

## 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.

MD. CODE ANN., STATE GOV’T § 10-631 to § 10-642; MD. REGS. CODE tit. 14.18.02 to 14.18.05.

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.

MD. CODE ANN., STATE GOV’T § 10-631 et seq. applies to “units of the State government,” thereby conceivably making application universal.

Additional comments:

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

MD. CODE ANN., STATE GOV’T § 10-639; MD. REGS. CODE tit.14.18.02.01

Additional comments:

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

Yes  
 No

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

The statutes do not address electronic records. However, the definition of “record” in MD. REGS. CODE tit 14.18.02.01 specifically includes electronic records. In addition, MD. REGS. CODE tit 14.18.04 exclusively addresses the maintenance and disposition of electronic records.

Additional comments:

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

Yes  
 No

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

MD. CODE ANN., STATE GOV’T §§ 10-639 – 10-640; MD. REGS. CODE tit 14.18.02.02. The statute permits records destruction after written approval by the State Archivist. The regulations mandate that agencies file schedules approved by the State Archivist. No records may be disposed of without authorization in the form of a filed schedule. Schedules shall be prepared in 4 steps: “(a) Inventorying the records, (b) Appraising the records, (c) Preparing the schedule, and (d) Obtaining legal authorization for use of the schedule...” MD. REGS. CODE tit 14.18.02.02(E)(1). The rest of MD. REGS. CODE tit 14.18.02.02 outlines each of the four steps. The critical section, “Records Appraisal,” says: “Records appraisal is the process of determining how long, in what format, and under what conditions a record series ought to be preserved. Records appraisal is based upon the information contained in the records inventory. Record series shall be either preserved permanently or disposed of when no longer required for the current operations of an agency or office, depending upon: (1) Historical value; (2) Administrative value; (3) Legal value; (4) Fiscal value; and (5) Other archival value.” MD. REGS. CODE tit 14.18.02.02(G).

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.

Electronic records are addressed both in MD. REGS. CODE tit 14.18.02.02 and in MD. REGS. CODE tit 14.18.04. The latter provision provides extensive guidance on the preservation of certain electronic records. All schedules, for example, must include a plan “[t]hrough which permanent electronic records will be preserved and made accessible to government and the public...” MD. REGS. CODE tit 14.18.04.04(C)(4)(a). Only one case or opinion has addressed these regulations. Maryland Attorney General Opinion 96-016 (1996 Md. AG LEXIS 18), May 22, 1996, held that these regulations apply to business-related e-mail. Nevertheless, the opinion, in footnote 4, hinted

that few e-mails, especially those of a transitory nature, would meet the standards of “archival value.”

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.

MD. REGS. CODE tit 14.18.02.02(B) provides that “All agencies shall: (1) Identify and preserve permanently valuable records; (2) safeguard their legal and fiscal accountability; (3) Document their administrative history; and (4) Ensure ongoing public access to the public records of government by adopting schedules.” In addition, MD. REGS. CODE tit 14.18.04.01 outlines the purpose of the chapter on electronic records. It is reprinted here:

“.01 Purpose.

A. These regulations establish the minimum requirements to create, use, maintain, appraise, preserve, store, make accessible, and dispose of electronic records.

B. All electronic media are highly perishable. Electronic media do not last as long as traditional record-keeping media such as paper or microfilm.

C. At a time when public records increasingly are created, maintained, and made accessible only in electronic form, it is vital that standards and procedures be established to identify and preserve these records in order to:

(1) Provide for the regular and timely appraisal of electronic public records to ensure that records of permanent historical, administrative, fiscal, legal, or other archival value are identified and preserved;

(2) Make these records accessible to government and to the public in perpetuity;

(3) Safeguard government's legal and fiscal accountability through the preservation of important records; and

(4) Document the administrative history of government by preserving those records that illustrate agency goals and accomplishments.”

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.

According to MD. CODE ANN., STATE GOV'T § 10-632, the State Archivist and the Records Management Division of the Department of General Services "jointly shall adopt regulations." In MD. REGS. CODE tit 14.18.02.02, the State Archivist approves retention and destruction schedules alone, while the Division "shall assist agency and office personnel in the development of schedules and provide any necessary forms." MD. REGS. CODE tit 14.18.02.02(C).

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.

MD. REGS. CODE tit 14.18.02.02 and 14.18.04.01.

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?

Arguably, Maryland has such a provision in MD. REGS. CODE tit 14.18.04. Certain electronic records may be considered "permanent electronic records" in they have "sufficient historical, administrative, legal, fiscal, or other archival value to warrant preservation by the Archives beyond the time that the record is needed by the agency that created it." MD. REGS. CODE tit 14.18.04.03(B)(15). Nevertheless, many electronic records will not rise to the level of importance that will ensure permanence.

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

These were adopted by 21:16 Md. Reg. 1389 (August 15, 1994) substantially as proposed. There is no additional printed 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.

The above-cited regulations also apply to county and local governments. MD. REGS. CODE tit. 14.18.02.01(B)(1) and MD. REGS. CODE tit 14.18.04.02(A). In addition, per MD. REGS. CODE tit 14.18.04.02(A), electronic records regulations extend to “any private vendor under contract with the agency or office to collect, maintain, or disseminate public information in an electronic form.”

## **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.

MD. CODE ANN., STATE GOV’T § 10-611 to § 10-628. Individual state agencies may adopt “reasonable rules or regulations” to govern “timely production and inspection of a public record.” MD. CODE ANN., STATE GOV’T § 10-613(b). The Secretary of State has done so, for example, at MD. REGS. CODE tit 01.02.05.

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

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

According to MD. CODE ANN., STATE GOV’T § 10-611(g), a “public record” is “the original or any copy of any documentary material that: (i) is made by a unit or instrumentality of the State government or of a political subdivision or received by the unit or instrumentality in connection with the transaction of public business.”

Additional comments:

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

MD. CODE ANN., STATE GOV'T § 10-611(g).

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:

MD. CODE ANN., STATE GOV'T § 10-611(g) provides that a public record may be various paper documents or “a computerized record.”

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.

MD. CODE ANN., STATE GOV'T § 10-612 provides a general right of access, although it does not discuss the permanency of the records to be accessed:

“§ 10-612. General right to information (a) General right to information. -- All persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees. (b) General construction. -- To carry out the right set forth in subsection (a) of this section, unless an unwarranted invasion of the privacy of a person in interest would result, this Part III of this subtitle shall be construed in favor of permitting inspection of a public record, with the least cost and least delay to the person or governmental unit that requests the inspection.” In addition, agency regulations may also reiterate this policy. For example, the Secretary of State in MD. REGS. CODE tit 01.02.02.01 states that “[i]t is the policy of the Secretary [of State] to facilitate public access to the records of the office when this access is allowed by law by minimizing costs and time delays to persons requesting information.”

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.

The answer applies only to “Freedom of Information” requests; permanent public access is addressed in the first section.

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.

The reader should know that “permanent public access” to Maryland records is primarily addressed through the state’s records laws, and not necessarily its “Freedom of Information” act.

### 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.

Maryland has such a law in regards to the *Code of Maryland Regulations* (COMAR) and the *Maryland Register*. MD. CODE ANN., STATE GOV'T § 7-206.2 provides as follows:

"(a) Availability. -- The Division may arrange for data bases derived from publications issued by the Division to be made available to the public for direct on-line searching by contracting with third-party or value-added resellers.

(b) Charge for access. -- Notwithstanding the provisions of subsection (a) of this section, the State Data Center shall charge for on-line access to the Maryland Information Retrieval System.

(c) Construction of section. -- This section may not be construed to require a State data center to provide a member of the public with direct on-line access or any other type of access to the computers or data bases of the State Data Center.

(d) No cost availability. -- Notwithstanding any other provision of law, the Division shall make available to the public, at no cost, direct on-line searching of:

(1) the Code of Maryland Regulations (COMAR);

(2) the Maryland Register; and

(3) any other material the Division determines to be in the public interest.

(e) Disclaimer. -- The receipt of any material made available to the public under the terms of subsection (d) of this section shall be preceded by a legend stating that:

"The information you are about to receive is made available for personal use only. By proceeding beyond this point you agree that you will not use the information for any prohibited commercial purpose, as defined in § 7-206.2 (g) of the State Government Article, including, by way of example and not in limitation, the downloading of this information for resale in any other electronic or printed form."

(f) Opportunity to refuse access. -- The legend referenced in subsection (e) of this section shall be presented to the recipient in a manner that affords the recipient an opportunity to refuse to access the material.

(g) Prohibited commercial purpose. --

(1) In this subsection, "prohibited commercial purpose" includes any use that involves the resale or other compensated transfer of information made available under subsection (d) of this section.

(2) "Prohibited commercial purpose" does not include the incorporation of portions of information made available under subsection (d) of this section into documents commenting upon or advising persons of the legal effect of that information, even though the person incorporating the information may be compensated for the comments or advice.

(3) Data or material obtained under subsection (d) of this section may not be used for any prohibited commercial purpose.

(h) Violation; fine. -- A person who violates subsection (g) of this section is subject to a fine not exceeding \$ 1,000 for each violation."

MD. CODE ANN., STATE GOV'T § 2-1243 provides for the printing of session laws by the Department of Legislative Services. MD. CODE ANN., STATE GOV'T § 2-1244 provides for the sale of the session laws, the Senate journal and the House journal. In addition, it provides for the distribution of copies to public libraries. Note that this statute does not discuss distribution in electronic format or the preservation of permanent copies.

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.

Additional comments:

See above statutes.

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:

See above statutes.

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?

MD. CODE ANN., STATE GOV'T § 7-206.2 specifically discusses electronic access.

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:

One might argue that MD. CODE ANN., STATE GOV'T § 7-206.2 presumes permanency. Nevertheless, that concept is not stated explicitly.

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.

See above-cited statute at Question 1.

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?

MD. CODE ANN., STATE GOV'T § 7-206.2 was enacted in 1999 after lobbying by the Maryland State Bar Association and supporting testimony from the Law Library Association of Maryland. It was introduced and rejected the previous year.

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

1999 Md. Laws ch. 668.

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.

The statutory development of such provisions progresses in a piecemeal, ad hoc fashion. There is no section of the Code, for example, dedicated specifically to government publications.

#### **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.

MD. CODE ANN., STATE FIN. & PROC. § 3-406 – 3-407 establishes a State Information Technology Board, composed Department Secretaries and independent state committee chairs and other Governor appointees. The Board provides advice and counsel to the Chief of Information Technology. MD. CODE ANN., STATE FIN. & PROC. § 3-409. The Chief of Information

Technology is appointed by the Secretary of the State Department of Budget and Management and carries out various duties for the Secretary as outlined in MD. CODE ANN., STATE FIN. & PROC. § 3-410.

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?

See above. 1994 Md. Laws ch. 493.

Additional comments:

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

Yes  
 No

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

MD. CODE ANN., STATE FIN. & PROC. § 3-410(d)(6) grants to the Chief of Information Technology the ability to promulgate regulations only for “nonvisual access standards” for procurement functions, e.g., for the blind and visually impaired.

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 Chief is a serves at the pleasure of the Secretary of the Department of Budget and Management.

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?

The above-referenced statutes apply solely to information technology and not print-based materials.

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.

Additional comments:

By statute, the Chief may review various Department plans to make information available to the public over the Internet. MD. CODE ANN., STATE FIN. & PROC. § 3-410(d)(4). In addition, the Chief may develop a "statewide information technology master plan." MD. CODE ANN., STATE FIN. & PROC. § 3-410(d)(5). However, there is no mention of ensuring permanent public access to government information.

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

Yes  
 No

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

Additional comments:

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

Yes  
 No

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

Additional comments:

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

Maryland is striving to make a concerted effort to boost the technology sector of the state economy. It is striving to attract technology businesses and, in return, it is attempting to make state government more technology-friendly. Therefore, it is likely that in the coming years the Chief of Information Technology and the Information Technology Board will play an increasingly important role in statewide technology planning.

## 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:

MD. CODE ANN., STATE FIN. & PROC. § 3-409 and § 3-410 grant the State Information Technology Board and the Chief of Information Technology joint power in developing a master plan. It has not yet been completed, according to the Board's website: <http://www.techmd.state.md.us/ITPlanning/futureitplan.asp>. It is scheduled to be released shortly.

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.

MD. CODE ANN., STATE GOV'T § 9-1005 provides for a State Archivist.

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.

MD. CODE ANN., STATE GOV'T § 9-1005 to § 9-1015; § 10-631 to § 10-642.

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.

MD. REGS. CODE tit. 14.18.

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.

The State Archivist's powers extend to all units of state government for purposes of records management. See additional answers in Section A.

Additional comments:

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

In addition to overseeing the management of state public records as described in Section A, the Archivist manages the physical Archives and the Hall of Records, collects public and private historical information, and manages state land records.

Additional comments:

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

Yes  
 No

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

See answers given in Section A.

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.

See answers given in Section A.

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.

See answers given in Section 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  
 No

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

See answers given in Section A.

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.

The State Archives now has an extensive free database on the web consisting of historical legal materials, such as House and Senate Journals and old versions of the Maryland Code. These are available at:

<http://www.mdarchives.state.md.us/megafile/msa/speccol/sc2900/sc2908/html/codes.html>

Additional comments:

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

Yes  
 No

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

Additional comments:

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

## H. STATE LIBRARY AND STATE LIBRARIAN

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

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

Yes  
 No

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

MD. CODE ANN., EDUC. § 23-101 et seq. creates the Division of Library Development and Services within the State Department of Education. The Division is headed by the Assistant Superintendent for Libraries. MD. CODE ANN., EDUC. § 23-103. Maryland does not have a “State Library” per se, but rather a loose structure of depository libraries. Therefore, the Assistant Superintendent for Libraries likely is not quite equivalent to the prototypical position of “state librarian.”

b. If “No,” skip this whole section.

Additional comments:

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

MD. CODE ANN., EDUC. § 23-103 to § 23-105.

Additional comments:

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

Yes

No

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

Additional comments:

However, the State Board of Education itself may promulgate regulations pertaining to Title 23 (Libraries) of the Education Article. MD. CODE ANN., EDUC. § 23-104.

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 Assistant Superintendent for Libraries is part of the Department of Education and therefore has responsibilities only insofar as they pertain to the Department.

Additional comments:

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

MD. CODE ANN., EDUC. § 23-105 outlines the powers and duties of the Division generally:

“§ 23-105. Powers and duties of Division

(a) In general. -- In addition to any other powers granted and duties imposed by this title, and subject to the authority of the State Board, the Division of Library Development and Services has the powers and duties set forth in this section.

(b) General powers and duties. -- The Division of Library Development and Services shall:

- (1) Provide leadership and guidance for the planning and coordinated development of library and information service in this State;
- (2) Develop statewide public and school library services and networks, resource centers, and other arrangements to meet the library and information needs of this State;
- (3) Provide professional and technical advice on improving library services in this State to:
  - (i) Public and school library officials;
  - (ii) State government agencies; and
  - (iii) Any other person;
- (4)
  - (i) Collect library statistics and other data;
  - (ii) Identify library needs and provide for needed research and studies of them;
  - (iii) Publish and distribute findings in these areas; and
  - (iv) Coordinate library services with other information and education services and agencies;
- (5) Administer federal and State funds appropriated to it by the State for library purposes;
- (6)
  - (i) Develop and recommend professional standards and policies for libraries; and
  - (ii) Establish requirements and procedures for the certification of librarians and library personnel;
- (7) Provide:
  - (i) Specialized library service to the blind and other physically handicapped individuals in this State; and
  - (ii) Other desirable specialized library services;
- (8) Encourage, advise, and assist in establishing, operating, and coordinating libraries at State institutions and agencies and administer the operation of library and information services for the Department;
- (9) Adopt guidelines for the administration of public libraries and recommend to the State Board rules and regulations to implement this title;
- (10) Cooperate with national library agencies and those of any other state; and

(11) Perform any other duty necessary for its proper operation.”

Additional comments:

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

Yes  
 No

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

Additional comments:

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

Yes  
 No

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

Additional comments:

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

Yes  
 No

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

Additional comments:

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

Yes  
 No

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

Additional comments:

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

Yes  
 No

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

Additional comments:

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

Yes  
 No

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

Additional comments:

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

## I. STATE DEPOSITORY LIBRARY LAWS

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

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

Yes  
 No

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

MD. CODE ANN., EDUC. § 23-301 et seq.

- 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?

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:

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

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

Additional comments:

Based on personal knowledge of Maryland legal information, much of this continues to be in print format.

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 Publications Depository and Distribution Program is not focusing on the dissemination of electronic materials.

## 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:
  - 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:

(a.) Maryland has regulations in force that preserve “permanent public access” to certain state records. These regulations, under the auspices of the State Archivist, ensure public access to records that rise to a certain level of historical or legal “value.” It is likely that primary legal sources and government publications would meet this rather subjective threshold. Nevertheless, government publications are not specifically enumerated in the regulations as automatically meeting the threshold. Given the broad authority granted by statute to the State Archivist, any amendments strengthening “permanent public access” should be made in the Archivist’s records management regulations.

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

Additional comments:

The Chief of Information Technology and Information Technology Board will likely hold increased political power in future years. Currently, these positions are within the State Department of Budget and Management, but are also granted the power to create a statewide master technology plan. It may be wise to ensure communication between these entities and the State Archivist who currently oversees “permanent public access.” Doing so would underscore the importance of, and regulatory mandate for, access to electronic state records.

## **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 K. Lee  
Interim State Chief Information Officer  
Department of Budget & Management  
Office of Information Technology  
45 Calvert St  
Annapolis, MD 21401-1907  
Telephone: (410) 260-7259  
Fax: (410)974-5615  
E-mail: tlee@dbm.state.md.us

### **2. State Archivist**

Dr. Edward C. Papenfuse  
Maryland State Archives  
350 Rowe Boulevard  
Annapolis, MD 21401  
Telephone: (410) 260-6403  
Fax: (410) 974-3895  
E-mail: edp@mdarchives.state.md.us

### **3. State Printer**

None

### **4. State Librarian and/or State Law Librarian**

Irene M. Padilla  
Assistant State Superintendent for Libraries  
Division of Library Development & Services  
200 West Baltimore St.  
Baltimore, MD 21201  
Telephone: (410) 767-0434  
E-mail: ipadilla@msde.state.md.us

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

J. Joseph Curran, Jr.  
Office of the Attorney General  
200 St. Paul Place, 17<sup>th</sup> Floor  
Baltimore, MD 21202  
Telephone: (410) 576-6300

Fax: (410) 576-7003  
E-mail: OAG@oag.state.md.us

#### **M. IMPORTANT STATE RESOURCES**

Provide URLs or other finding information for:

1. Official state home page  
<http://maryland.gov/>

2. State agency portal  
<http://www.mec.state.md.us/>

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

No.

3. Legislative website  
<http://mlis.state.md.us/>

a. Does the website cover the current year only?

No. The full text of bills introduced since 1996 are available.

b. Are services free or fee-based?

The free version is updated nightly during the legislative session. A for-pay “up-to-the-minute” version is also available. This allows users to have the same, immediate access as the legislators.

4. Judicial websites  
<http://www.courts.state.md.us/>

5. Regulatory agency websites  
<http://www.mec.state.md.us/>

6. Freedom of Information Service Hotline

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

There is no statewide ombudsman, although agencies may have such positions.

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

No, the public must contact the custodian of the public record individually.

## **PART II**

Part II is the Executive Summary. Please create a separate MS Word file for this important narrative, and be sure to follow specifications in the Format and Style Sheet. We emphasize that the Executive Summary must be no longer than three pages, double-spaced, with 1-1/2 inch margins on all sides. Use New Times Roman font, size 12.

Begin the Executive Summary with your conclusion as to whether or not permanent public access of state government electronic information is a reality in your state. What is the current status? Then, to support your conclusion, discuss your findings, as reflected in your answers in Part I. What laws, if any, mandate permanent public access? What official or unofficial cooperative or other permanent public access arrangements are in place? Conclude with a statement about reform, if needed, and future advocacy efforts.