three branches. In other places it does not. The author's attempts at

contacting the Director of Support Services were unsuccessful. The author received some information from a Deputy AG, but it was not general enough to use in this instance.

Additional comments:

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

The Division of Support Services is, as is stated above, responsible for graphics and printing services, including but not limited to printing, duplicating, photography and photocopying for all state agencies. The author was told that officials in that office will consult with departments and, if necessary, will go outside for a job that is too big or beyond their area of expertise.

It was not possible to obtain the following information.

- a. Describe your state's use of in-house agency publishing and/or commercial publishing of government information.
- b. What percentage of official state government documents are printed by the printing office/official printer?
- c. To what extent is the printing office/official printer involved in the electronic dissemination of government information?

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?

The author was unable to locate anywhere any mention of this office being responsible for anything related to electronic records.

Additional comments:

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.

THE STATE ARCHIVES AND STATE ARCHIVIST ARE DISCUSSED FULLY UNDER PART 1 (A), "PUBLIC RECORDS STATUTES."

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

Yes RESPONSES TO THIS SECTION SHOULD BE READ WITH THOSE IN PART 1, SECTION A

No

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

DEL. CODE ANN. tit. 29 § 501-526 (supp. 2000). (This subchapter may be cited as the "Delaware Public Records Law.") 66 Del. Laws, c 211 (1988); 72 Del. Laws, c 91 (1999)

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.

DEL. CODE ANN. tit. 29 § 501-526 (Supp. 2000)

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.

According to the Deputy State Records Administrator at Delaware Public Archives, the policies and guidelines shown on the Delaware Public Archives' webpage are their "regulations." See www.state.de.us/sos/dpa. Click on "Services to Government" and then on "Records Policies."

Additional comments:

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.

Covers all branches of state and local governments.

“The Delaware Public Archives shall be responsible for establishing and enforcing the policies and guidelines for management and preservation of all public records of this State and the political subdivisions thereof.” DEL. CODE ANN. tit. 29, § 503(a) (Supp. 2000).

“‘Political Subdivision’ includes counties, cities, towns, districts, authorities and other public corporations and entities whether mandated by the Constitution or formed by an act of the General Assembly.” DEL. CODE ANN. tit. 29, § 502(3) (Supp. 2000).

“‘Agency’ means any office, department, board, commission or other separate unit of government of this State, including all branches of government: Executive, legislative and judicial.” DEL. CODE ANN. tit. 29, § 502(6) (Supp. 2000).

Additional comments:

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

- “Establish and administer an archives and records management program for the application of efficient and economical methods to the creation, utilization, maintenance, retention, preservation and disposal of public records.” DEL. CODE ANN. tit. 29, § 503(1) (Supp. 2000)
- Develop standards and procedures for recordmaking and recordkeeping
- Manage the process by which records are transferred from an agency to Archives
- Establish a centralized micrographics and document imaging program for the benefit of all agencies.
- Training of and information to state agencies
- Select and preserve vital records, i.e.,” records which are considered essential to the continuing operation of government and to the protection of the rights and privileges of citizens.” DEL. CODE ANN. tit. 29, § 503(7) (Supp. 2000)

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 STATUTE: Print and electronic records are not really addressed separately BUT both “public record” and “electronic record” are defined and “electronic records” are included as part of the “public record” definition. DEL. CODE ANN. tit. 29, § 502 (1), (2) (Supp. 2000).

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

“Guidelines” have been adopted by the Delaware Public Archives which specifically deal with (1) electronic records and (2) maintaining and preserving records of web-based activities. Both are on the Delaware Public Archives website (www.state.de.us/sos/dpa). A complete report of the study which resulted in the electronic records guidelines is in paper format obtainable from the Delaware Public Archives (“*Management of Electronic Records*,” Delaware Public Archives, Public Systems Incorporated, May 1998).

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 BUT ... (see “additional comments”)

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:

“Permanent maintenance” never is discussed. However, the Deputy State Records Administrator with the Delaware Public Archives believes that the statutory language in the section of the Code establishing the legislative intent in forming the Delaware Public Archives equates to “permanency” although not necessarily access. The applicable language is: “Such records need to be systematically managed to ensure preservation of historically valuable materials to provide ready access to vital information and to promote the efficient and economical operation of government.” DEL. CODE ANN. tit. 29 § 501(a).”

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

Yes Sort of

No

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

The Deputy State Records Administrator believes that the following statutory language could be interpreted as being “permanently maintain government information” but emphasizes that it does not mean ALL government information nor does it ensure public access since some of the

documents to be maintained will be exempt from disclosure. However, it certainly would cover government publications.

“Such records need to be systematically managed to ensure preservation of historically valuable materials to provide ready access to vital information and to promote the efficient and economical operation of government.” DEL. CODE ANN. tit. 29 § 501(a)

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 BUT, not ALL government information
 No

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

See response to question 8(a) immediately above this question.

Additional comments:

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.

There have been two projects – although, again, the word “permanent” is never used:

- Delaware Project (1996-1998) – a two-year, federally funded project to assess the management of electronic records in Delaware Government and “recommend policies and procedures for the inventory and description, accessioning and long-term preservation of Delaware’s electronic records.” (*Management of Electronic Records: Delaware Public Archives*,” Public Systems Incorporated. May, 1998, p. 2). (Underlining not in original) Funding was from the National Historical Publications and Records Commission. Complete work and findings included in the document noted above.

As part of this project, the “Model Guidelines for Electronic Records” were developed. They were drawn directly from the work of the Functional Requirements for Evidence in Electronic Records project conducted by the University of Pittsburgh School of Library and Information Science from 1993 to 1996. A summary version of these guidelines is available online at www.state.de.us/sos/dpa (click on “Services to Government” and then on “Records Policies.”). These guidelines were made available to state agencies in 1998.

According to the Deputy State Records Administrator for the Delaware Public Archives they are being followed by most agencies.

- Three-State Project (2001-2004) -- Delaware Public Archives (DPA) has recently launched a new project on electronic records management which has Federal government funding (The author believes from the National Archives). The project includes the participation of two other state archives programs - Wyoming and North Carolina - and is designed to provide all three programs with core competencies on how best to manage different types of electronic records. Within the past couple of months, Arizona has joined the group.

The project has as its basis a taxonomy which includes fourteen different types of electronic records that an archives can be expected to manage: web pages, email, word processing documents, geographic information systems, databases, and enterprise resource planning systems (such as PHRST and ASAP). Each of these electronic records types has a pilot project identified for it. It is expected that each state will work on the same pilot project for a period of approximately 90 days (per project). At the conclusion of each pilot project, the core team (two representatives from each state) will get together and identify the best practices and create a training module so that the results of the project can be disseminated to all staff members. They have just completed the first module which is for web-based activities. The end result is the "*Guidelines for Maintaining and Preserving Records of Web-Based Activities*" which was published in Delaware and made effective on 2/2/02. A copy of these guidelines is available online at www.state.de.us/sos/dpa (click on "Services to Government" and then on "Records Policies.").

Also, the project has a website: <http://www.state.de.us/sos/dpa/govserv/tsp>.

Additional comments:

Tim Slavin, the current Director of the Delaware Public Archives appears to be a key player in the entire area of preservation of electronic documents. Tim came to the state in 1995 from the Rhode Island State Archives as the Coordinator of Electronic Information Policy in DPA. Tim now is Director of the Delaware Public Archives after a stint in the Office of Information Services (which now is the Department of Technology and Information) at which time he was asked to set up the Delaware Government Information Center. He was instrumental in getting the grant to do the Delaware Project (noted above).

The new strategic plan for the Delaware Public Archives calls for them to "achieve and maintain world class status in the stewardship of digital records." This second project is directed toward that goal.

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.

Division of Libraries is the agency and the head of it is the State Librarian. DEL. CODE ANN. tit. 29, §8731(a) (1997).

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

Additional comments:

The Division of Libraries is within the Department of State. It was part of a department (Department of Community Services) that was dismantled in the late 1980's – early 1990's.

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

DEL. CODE ANN. tit. 29, §8731 (a) (1997).

Additional comments:

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

Yes
 No (she does not think so and the statutory language does not specify that she does)

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

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 "state and local governmental units and their subdivisions ... and to organizations in need of library services." DEL. CODE ANN. tit. 29, §8731 (a)(1) (1997).

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

29 Del. C. §8731 (1) states that the Division of Libraries is responsible for providing "... information, resource materials and library services to state agencies, state and local governmental units and their subdivisions and, in the Department's discretion, to organizations in need of library services." Both the Legislative and Judicial Branches have their own libraries.

Additional comments:

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

The Delaware Code gives a number of responsibilities to the State Library/State Librarian. However, in communicating by email with the current State Librarian, it appears that some tasks and initiatives have been set aside because of the staff shortage in the department (6 out of 21 positions are vacant because of the State's hiring freeze. The State Library is both a federal and a state depository. According to the State Librarian: "... neither state nor federal documents have [sic] been a priority, hasn't been an overwhelming demand, and we have very limited staff and resources." (email communication with author, 6/12/02)

According to the information on their website, the Delaware Division of Libraries (i.e., State Library) "provides general direction over the extension and improvement of library and information services statewide in order to assist Delaware libraries in meeting the educational and informational needs of their communities."

More specifically they:

- Administer a variety of state and federally-funded programs and services.
- Through the Library Standards Program provide state grants to public libraries to purchase materials, extend hours of operations, provide new library technologies and conduct comprehensive planning and evaluation of library services.
- Through the Delaware Public Library Technology Assistance Act, they provide improvement grants to local libraries to fund up to 50% of the cost for public library technology.
- Administer the Delaware Library for the Blind and Physically Handicapped
- Manage an online service that provides full text magazines and journals, full text newspapers, a guide to Internet resources, connections to government information and links to Delaware libraries.

Source: www.state.de.us/sos/library.htm

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 Possibly (see below) but it is not being done.
 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.

The statute contains the following responsibility: "To provide access to a complete collection of current documents published by state government and a comprehensive collection of current local, state and federal documents of interest to the State" The State Library clearly is not now carrying out that responsibility. DEL. CODE ANN. tit. 29, §8731 (a)(8) (1997).

Also, "Every state agency shall provide and deposit with the Department sufficient copies of all publications issued by such agencies for the purpose of making accessible to Delaware and other citizens resource materials published at the expense of the State. The Administrator of Libraries shall recommend the number of copies required for deposit, consistent with state interests. From time to time listing of such documents received under the terms of this section shall be published." DEL. CODE ANN. tit. 29, §8731 (b) (1997)

However, the State Librarian states that "This [provision] is not being enforced, we refer searchers to the Archives." (email communication with author, 6/21/02). She states that "there are currently 3 state agencies with responsibility for government information, one of us needs to do it, but not necessarily all 3. We should be an advocate to make sure it gets done." She refers people to the Delaware Public Archives to get government documents -- current as well as older ones.

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.

As discussed before under Archives (#8).

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.

Additional comments:

She believes collection and/or retention is the responsibility of the Delaware Public Archives.

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 (although not called something quite this formal)
 No

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

One of the stated duties of the Division of Libraries/State Librarian: “Every state agency shall provide and deposit with the Department sufficient copies of all publications issued by such agencies for the purpose of making accessible to Delaware and other citizens resource material published at the expense of the State.” DEL. CODE ANN. tit. 29, §8731 (b) (1997)

b. If “No,” skip this whole section.

Additional comments:

Unfortunately, according to the State Librarian, this provision of the Code currently is not being enforced. Rather, she (and her predecessors) have left the responsibility of getting and retaining state government documents to the Delaware Public Archives. (email communication, 6/21/02)

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?

Statutes/regulations have been construed to cover electronic government information in the Delaware Public Archives, but the State Library does not deal with any of these issues.

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.

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:

- b. Please determine the absolute number or percentage of titles:

It was not possible to obtain this information.

Formerly distributed in print, now distributed exclusively in electronic format.
 Never before distributed, now distributed in electronic format.

Additional comments:

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

Additional comments:

The program, as statutorily established, is not functioning.

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:

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:

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:

The author would not say permanent public access is neglected but it could be developed further and formalized so everyone understands clearly what it means. No one here uses the phrase "permanent public access," but as mentioned in the sections about the Delaware Public Archives, there is a belief by the leaders in this department that they are responsible for long-term records management, including government publications and, most importantly, they have been moving forward in becoming more knowledgeable about the management and retention of electronic information (see the section on their two initiatives). According to the Deputy State Records Administrator, one of their current strategic objectives is to “achieve and maintain world class status in the stewardship of digital records.”

- 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.

The author believes the best agency is the Delaware Public Archives. They have done the most so far and they are very clear that their mandate is to manage all government and/or public documents regardless of the medium, i.e., print, electronic, etc. The current Director of the DPA is extremely enthusiastic and knowledgeable about electronic issues. The author would need to more know before suggesting any language.

- 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.”

The author’s strong suggestion would be to put the responsibility with the Delaware Public Archives, although they may believe they already have it and just do not call it “permanent public access.”

First, there is an interest right now on the part of the Governor and key members of her staff to improve all aspects of what they call e-government. So, although it was mentioned by the folks involved with FOIA that the legislature seems bent on restricting access to government information that might be useful to terrorists, I believe the Governor and some other Executive Branch leaders would be receptive to “permanent public access.” The State already has made a good beginning under current laws

It is very beneficial that the three agencies involved with e-government and/or government information are all located within the same cabinet department -- the Department of State. The Secretary of State is a good friend of the Governor's and an influential person in the cabinet. She has been heavily involved in the e-government initiatives so far and will be for the foreseeable future. I spoke with her Assistant Secretary of State, Rick Geisenberger, to whom the directors of all three agencies report – Libraries, Archives and the Delaware Government Information Center (see below). He is very enthusiastic about the various efforts the State is making regarding e-government. In his view, the major responsibility of each agency when it comes to government documents and/or public information is as follows:

Division of State Libraries -- responsible for "giving citizens access to current government documents." Clearly, he does not realize that the State Librarian is not carrying out that function.

Delaware Public Archives – responsible for "preserving documents forever."

Delaware Government Information Center (an entity I have not mentioned before) which is responsible for establishing standards for website design and coordinating the provision of services and information created by Delaware agencies. I.e., this group is a clearinghouse for all e-government applications being developed by agencies so that there is a uniform look and feel. DGIC was not created either by statute or EO. Rather, it is a group of people pulled together from a couple of agencies who served as the staff for the Electronic Government Steering Committee created under EO#9. Although the steering committee has completed its work and is no longer in existence, the staff has remained as the Delaware Government Information Center. (Telephone conversation with Rick Geisenberger, Assistant Secretary of State, 6/27/02.)

Additional comments:

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

No known failed efforts.

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:

1. State Chief Information Officer (or equivalent)

Thomas M. Jarrett

CIO and Secretary of the Department of Technology and Information

State of Delaware

801 Silver Lake Blvd.

Dover, DE 19904

Telephone: (302) 739-9500

Fax: (302) 739-1442

E-Mail: tjarrett@state.de.us

2. State Printer

Bobbie Hettel-Minner

Director, Division of Support Operations

Delaware Department of Administrative Services

820 Silver Lake Blvd, Suite 100

Dover, DE 19904

Telephone: (302) 739-5371

Fax: (302) 739-3697

E-Mail: bhminner@state.de.gov

3. State Archivist

Timothy A. Slavin

State Archivist and Records Administrator

Delaware Public Archives

121 Duke of York Street

Dover, DE 19901

Telephone: (302) 744-5000

Fax: (302) 739-6710

E-Mail: tslavin@state.de.gov

4. State Librarian and/or State Law Librarian

Anne E.C. Norman

Director & State Librarian

Delaware Division of Libraries/State Library

43 S. DuPont Hwy

Dover DE 19901

Telephone: (302) 739-4748 x126

Fax: (302) 739-6787
E-Mail: norman@lib.de.us

5. State Attorney General (on freedom of information act issues, etc.)

M. Jane Brady
Attorney General
State of Delaware
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M. IMPORTANT STATE RESOURCES

Provide URLs or other finding information for:

1. Official state home page <http://www.delaware.gov>
2. State agency portal <http://www.delaware.gov/agencies/egovernment/agencyindex>
 - a. Does the portal have a searching capability similar to FirstGov?

Has a search capability run by Inktomi, but it is not very good.

3. Legislative website <http://www.legis.state.de.us>
 - a. Does the website cover the current year only?

No, has bill tracking archives that go back to the 138th General Assembly (1995-1996). However, for that first session and part of the second, there are no full-text copies of the bills.

- b. Are services free or fee-based?

Free

4. Judicial websites <http://courts.state.de.us> (all state courts accessible through this site)
5. Regulatory agency websites

All agencies are accessible through the Delaware homepage shown above by clicking on “state agencies.”

6. Freedom of Information Service Hotline

- 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