

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.

MASS. GEN. LAWS ch. 4 § 7 cl. 26 and MASS. GEN. LAWS ch. 66
MASS. REG. CODE tit. 950, § 32.01-32.09

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.

Public records include “any documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of any political subdivision thereof, or of any authority established by the general court to serve a public purpose,” unless such materials or data fall within enumerated exemptions. MASS. GEN. LAWS ch.4 § 7 cl. 26.

The Massachusetts legislature exempted itself from the application of the public records law. MASS. GEN. LAWS ch. 66 § 18.

Additional comments:

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

MASS. GEN. LAWS ch. 4 § 7 cl. 26

Additional comments:

“Record” is also defined in Chapter 66 Public Records in MASS. GEN. LAWS ch. 66 § 3 for purposes of conservation of tangible public records. In this place it includes items such as written or printed book or paper, or any photograph, micrograph, map or plan.

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

Only in the sections setting out reproduction fees.

MASS. REG. CODE tit. 950, § 32.06 Fees for Copies of Public Records

1) Except where fees for copies of public records are prescribed by statute, a governmental entity shall charge no more than the following fees for copies of public records:

(a) for photocopies of a public record no more than twenty cents per page;

(b) for copies of public records maintained on microfilm or microfiche no more than twenty-five cents per page;

(c) for requests for non-computerized public records a prorated fee based on the hourly rate of the lowest paid employee capable of performing the task may be assessed for search time and segregation time expenses, as defined by 950 CMR 32.03. In addition, a per page copying fee under 950 CMR 32.06(1)(a) and 950 CMR 32.06(1)(b) may be assessed;

(d) for computer printout copies of public records no more than fifty cents per page;

(e) for a search of computerized records the actual cost incurred from the use of the computer time may be assessed;

(6) Street Census Computer Tapes and Mailing Labels - Reproduction Fees for City and Town Committee Chairman. Where "street list" data collected under G. L. c. 51, §§ 6-7, is compiled on computer tapes:

(a) City or town registrars of voters shall provide, or cause their agents to provide, copies of said computer tapes to the chairman of each city or town committee for a fee of no more than one cent (\$0.01) per name, provided that a minimum fee of no more than ninety dollars (\$90.00) may be assessed. No fee assessed under 950 CMR 32.06(6)(a) shall exceed seven hundred fifty dollars (\$750.00).

(b) City or town registrars of voters shall provide, or cause their agents to provide, sets of mailing labels made from said computer tapes to the chairman of each city or town committee for a fee of no more than two cents (\$0.02) per label, provided that a minimum fee of no more than fifty dollars (\$50.00) may be assessed.

Additional comments:

Recognizing that electronic and print records are different, there are a number of guidelines for the documentation of electronic record-keeping systems. See, for example, <http://www.state.ma.us/sec/arc/arcrmu/rmuer/ergde.htm>

Similarly there are a number of conservation statutes which discuss the grade of paper that some state publications should be printed on, etc.

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

Yes

No

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

MASS. GEN. LAWS ch. 30 § 42 creates the Records Conservation Board, comprised of the State Archivist, Supervisor of Public Records, State Librarian, State Comptroller, Commissioner of Administration and Finance, and Attorney General, or their designees, which requires all departments of the commonwealth to report which series of records they hold, to set standards for the management and preservation of such records, including establishing schedules for the transfer to the state archives those records of potentially permanent value. Those records of no historical value may be slated for destruction according to a schedule approved by the RCB, and the records must come before the Board again at the actual time of their destruction.

For more information see “An overview of the Massachusetts Public Records Law” <http://www.state.ma.us/sec/pre/prelaw/lawover.htm>.

- 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.

SPR Bulletin NO. 3-96 June 6, 1996, “Application of the Public Records Law to Electronic Records Access”, <http://www.state.ma.us/sec/arc/arcrmu/rmubul/bul396.htm>.

Additional comments:

“Guideline for the Documentation of Electronic Record-Keeping Systems” (revised 4/29/02), <http://www.state.ma.us/sec/arc/arcrmu/rmuergde.htm>.

1. Introduction.

1.1 Purpose of the Guideline. The approval of Records Disposal Schedules or Applications for Destruction by the Records Conservation Board and the Supervisor of Public Records requires some assurances from agencies that their record-keeping systems produce accurate, secure, and reliable records. Agencies must be able to demonstrate consistent, controlled data handling during the active and inactive life of the data. These assurances are necessary for the following reasons: Electronic data may be easily altered, manipulated, damaged, and lost.

Confidentiality of records can be problematic.

Electronic data can become irretrievable after a short time span.

Electronic records may not be legally admissible in court if they are maintained poorly.

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.

MASS. REG. CODE tit. 950, § 32.02: Scope and Purpose

950 CMR 32.00 shall be construed to ensure the public prompt access to all public records in the custody of state governmental entities and in the custody of governmental entities of political subdivisions of the Commonwealth, and to ensure that disputes regarding access to particular records are resolved expeditiously and fairly.

Additional comments:

MASS. GEN. LAWS ch. 66 § 10(a) “Every person having custody of any public records, as defined in clause Twenty-six of section seven of chapter four, shall, at reasonable times and without reasonable delay, permit it, or any segregable portion of a record which is an independent record to be inspected and examined by any person, under his supervision, and shall furnish one copy thereof upon payment of a reasonable fee.”

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.

MASS. GEN. LAWS ch. 9 § 4 creates the position of Supervisor of Public Records in the office of the Secretary of State.

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.

MASS. GEN. LAWS ch. 66 § 1 requires the supervisor of public records to take necessary measures to put the records of the commonwealth and its subdivisions in the custody and condition required by law to secure their preservation. The rest of the chapter discusses many of the specific provisions relating to conservation and preservation of public records.

MASS. GEN. LAWS ch. 66 § 10(b) If a custodian of a public records refuses a request for access to a public records or fails to comply with it within ten days, the person making the request can petition to supervisor of public records for a determination of whether the requested record is public. If the supervisor of public records determines it to be public he orders its release and if the custodian still refuses to produce it, he may notify the attorney general or the appropriate district attorney to take whatever further measures he deems necessary to insure compliance with the right of the public to inspect or purchase copies of a public record.

Additional comments:

MASS. GEN. LAWS ch. 30 § 42 creates the Records Conservation Board, comprised of the State Archivist, Supervisor of Public Records, State Librarian, State Comptroller, Commissioner of Administration and Finance, and Attorney General or their designees.

The Records Conservation Board (RCB) is empowered by MASS. GEN. LAWS ch. 30, § 42 to:

Require all departments of the commonwealth to report which series of records they hold, to set standards for the management and preservation of such records, and to establish schedules for the destruction, in whole, or in part, and transfer to the archives of another appropriate division within the office of the State Secretary, in whole or in part, records no longer need for current business. All records "remain the property...of the commonwealth" until the Board has authorized their destruction.

The Board holds monthly meetings at the State House Library to review disposal schedules and permissions, and to discuss policy relating to the management of state records. Meetings are open to the public.

On September 4, 2002, the Records Conservation Board, in conjunction with the Massachusetts Archives and the Supervisor of Public Records published a Draft "Statewide Records Disposition Schedule" which is intended to replace all other existing schedules. It directly addresses new issues in records retention and availability that arose from newer technologies such as the capture and preservation of public records created in fragile media such as e-mail or dynamically generated web pages. The Draft Schedule is available at <http://www.state.ma.us/sec/arc/arcrmu/rmuwn/scidx.htm>

The draft schedule applies to all records, regardless of media or format, including those found in electronic form, audiotape, and hardcopy. *Id.* at 2. The draft policy recognizes that electronic records are public records as defined by MASS. GEN. LAWS ch. 4 MGL § 7 cl. 26 and requires agencies to transfer those of a permanent nature to either the State Librarian or the State Archivist using procedures and formats necessary for the transmission of electronic data. *Id.* at item 141. The draft policy also calls for the permanent retention of publications that were posted on the web as well as and archival review of snapshots of websites after their administrative use ceases. *Id.* at item 186d and item 171. The draft policy recognizes that e-mail is a transitory messaging system not adequate or proper for the ongoing storage of information, so substantive e-mail is recommended to be transferred outside the email system for retention to a proper file, which can be an electronic file. *Id.* at item 142.

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

Yes
 No

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

Yes
 No

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.

MASS. GEN. LAWS ch. 4 § 7 cl. 26 and ch.66 § 10
MASS. REG. CODE tit. 950, § 32.01-32.09

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

Additional comments:

See Section A: Public Records Statutes

The Massachusetts Freedom of Information Act is technically known as the Massachusetts Public Records Law. William Abrashkin and Ernest Winsor, *Freedom of Information in Massachusetts: A Practical Guide Including Fair Information Practices, Criminal Records, Open Meetings, and Comparisons with Other States*, (Dover, Mass: Auburn House Publishing Company, 1989) p. 5.

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.

Additional comments:

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

Additional comments:

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.

- 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:

- 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.

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

- 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.

Massachusetts has specific statutes requiring the publication of state regulations and the session laws. They are MASS. GEN. LAWS ch. 5 § 2 requiring the publication of laws, constitutional amendments, a table of changes and an index, and MASS. GEN. LAWS ch. 30A §§ 6 & 6A requiring the publication of the Massachusetts Register and the Code of Massachusetts Regulations. Also MASS. GEN. LAWS ch. 5 § 6 requires reports made by permanent state departments, officers and commissions to be printed annually. There are no statutes requiring anything to be published electronically.

There is also a depository library program. MASS. GEN. LAWS ch. 6 § 39A (1) and (2). The definition of “publication” in MASS. GEN. LAWS ch. 6 § 39 also contains the language “regardless of its format or manner of duplication, and so is interpreted to include electronic-only publications as well.

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.

MASS. GEN. LAWS ch. 6 § 39A (1) and (2) make the state library the depository library for Massachusetts state publications in order to preserve all state publications and make them available for the use of citizens of the commonwealth. The state library is required to maintain a complete collection of Massachusetts state publications, both current and historic.

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:

The author believes that electronic information is so fragile that really important documents such as the General Laws and the Regulations need to be created in a permanent form for preservation and authentication concerns and that is why they are required to be printed. See the disclaimer on the General Laws web site of the general court for an example of this.

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

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

Director & Chief Information Officer, Information Technology Division, Office of the Secretary of State

MASS. GEN. LAWS ch.7 § 4A(d)

Additional comments:

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

MASS. GEN. LAWS ch.7 § 4A(d)

The ITD Director & Chief Information Officer, under the Executive Office for Administration and Finance, has the responsibility to set information technology standards; review and approve secretariat and department information technology strategic plans; be involved in the planning,

design, and operation of information technology systems; manage central information technology systems, as well as the Commonwealth's mailing operations.

Additional comments:

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

- Yes
- No

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:

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:

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.

All officers of the Commonwealth are obligated to comply with the Massachusetts Public Records Act.

Additional comments:

The Office of Information Technology in its servers has custody of a great deal of data which is public records produced by other agencies of the Commonwealth. The General Counsel of the Information Technology Division, Linda Hamel, acknowledged the responsibility to preserve government records, in whatever form, especially in fragile media not well-suited to storage, such as e-mail, in a phone conversation on February 5, 2003. She expressed the opinion that one of the challenges facing the Commonwealth was in getting its employees to think of electronic records as records in the same way they think of paper records. Unless staff know not to delete e-mail but to transfer them to appropriate storage media, important data a records can be lost. Additionally, since many of the state's web pages are dynamically generated, it is another challenge to appropriately archive them.

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:

The state librarian has asked people in this office to set up specifications for a server to archive and make available electronic publications removed from agency servers for space reasons. The financial condition of the state makes it unlikely that this will be accomplished anytime soon.

The pending "Statewide Records Disposition Schedule" attempts to preserve more government information that is created in fragile media. The General Counsel for the Office of Technology sees three major challenges in guarantying the permanency of all public records:
How will the state provide long term storage for public records when there is no funding for it?
How will the state get people in agencies to keep the electronic records they are producing in their work?

How can the state get people to save electronic records in a sensible way?
(Phone conversation February 5, 2003)

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.

Most litigation under this statute relates to failure to release information because it is in one of the statutory exemptions.

Additional comments:

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

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.

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

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:

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.

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.
- 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.

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
 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:

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

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.

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.

Chief of the archives division in the department of the secretary of state, known as archivist of the commonwealth. MASS. GEN. LAWS ch. 9 § 2.

Additional comments:

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

MASS. GEN. LAWS ch. 9 § 2.

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:

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

Executive

Legislative

* Judicial – see comments

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

Other

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

The archivist of the commonwealth shall, under the direction of the secretary, have charge of the non-current records of the commonwealth, particularly with regard to their custody, preservation, management and, when authorized, their destruction, and shall supervise the operation of the archives museum. MASS. GEN. LAWS ch. 9 § 2.

Additional comments:

*The Judicial Archives is a separate and distinct institution holding permanent court records housed within the Massachusetts Archives. The Judicial Archives contains the pre-1860 records of the predecessor courts of the Superior Court (Court of General Sessions of the Peace and Inferior Court of Common Pleas) for 9 counties. Other records in the Judicial Archives include Supreme Judicial Court and Superior Court of Judicature; predominantly pre-1900 probate records of Essex, Middlesex, Suffolk, Plymouth, and Worcester counties; a limited number of County Court records; records of some Justices of the Peace, naturalization records and records of a small number of special courts. Some collections of court records may still remain in original court houses.

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

The archivist of the commonwealth shall, under the direction of the secretary, have charge of the non-current records of the commonwealth, particularly with regard to their custody, preservation, management and, when authorized, their destruction, and shall supervise the operation of the archives museum. MASS. GEN. LAWS ch. 9 § 2.

Additional comments:

The statute requires the chief of the archives division to be a qualified archivist.

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

Yes
 No

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.

Records may be kept in the archives or in another appropriate division within the office of the state secretary, under reasonable restrictions as to access, for a reasonable length of time; provided, that such restrictions are in writing and accepted by the records conservation board at a meeting at which the attorney general, or his designee, is present. MASS. GEN. LAWS ch. 30 § 42.

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 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.

Mission of the Massachusetts Archives as stated on their web page July 1, 2002.

<http://www.state.ma.us/sec/arc/arcemis/misidx.htm>

“To ensure the preservation and accessibility of the records of government. To provide assistance to government agencies. To provide leadership to ensure the preservation and accessibility of Massachusetts's historical heritage. To develop appreciation of the value of historical records. The Massachusetts Archives serves the Commonwealth and its citizens by preserving and making accessible the records documenting government action and by assisting government agencies in managing their permanent records. The Archives provides leadership in preserving historical records and ensuring that those records are known and valued by citizens, students, and scholars.”

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.

Additional comments:

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

Yes
 No

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.

Librarian of the State Library MASS. GEN. LAWS ch. 6 § 35

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

MASS. GEN. LAWS ch. 6 § 38.

Additional comments:

The actual power is granted to the board of trustees of the library, who delegate power to the librarian.

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

Yes

No

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.

The State Library is in the state house for the use of the governor, lieutenant governor, council, general court (legislature) and such officers of the government and other persons as may be permitted to use it. MASS. GEN. LAWS ch. 6 § 38

Additional comments:

The judicial branch has its own two libraries, the Social Law Library, which is a membership library that also serves as the library to the Supreme Judicial Court and the Appeals Court, and the Trial Court Libraries that also function as the public law libraries of the state.

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

In addition to the functions mentioned above, the state library also serves as a public depository library for state publications, receiving copies for all the depository libraries and then passing on all but three, two to remain physically in the library and one to be disbound for microphotography. The state library also publishes a checklist of state publications received by the state library.

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.

The state library is designated as the depository library for Massachusetts state publications “in order that all state publications of the commonwealth are preserved and made available for the use of citizens of the state.” MASS. GEN. LAWS ch. 6 § 39A(1) & (2).

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.

The state library is designated as the depository library for Massachusetts state publications “in order that all state publications of the commonwealth are preserved and made available for the use of citizens of the state.” MASS. GEN. LAWS ch. 6 § 39A(1).

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.

Phone conversation with state librarian June 19, 2002.

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.

Requested a special server on which to archive government publications currently available electronically that agencies want to remove from their web sites for reasons of space. Currently the library collects them on disk and is committed to migrating them to new formats to keep them available.

The author does not know if they will get the new server anytime soon given the current fiscal situation in the state, but they are committed to not losing any government publications in the interim. The librarian may be doing this as chair of the Records Conservation Board rather than in his capacity as librarian, or both given the state library's status as head depository library for state documents. They are not committed to archiving individual web pages, just "electronic documents" however that should be construed. The new Draft "Statewide Records Disposition Schedule" does mention snapshots of web pages. Since many web pages are dynamically generated, there are still issues to be resolved in archiving them.

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.

The Massachusetts State Library has no statewide library responsibility. The statewide library programs are run out of the state library commission.

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.

MASS. GEN. LAWS ch. 6 §§ 39A & 39B

- 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?

Because the definition of public document, like that of public record, is regardless of format, it has been construed to include electronic as well as print information.

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.

MASS. GEN. LAWS ch. 6 § 39A(1) “In order that all state publications of the commonwealth are preserved and made available for the use of citizens of the state...”

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.

Since 1975 the Library has microfilmed all Massachusetts documents received in its collection. All state documents in the Library are cataloged via the OCLC online bibliographic database. The Library's holdings symbol is MAS. Since 1978 state documents may be accessed through the State Library's Online Public Access Catalog (OPAC).

Additional comments:

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

This information is not currently available. The government is under no obligation to create reports for citizens, only to make information available for inspection or provide copies at a reasonable fee.

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 state librarian is currently chairman of the Records Conservation Board. The Records Conservation Board knows it needs to deal with electronic records. The state library has been in contact with ITD and has made a proposal to set up a special server to archive web only publications that agencies are getting ready to take off their web pages for reasons of room. The library has sent a letter to all state agency heads to send copies of documents in either word or PDF of any documents they plan to take off the web site. Recognizing that electronic publications can become inaccessible due to changes in technology, they have a commitment to migrate the electronic documents into current formats.

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.

The state library provides copies of state publications to a commercial vendor, Research Publications, Inc., who microfiches them and makes them for sale in exchange for a fiche copy for the State Library. The State Library produces a checklist of state agency publications that serves as a finding list for these publications. The checklist is available through the State Bookstore, Room 116 State House, Boston, MA 02133 (617) 727-2834. The microfilm can be purchased from Primary Source Media, 12 Lunar Drive, Woodbridge, CT 06525 (203) 397-2600. The checklist names the state depository libraries where the documents may be viewed and also mentions that copies are sent to the Library of Congress.

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:

- 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.

- 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.”

Additional comments:

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:

1. **State Chief Information Officer (or equivalent)**

Peter J. Quinn
Director & Chief Information Officer
Information Technology Division
Executive Office for Administration and Finance
Commonwealth of Massachusetts
One Ashburton Place, Room 801
Boston, MA 02108
Telephone: (617) 626-4400
Fax: (617) 727-3766
E-mail: peter.j.quinn@massmail.state.ma.us

2. **State Printer**

None – done by contract

3. **State Archivist**

John D. Warner, Jr.
Archivist of the Commonwealth
Commonwealth of Massachusetts
220 Morrissey Blvd.
Boston, MA 02125
Telephone: (617) 727-2816
Fax: (617) 288-8429
E-mail: john.warner@sec.statema.us

Supervisor of Public Records

Alan N. Cote
Supervisor of Public Records
Commonwealth of Massachusetts
McCormack Building, Room 1719
One Ashburton Place
Boston, Massachusetts 02108
Telephone: (617) 727-2832
Fax: (617) 727-5914
E-mail: pre@sec.state.ma.us

4. State Librarian and/or State Law Librarian

Steve Fulchino
State Librarian
State Library of Massachusetts
State House Room 341
Boston, MA 02133
Telephone: (617) 727-2592
Fax: (617) 727-5819
E-mail: library.director@state.ma.us

5. State Attorney General

Tom Reilly
Attorney General
Commonwealth of Massachusetts
One Ashburton Place
Boston, MA 02108-1698
Telephone: (617) 727-2200
Fax: (617) 727-3251
E-mail: webmaster@ago.state.ma.us

FOIA refusals may be referred to the AG's office or to the appropriate District Attorney for enforcement.

M. IMPORTANT STATE RESOURCES

Provide URLs or other finding information for:

1. Official state home page

<http://www.mass.gov/portal/index.jsp>

2. State agency portal

<http://www.state.ma.us/massgov.htm>

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

Yes. It uses the Altavista search engine.

3. Legislative website

<http://www.state.ma.us/legis/>

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

Session laws go back to 1997. Senate Journals go back to 1998

- b. Are services free or fee-based?

Free

4. Judicial websites

<http://www.state.ma.us/courts/>

Reported decisions of the Supreme Judicial Court and Appeals Court are available to the public on the day of release through publishers who are not directly associated with the Judicial Branch. The Judicial Branch is currently studying the issue of what trial court case information will be made available to the public on the Internet.

Opinions of the Supreme Judicial Court and Appeals Court can be found at the following websites, none of which allow maintain permanent free access at this time:

The Social Law Library:	http://www.sociallaw.com
Massachusetts Lawyers Weekly:	http://www.masslawyersweekly.com
Massachusetts Law.com:	http://www1.law.com/ma

In 2003 the Supreme Judicial Court began posting slip opinions and orders on its Website. They are subject to formal revision and are superseded by the advance sheets and bound volumes of the Official Reports. This preliminary material will be removed from the Website once the advance sheets of the Official Reports are published.

5. Regulatory agency websites

Agencies organizationally:

<http://www.state.ma.us/massgov.htm>

6. Freedom of Information Service Hotline

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

Not named as such, but the Supervisor of Public Records serves that function.

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

No, although refusals to provide access can be referred to him or to a District Attorney.