

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.

The Archives and Records Management Act, Miss. Code Ann. §§ 25-59-1 – 31 (1999).

Regulations:

Reproduction of Records of Archival or Enduring Value, Storage of Copies: Miss. Code Regs. § 31-000-034 (2001).

Offsite Storage of Inactive Records of Local Governmental Entities: Miss. Code Regs. § 31-000-035 (2001).

Image Reproduction Policy: Miss. Code Regs. § 31-000-038 (2001).

Destruction of Original Records After Imaging: Miss. Code Regs. § 31-000-042 (2001).

- 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.

The Archives and Records Management Act applies to documents, papers, letters, maps, books, tapes, etc. “made or received pursuant to law or ordinance or in connection with ... official business by any agency or by any appointed or elected official”¹ (a much broader definition of

¹ Miss. Code Ann. § 25-59-3(b) (1972).

public record than that in the Public Records Act discussed in Part B). In reality, however, the Department of Archives and History seems to have little if any authority over any branch of government other than administrative. The Department's authority over other agencies is also quite limited; the Department mostly serves an advisory role.

Additional comments:

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

Miss. Code Ann. § 25-59-3(b) (1999).

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 treat electronic records differently than print, but there are some special regulations regarding electronic records. The Department of Archives and History has issued rules for imaging records² and for the destruction of records after imaging.³ Furthermore, the Department has prepared a set of draft guidelines for managing records kept in desktop files, databases, email, and web pages.⁴ The Department has also issued draft guidelines for metadata.⁵

Additional comments:

If the reproduction and storage methods and procedures meet standards approved by the Department of Archives and History, a reproduction of a record "shall be deemed to be the original record for all purposes and shall be deemed to be the original record for all purposes and shall be admissible as evidence in all courts or administrative agencies."⁶

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

Yes
 No

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

Each agency and each appointed or elected state official must "submit to the [Mississippi Department of Archives and History] for review by the state records committee and in accordance with the rules and regulations of the department, a recommended retention schedule for records in its custody, except schedules for certain types of records common to all agencies or offices which

² Miss. Code Regs. § 31-000-038 (2001)

³ Miss. Code Regs. § 31 -000-042 (2001).

⁴ Mississippi Department of Archives and History, *Electronic Records Draft Guidelines*, available at <http://www.mdah.state.ms.us/arlib/erglweb.html> (last visited June 28, 2002).

⁵ *Id.*

⁶ Miss. Code Ann. § 25-59-29 (1972).

may be established by the department and the state records committee.”⁷ The records control schedule must be approved by the State Records Committee which is composed of the governor, state registrar of vital records, state auditor of public accounts, secretary of state, and the director of the department of archives and history, or their designated representatives.⁸

Ordinarily, an agency contacts the MDAH Records Management Division and requests assistance with producing records control schedules. The agency will then be visited by records analysts from the Records Management Division and/or staff of the Electronic Records Section of the Archives and Library Division, as needed, for assistance with inventorying their records and producing draft schedules. As defined by state law, a records control schedule is a “set of instructions prescribing how long, where or in what form records shall be kept”⁹ (MCA 1972, §25-59-3). The records control schedule describes records and specifies where and how long they must be retained before it is disposed of or transferred to the State Archives. Once approved by the State Records Committee, a records control schedule has the force and effect of law. Before a schedule is considered by the Committee it must first be preliminarily agreed to by the agency, then approved by the MDAH in-house Appraisal Committee, then approved by the directors of the MDAH Archives and Library Division and Records Management Division, then formally agreed to by the agency.¹⁰

Once established, the records control schedules “shall have the force and effect of law.”¹¹ Furthermore, the Act required the Department to adopt rules and regulations binding on all agencies and all appointed and elected officials relating to the reproduction, destruction, and disposal of public records.¹² Public records may not be destroyed unless specified in the applicable records control schedule.¹³ Thus, *permanency is assumed unless specified otherwise*. § 25-59-23 describes the penalty for offenses involving the alteration or unauthorized destruction of records.¹⁴

If records are of enduring value to the agency concerned or are determined to be of archival value by the Mississippi Department of Archives and History, the reproduction and storage methods must meet standards approved by the department. One master copy of each record or enduring or archival reproduced shall be deposited with the department. Custodians may destroy the original records from which the reproductions were made, or any part of them, provided that the records are of no value to the agency concerned, the Mississippi Department of Archives and History certifies that the records may be destroyed through the provisions of retention schedules approved by the state records committee, and the records microfilmed or reproduced and approved for

⁷ Miss. Code Ann. § 25-59-15 (1972).

⁸ Id.

⁹ Miss. Code Ann. § 25-59-3 (1972).

¹⁰ E-mail from David Pilcher, Head of the Electronic Records Section, Archives and Library Division, Mississippi Department of Archives and History, to Lynn Murray, Public Services Law Librarian, University of Mississippi School of Law (Jan 21, 2003 15:34:15 CST) (on file with author).

¹¹ Miss. Code Ann. § 25-59-7 (1972).

¹² Miss. Code Ann. § 25-59-21 (1972).

¹³ Miss. Code Ann. §§ 25-59-21, 25-59-23 (1972).

¹⁴ Id.

destruction are reported to the Mississippi Department of Archives and History in such manner as it may direct.¹⁵

- 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.

Regarding retention of electronic records, the Public Records Act states that electronic records are subject to records retention polices.¹⁶ When the records of an agency or office are scheduled, the retention and disposition of all records, regardless of format, must be addressed. The records control schedule form has been updated and expanded for this purpose and staff of the MDAH Records Management Division and Electronic Records Section work together to produce comprehensive schedules.¹⁷

The Department of Archives and History has issued rules for imaging records¹⁸ and for the destruction of records after imaging.¹⁹ Furthermore, the Department has prepared a set of draft guidelines for managing records kept in desktop files, databases, email, and web pages.²⁰ The Department has also issued draft guidelines for metadata.²¹

§ 23 of the Uniform Electronic Transactions Act also addresses the retention of records, requiring that if a record must be retained, the requirement is satisfied by retaining an electronic record of the information which accurately reflects the information set forth in the record at the time it was first generated in its final form and remains accessible for later reference.²²

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.

¹⁵ Miss. Code Ann. § 25-59-29 (1972).

¹⁶ Miss. Code Ann. §§ 25-61-1, 25-61-2 (1972).

¹⁷ E-mail from David Pilcher, Head of the Electronic Records Section, Archives and Library Division, Mississippi Department of Archives and History, to Lynn Murray, Public Services Law Librarian, University of Mississippi School of Law (Jan 21, 2003 15:34:15 CST) (on file with author).

¹⁸ Miss. Code Regs. § 31-000-038 (2001)

¹⁹ Miss. Code Regs. § 31 -000-042 (2001).

²⁰ Mississippi Department of Archives and History, *Electronic Records Draft Guidelines*, available at <http://www.mdah.state.ms.us/arlib/erglweb.html> (last visited June 28, 2002).

²¹ *Id.*

²² Miss. Code Ann. § 75-12-23 (1972).

The legislative and state policy regarding public records is that “public records must be available for inspection by any person unless otherwise provided.”²³ The Public Records Act of 1983 was intended to “provide access by any person to the records of all public bodies of government [and] to require that standard procedures be established by all public bodies by which persons may become aware of their rights to examine public records....”²⁴ The 1996 amendment regarding electronic records also displayed a strong public policy in favor of access; the amendment specified that “automation of public records must not erode the right of access to those records.... each public body must ensure reasonable access to records electronically maintained.”²⁵ Furthermore, the law “prohibit[s] a public body from entering into a contract for the creation or maintenance of a public records database if that contract impairs the ability of the public to inspect or copy the public records of that agency.”²⁶

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

Additional comments:

Each agency must “establish and maintain and continuing program for the ... management of records.”²⁷ Part of this responsibility entails creating a records retention schedule for its records in cooperation with the state records committee²⁸ and the Mississippi Department of Archives and History.²⁹ The Department establishes reproduction and storage standards for records of enduring or archival value.³⁰

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?

²³ Miss. Code Ann. §§ 25-61-1, 25-61-2 (1972).

²⁴ 1983 Miss. Laws 424.

²⁵ 1996 Miss. Laws 453 (codified at Miss. Code Ann. § 25-61-1 (1972)).

²⁶ Miss. Code Ann. § 25-61-10 (1972).

²⁷ Miss. Code Ann. § 25-29-15(b) (1972).

²⁸ Miss. Code Ann. § 25-59-7 (1972).

²⁹ Miss. Code Ann. § 25-59-15(d) (1972).

³⁰ Miss. Code Ann. § 25-59-29 (1972).

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

Additional comments:

No legislation explicitly states that records must be kept permanently, but that is implied in several code sections. No person may “destroy, sell, loan, or otherwise dispose of any public record” without the consent of the Department.³¹ Public records may not be destroyed unless specified in the applicable records control schedule.³² § 25-59-23 describes the penalty for offenses involving the alteration or unauthorized destruction of records.³³ Thus, permanency is assumed unless specified otherwise in the applicable records retention schedule which must be approved by the state records committee.

Records that are no longer of use to agencies are transferred to the Department of Archives and History to be preserved,³⁴ and these records are to be open for public use.³⁵ Copies of “records of enduring value” must meet archival standards approved by the Mississippi Department of Archives and History.³⁶

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

Yes
 No

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

Additional comments:

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

B. FREEDOM OF INFORMATION ACT

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

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

Yes
 No

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

³¹ Miss. Code Ann. § 25-59-21 (1972).

³² Miss. Code Ann. § 25-59-23 (1972).

³³ Id.

³⁴ Miss. Code Ann. §§ 25-59-9(g), 25-59-13(a), 25-59-15(d)

³⁵ Miss. Code Ann. § 25-29-27 (1972).

³⁶ Miss. Code Ann. § 25-59-29 (1972).

Miss. Code Ann. §§ 25-61-2 – 17 (1999)

Emergency Management Agency: Miss. Code Regs. § 7-000-002 (2001)
Department of Environmental Quality: Miss. Code Regs. § 8-000-001 (2001)
Department of Human Services: Miss. Code Regs. § 11-000-008 (2001)
Medicaid: Miss. Code Regs. § 13-000-005 (2001)
Secretary of State: Miss. Code Regs. § 21-000-004 (2001)
Animal Health Board: Miss. Code Regs. § 25-010-024 (2001)
Veterinary Diagnostic Laboratory Board: Miss. Code Regs. § 25-060-002 (2001)
Department of Insurance: Miss. Code Regs. § 28-000-034 (2001)
Department of Mental Health: Miss. Code Regs. § 44-000-007 (2001)
State Auditor: Miss. Code Regs. § 20-000-002 (2001)
Mississippi Library Commission: Miss. Code Regs. § 60-035-01 (2001)
Pearl River Valley Water Supply District: Miss. Code Regs. § 60-055-004 (2001)

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.

Additional comments:

The public records statutes apply to public bodies, defined as “any department, bureau, division, council, commission, committee, subcommittee, board, agency, and any other entity of the state or a political subdivision thereof, and any municipal corporation.”³⁷ Furthermore, §25-61-17 states that “nothing in this chapter shall be construed as denying the legislature the right to determine the rules of its own proceedings and to regulate public access to its records.”³⁸

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

Miss. Code § 25-61-3(b) (1999).

Additional comments:

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

³⁷ Miss. Code Ann. § 25-61-3(a) (1972).

³⁸ Miss. Code Ann. § 25-61-17 (1972).

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:

§ 1 of the Mississippi Public Records Act was amended in 1996 in order to address electronic records. The section states that "it is the policy of the Legislature that... automation of public records must not erode the right of access to those records. As each agency increases its use of and dependence on electronic record keeping, each agency must ensure reasonable access to records electronically maintained, subject to the rules of record retention."³⁹ This language is repeated in §25-61-2, changing it only slightly to say that it is the policy of the *state* as well.⁴⁰ Software used to store public records must not diminish the right of the public to inspect and copy a public record. Before a public body acquires or makes a major change to any information technology system to store public records, the public body shall adequately plan for the provision of public access and redaction of exempt or confidential information by the proposed system.⁴¹ Plans for electronic storage systems must meet the requirements listed under § 9-1-57.⁴²

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.

No statute specifically calls for permanent public access of electronic records, but as stated earlier records are to be kept permanently unless specified otherwise in the applicable records control schedule.

The Department of Archives and History is very concerned with permanent public access to electronic records and has assumed a leadership role in the area, undertaking a project called the Electronic Records Initiative. As part of the project, the Department has issued regulations regarding imaging of records,⁴³ and the destruction of records after imaging.⁴⁴ The Department

³⁹ Miss. Code Ann. § 25-61-1 (1972).

⁴⁰ Miss. Code Ann. § 25-61-2 (1972).

⁴¹ Miss. Code Ann. § 25-61-10 (1972).

⁴² Miss. Code Ann. § 9-1-57 (1972).

⁴³ Miss. Regs. § 31-000-038 (2001).

⁴⁴ Miss. Regs. § 31-000-042 (2001).

has also prepared a set of draft guidelines for managing records kept in desktop files, databases, email, and web pages.⁴⁵ The Department has also issued draft guidelines for metadata.⁴⁶

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.

No statute specifically calls for permanent public access, but the state does have a strong policy in favor of public access: "It is the policy of the Legislature that public records must be available by any person unless other provided. Furthermore, providing access to public records is a duty of each public body...."⁴⁷ § 25-61-2 repeats this same language, only saying that it is the policy of the *state* as well.⁴⁸ In addition, the Archives and Records Management Law suggests that permanent public access is the policy of the state as records may not be destroyed unless specified in the applicable records retention schedule.⁴⁹ Records that are no longer of use to agencies are transferred to the Department of Archives and History to be preserved⁵⁰, and these records are to be open for public use.⁵¹ The act also requires that copies of "records of enduring value" meet archival standards approved by the Mississippi Department of Archives and History.⁵²

The terms "enduring value" and "archival value" are not defined in the statute. An attorney general's opinion on the matter also sheds little light, stating that "Records of archival value are records which the Department of Archives and History determines have permanent value. Records of enduring value are non-archival records which are not permanent but which the agency determines should be kept for a period of time after they become inactive."⁵³

Additional comments:

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

Yes
 No

⁴⁵ Mississippi Department of Archives and History, *Electronic Records Draft Guidelines*, available at <http://www.mdah.state.ms.us/arlib/erlibweb.html> (last visited June 28, 2002).

⁴⁶ *Id.*

⁴⁷ Miss. Code Ann. § 25-61-1 (1972).

⁴⁸ Miss. Code Ann. § 25-61-2 (1972).

⁴⁹ Miss. Code Ann. § 25-59-23 (1972).

⁵⁰ Miss. Code Ann. §§ 25-59-9(g), 25-59-13(a), 25-59-15(d) (1972).

⁵¹ Miss. Code Ann. § 25-29-27 (1972).

⁵² Miss. Code Ann. § 25-59-29 (1972).

⁵³ Op. Miss. Atty. Gen. No. 1996-0659 (Oct. 4, 1996).

- 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.
- 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:

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

Additional comments:

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

Yes
 No

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

Additional comments:

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

Yes
 No

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

Additional comments:

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

Yes
 No

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

Additional comments:

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

Yes
 No

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

Additional comments:

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

Yes
 No

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

Additional comments:

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

Yes
 No

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

Additional comments:

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

D. STATE OFFICE FOR TECHNOLOGY AND CHIEF INFORMATION OFFICER

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

Yes
 No

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

The complete name of the department is the Mississippi Department of Information Technology Services.⁵⁴ Miss. Code § 25-53-1. The executive director of the department’s title is Chief Information Confidentiality Officer.⁵⁵ The current executive director is David Litchliter.

- 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?

⁵⁴ Miss. Code Ann. § 25-53-1 (1972).

⁵⁵ Miss. Code Ann. § 25-53-19 (1972).

§ 25-53-21 defines the powers of the executive director; § 25-53-29 defines the responsibilities of the department.

The statute was first enacted in 1968, when the agency was called the Central Data Processing Authority.⁵⁶ In 1995 the name of the agency was changed to Mississippi Department of Information Technology Services and its powers were expanded.⁵⁷

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.
Information Systems Policy Manual: Miss. Code Regs. § 10-000-001 (2001)
ITS Procurement Handbook: Miss. Code Regs. § 10-000-002 (2001)

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 purpose of creating the Mississippi Department of Information Technology Services was to encourage "cooperation and cohesive planning and effort by and between the state agencies."⁵⁸

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:

Attorney General Opinion 2000-0442 answered several questions Executive Director Lichliter had about the Mississippi Department of Information Technology Services (MDITS). In the opinion,

⁵⁶ 1968 Laws 499 (codified as amended at Miss. Code Ann. § 8946-61 (1972 Supp.)).

⁵⁷ 1995 Laws 622 (codified as amended at Miss. Code Ann. §§ 25-53-1 – 29 (1972)).

⁵⁸ Miss. Code Ann. § 25-53-1 (1972).

the following points were clarified: It is within the discretion of the MDITS to establish infrastructure standards which must be utilized and conformed to by all state agencies; MDITS has the authority to establish a procedure requiring the definition of requirements and a competitive contract award for the procurement of E-Government services; MDITS may enter contracts with vendors who display commercial ads on their private web sites; MDITS may institute contracts which carry out the duties and responsibilities of the agency and the contracts may allow vendors to charge fees for their services. However, the customer must still have the option of not using a fee-added internet service in order to do business with the agency; an agency cannot sell its records for a profit and the state may not authorize any entity to be the exclusive recipient or exclusive provider of public data.⁵⁹

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:

Permanent public access to public records is addressed in the Archives and Records Management Act and the Mississippi Public Records Act, discussed in Parts A and B respectively.

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.

No statute specifically calls for permanent public access, but the state does have a strong policy in favor of public access: “It is the policy of the Legislature that public records must be available by any person unless other provided. Furthermore, providing access to public records is a duty of each public body....”⁶⁰ § 25-61-2 repeats this same language, only saying that it is the policy of the *state* as well.⁶¹ In addition, the Archives and Records Management Law suggests that permanent public access is the policy of the state as records may not be destroyed unless specified in the applicable records retention schedule.⁶² Records that are no longer of use to agencies are transferred to the Department of Archives and History to be preserved⁶³, and these records are to

⁵⁹ Op. Miss. AT&T’s Gen. No. 2000-0442 (Aug. 25, 2000).

⁶⁰ Miss. Code Ann. § 25-61-1 (1972).

⁶¹ Miss. Code Ann. § 25-61-2 (1972).

⁶² Miss. Code Ann. § 25-59-23 (1972).

⁶³ Miss. Code Ann. §§ 25-59-9(g), 25-59-13(a), 25-59-15(d) (1972).

be open for public use.⁶⁴ The act also requires that copies of “records of enduring value” meet archival standards approved by the Mississippi Department of Archives and History.⁶⁵

The terms “enduring value” and “archival value” are not defined in the statute. An attorney general’s opinion on the matter also sheds little light, stating that “Records of archival value are records which the Department of Archives and History determines have permanent value. Records of enduring value are non-archival records which are not permanent but which the agency determines should be kept for a period of time after they become inactive.”⁶⁶

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.

The Mississippi Archives & Records Management Law, discussed in Part A, requires all state agencies to have records control schedules. Records may not be discarded or destroyed without consent of the Mississippi Department of Archives and History.

Additional comments:

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

Yes
 No

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

Additional comments:

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

Yes
 No

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

Additional comments:

⁶⁴ Miss. Code Ann. § 25-29-27 (1972).

⁶⁵ Miss. Code Ann. § 25-59-29 (1972).

⁶⁶ Op. Miss. Atty. Gen. No. 1996-0659 (Oct. 4, 1996).

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.

The Mississippi Department of Information Technology Services

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

Mississippi Dept. of Information Technology Services, *State of Mississippi Technology Infrastructure Plan* (2002)

Mississippi Dept. of Information Technology Services, *Strategic Master Plan for Information Technology* (2002).

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.

The goals of the technology plan only apply to administrative agencies. Furthermore, the department's enabling act specifically granted authority to increase cooperation and communication among the state agencies.⁶⁷

Additional comments:

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

Yes
 No

⁶⁷ Miss. Code Ann. § 25-53-1 (1972).

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

Additional comments:

The plan’s focus is on providing current information and routine government services (paying taxes, obtaining food stamps, etc.) over the Internet. The plan is not concerned with maintaining historical information and does not address permanency of electronic government information. However, the department’s records control schedule established in cooperation with the Mississippi Department of Archives & History (discussed in Part A) establishes rules regarding the retention of electronic information.

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.

The Mississippi Secretary of State Publications Division oversees publication of official documents of the state and the agency under statutory authority of the Secretary of State’s Office as found in Miss. Code Ann. §§ 5-1-33, 7-3-13, 7-3-15, 7-3-35, 9-5-3, 9-7-3, and 39-5—15 (1999). Other agencies are responsible for printing their own documents, but may contract with commercial publishers. Many agencies contract with the Mississippi Department of Education to print their publications.⁶⁸

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

Additional comments:

The remainder of this section will address the authority and responsibilities of the Secretary of State Publications Division.

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

Miss. Code Ann., §§ 1-5-1, 1-5-3, 1-5-5, 1-5-7, 1-5-9, 1-5-11, 1-5-17, 1-5-19, 1-5-21, 1-5-25, 5-1-33, 7-3-13, 7-3-15, 7-3-35, 9-5-3, 9-7-3, and 39-5-15 (1999).

Additional comments:

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

⁶⁸ State of Miss. Dept. of Educ. *Emp. Proc. Manual Topic: Printing § 15 page 1* (Revised 5/1/2000).

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.

The Office of the Secretary of State Publications Division is responsible for publishing its own publications as well as publications of the Legislature and the Judiciary (excluding the *Mississippi Code Annotated* and court reports).

Additional comments:

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

The publications that fall under the Secretary of State’s authority are the *Mississippi Official and Statistical Register*,⁶⁹ the Mississippi House and Senate Journals, and the Mississippi General Laws and Private Laws, the advance sheets and pre-advance sheet index,⁷⁰ the state constitution, pamphlets containing the Uniform Commercial Code—Secured Transactions,⁷¹ and the *Judiciary Directory and Court Calendar*. The Office of the Secretary of State also supervises the distribution of the *Southern Reporter—Mississippi Cases* to county libraries, sheriff offices, and educational institutions.⁷² The Office of the Secretary of State publishes many other documents not required by law in furtherance of its mission to promote participation in election processes; to report and store the state’s records in useful, accessible formats; and to support the state’s economic growth.

Publication of the *Mississippi Code* is overseen by the Joint Legislative Committee on Compilation, Revision and Publication of Legislation which selects and contracts with a reputable and competent publishing company to publish the code.⁷³

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

⁶⁹ Miss. Code Ann. § 39-5-15 (1972).

⁷⁰ Miss. Code Ann. § 7-3-5 (1972).

⁷¹ Miss. Code § 7-3-57 (1972).

⁷² Miss. Code Ann. § 7-3-15 (1972).

⁷³ Miss. Code Ann. § 1-1-107 (1972).

The reports of Mississippi decisions are published by a commercial publisher. The Mississippi Code is also published by a commercial publisher selected by the Legislature's Joint Legislative Committee on Compilation, Revision and Publication of Legislation. The Office of the Secretary of State may enter into contracts with private publishers for printing the general laws and the local and private laws passed at each session of the Legislature.⁷⁴ However, the Office of the Secretary of State has not yet done so.

Published agency regulations are compiled by a commercial publisher, but not under a formal contract. (In fact, agencies are not required to publish their regulations at all, and many do not.) No other state publications are published by a commercial publisher.

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

The Office of the Secretary of State publishes all official state government documents that fall within its authority.

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

The Office of the Secretary of State reproduces the session laws and house and senate journals in an online database known as the Mississippi Legislative Bill Status System (<http://billstatus.ls.state.ms.us/default.htm>). This service provides coverage from 1997 to the present. The Office of the Secretary of State has also posted the text of the Mississippi Constitution on-line in a searchable database. The Secretary of State's web site also links to the Mississippi Code (unannotated) on Lexis Publishing's web site.

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

⁷⁴ Miss. Code Ann. §1-5-1 (1972).

- 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.

The Office of the Secretary of State is required to “carefully keep the journals, papers and proceedings of both houses of the legislature; and he shall carefully keep and preserve the enrolled acts and resolutions of the legislature, maps, charts and other property of the state remaining at the seat of government, the keeping of which is not otherwise provided for.”⁷⁵ Furthermore, the Office has maintained the Mississippi Bill Status System since 1997.

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

⁷⁵ Miss. Code Ann. § 7-3-5 (1972).

- 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.
Mississippi Department of Archives and History Miss. Code Ann. § 39-5-1 (1999).
- b. If “No,” skip this whole section.

Additional comments:

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

§ 39-5-1 created the Department of Archives and History;⁷⁶ its original powers are defined in § 39-5-5.⁷⁷ In 1981 the Legislature passed the Archives and Records Management Law,⁷⁸ which designated the Department of Archives and History as the state’s archival and records management agency.⁷⁹ § 9 of the Archives and Records Management Law defines the Department’s duties regarding archives and records management.⁸⁰

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.

⁷⁶ Miss. Code Ann. § 35-5-1 (1972).

⁷⁷ Miss. Code Ann. § 35-5-5 (1972).

⁷⁸ 1981 Laws 501 (codified as amended at Miss. Code Ann. §§ 25-59-1 – 31 (1972)).

⁷⁹ Miss. Code Ann. § 25-59-5 (1972).

⁸⁰ Miss. Code Ann. § 25-59-9 (1972).

Miss. Code Regs. §§ 31-000-033 – 31- 000-042 (2001).

Additional comments:

The Mississippi Department of Archives and History’s enabling statute only conferred the ability to promulgate rules for the department’s own government and for the government of the department, to elect and fix the compensation of a director and other officials and employees, and to do and perform other acts as may be necessary to carry out the intent and purposes of the law.⁸¹ However, the Archives and Records Management Law granted the Department of Archives and History the power to promulgate regulations on records management.⁸² Furthermore, the Uniform Electronic Transactions Act state that agencies may convert written records to electronic records “subject to applicable policies and standards of the Mississippi Department of Archives and History as may be adopted pursuant to law.”⁸³

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 Archives and Records Management Law does not specifically grant the Department of Archives and History authority over any branch other than the administrative branch, but the definition of public record used in the law includes documents produced by all elected and appointed officials.⁸⁴

Additional comments:

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

§ 5 of the Department of Archives and History’s enabling act lists the original powers and duties of the board of trustees of the Department. The original responsibilities of the agency were limited to historical surveys, commemorations and historical markers, and the acquisition or preservation of historical property. § 39-5-6 designates the powers and duties of the board regarding the historic portion of the governor’s mansion. The department originally was responsible only for obtaining and/or preserving real property, furnishings, and objects of art, for making suitable historical markers at historic sites, and preparing and publishing official reports.

⁸¹ Miss. Code Ann. §§ 39-5-5 – 6 (1972).

⁸² Miss. Code Ann. §§ 39-5-5 – 6 (1972).

⁸³ Miss. Code Ann. § 75-12-33 (1972).

⁸⁴ Miss. Code Ann. § 25-59-3(b) (1972).

The archiving of government information is not mentioned in the enabling statute, except for the records of the Mississippi Sovereignty Commission which were to be kept sealed until 2027.⁸⁵

However, as stated previously, the Legislature later designated the department as the state's archive and records management agency. As such, the department is responsible for establishing retention, storage, preservation, and destruction policies⁸⁶ for both print and electronic records.⁸⁷ Furthermore, the Uniform Electronic Transactions Act states that agencies may convert written records to electronic records "subject to applicable policies and standards of the Mississippi Department of Archives and History as may be adopted pursuant to law."⁸⁸

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?

No statute defines the responsibilities of the Department of Archives and History differently for electronic information, but the Department has seen the need for leadership in this area and initiated a project called the Electronic Records Initiative. In 1997 the Archives and Library Division of the Department of Archives and History received a research grant from the National Historical Publications and Records Commission as part of the project. The purpose of the grant was to research appropriate methods and technologies for guaranteeing long-term preservation of and access to governmental records. In 1996-97 the Archives and Library Division conducted a survey of the electronic records of the Mississippi state government. One of the findings of the survey was that other state agencies wanted the Department to establish standards for preserving governmental records. Thus, the Department has assumed a strong leadership role in this area.⁸⁹

As part of the project, the Department has issued regulations regarding imaging of records⁹⁰, and the destruction of records after imaging.⁹¹ The Department has also prepared a set of draft guidelines for managing records kept in desktop files, databases, email, and web pages.⁹² The Department has also issued draft guidelines for metadata.⁹³

Additional comments:

⁸⁵ Miss. Code Ann. § 39-5-63 (1972).

⁸⁶ Miss. Code Ann. §§ 25-59-9 and 25-59-21 (1972)

⁸⁷ Miss. Code Ann. §§ 25-59-29, 75-12-33 (1972).

⁸⁸ Miss. Code Ann. § 75-12-33 (1972).

⁸⁹ Mississippi Department of Archives and History, *Electronic Records Management Survey Report of Results*, available at <http://www.mdah.state.ms.us/arlib/ersurvey.html> (last visited June 28, 2002).

⁹⁰ Miss. Code Regs. § 31-000-038 (2001).

⁹¹ Miss. Code Regs. § 31-000-042 (2001).

⁹² Mississippi Department of Archives and History, *Electronic Records Draft Guidelines*, available at <http://www.mdah.state.ms.us/arlib/erglweb.html> (last visited June 28, 2002).

⁹³ Id.

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.

No statute or regulation specifically sets forth powers or responsibilities ensuring permanent public access to governmental information, however it is implied in several places in Mississippi law. The Mississippi Department of Archives and History has been designated as the state’s archival and records management agency; public records that are of lasting value but not longer needed for agency business are transferred to the Department.⁹⁴ Public records may not be destroyed unless provided for in the applicable records control schedule.⁹⁵ Furthermore, all records that have been transferred to the Department “shall be open for public use.”⁹⁶ Finally, the Archives and Library Division of the Mississippi Department of Archives and History promulgated rules that must be used by state agencies, counties, municipalities, or other entities of the State of Mississippi when undertaking imaging technology applications with the intent of disposing of the original public records.⁹⁷

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.

Section 25-59-9 of the Mississippi Code mandates that "public records of lasting value" be transferred to the Department of Archives and History. Unless an exception applies, these records are open for public use. Miss. Code Ann. Sec. 25-29-27.

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

⁹⁴ Miss. Code Ann. § 25-59-9 (1972).

⁹⁵ Miss. Code Ann. §§ 25-29-21, 25-29-23 (1972).

⁹⁶ Miss. Code Ann. § 25-29-27 (1972).

⁹⁷ Miss. Code Regs. §§ 31-000-038, 31-000-042 (2001).

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

Section 25-59-9 of the Mississippi Code mandates that "public records of lasting value" must be transferred to the Department of Archives and History. Unless an exception applies, these records are open for public use. Miss. Code Ann. Sec. 25-29-27.

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.

As stated earlier, the Mississippi Department of Archives and History is working on an ongoing project called the Electronic Records Initiative. The purpose of the initiative is to research appropriate methods and technologies for guaranteeing long-term preservation of and access to governmental records. The department has set standards that must be applied when using imaging technology with the intent of disposing the original records.⁹⁸ The Department has also prepared a set of draft guidelines for managing records kept in desktop files, databases, email, and web pages.⁹⁹ The Department has also issued draft guidelines for metadata.¹⁰⁰ In setting standards, the department has kept in mind the limited budgets of state agencies for implementing new methods and so has recommended the least expensive alternatives still likely to guarantee permanent public access.¹⁰¹

The project was supported by the state legislature, and the agency was able to create an Electronic Records Division. The new division is continuing to revise the guidelines for managing electronic records. The division also assists state agencies with maintaining electronic records, helping the agencies set up their computer directory structures so as to keep the records well organized. The division also periodically visits the agencies and surveys their electronic records for those with historical value. Currently, MDAH has scheduled the webpages of several agencies, requiring the agencies to back up the site monthly or at times of significant modification and to transfer the files to MDAH every three months on cd-rom. The MDAH is currently investigating methods and tools for automatic capture of sites. The division also archives state agency web pages.

⁹⁸ Miss. Code Regs. §§ 31-000-038, 31-000-042 (2001).

⁹⁹ Mississippi Department of Archives and History, *Electronic Records Draft Guidelines*, available at <http://www.mdah.state.ms.us/arlib/erglweb.html> (last visited June 28, 2002).

¹⁰⁰ *Id.*

¹⁰¹ Mississippi Department of Archives and History, *Electronic Records Management Survey Report of Results*, available at <http://www.mdah.state.ms.us/arlib/ersurvey.html> (last visited June 28, 2002).

The initiative was well received by the state agencies as they had been grappling with the problem for some time and wanted leadership in the area.¹⁰² It has also been well funded by the Legislature. The agencies are trying to comply with the guidelines for maintaining electronic records.¹⁰³ Thus, the project is likely to be successful.

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.

§ 61 of the Mississippi Department of Archives and History Act specified that the department was responsible for maintaining the files of state sovereignty commission.¹⁰⁴ The files were supposed to be sealed until 2027.¹⁰⁵ However, the state was enjoined from enforcing the statute and the files are now available pursuant to a court order issued May 31, 1994, the judge having found that the files had a clandestine purpose of perpetuating racial inequality in the state.¹⁰⁶ The records are available for public view in electronic format in the Search Room of the Mississippi Department of Archives and History. Out of state requests are also filled for a \$15.00 charge plus photocopy and postage charges. Shortly the database will be available for worldwide access free of charge.¹⁰⁷

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

¹⁰² Mississippi Department of Archives and History, *Electronic Records Management Survey Report of Results*, available at <http://www.mdah.state.ms.us/arlib/ersurvey.html> (last visited June 28, 2002).

¹⁰³ Telephone conversation with David Tenpas, Mississippi Department of Archives & History, Division of Electronic Records (July 3, 2002).

¹⁰⁴ Miss. Code Ann. § 39-5-61 (1972).

¹⁰⁵ Miss. Code Ann. § 39-5-63 (1972).

¹⁰⁶ *A.C.L.U. v. Fordice*, 969 F. Supp. 403 (S.D. Miss. 1994).

¹⁰⁷ Telephone conversation with David Tenpas, Mississippi Department of Archives & History, Division of Electronic Records (July 3, 2002).

No

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

The Mississippi Constitution provides for a state librarian to be chosen by the Legislature and that the librarian serve a four year term.¹⁰⁸ The State Librarian is selected every four years. Every four years the members of the court make a recommendation to the Legislature, then the Legislature votes on the court's recommendation.

- 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.

No statute defines the powers or responsibilities of the librarian. The state librarian is the director of the Mississippi Supreme Court library. The state librarian performs the typical duties of a law library director. The librarian also performs special tasks at the request of the Chief Justice of the Mississippi Supreme Court.

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:

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 librarian is the librarian for the state supreme court.

Additional comments:

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

¹⁰⁸ Miss. Const. art. IV, § 106 (YEAR).

The mission of the Mississippi State Law Library is to provide law library services to the Supreme Court and other state courts, to state officials and to the general public.¹⁰⁹ In furtherance of the State Library's reciprocal program of code exchange with libraries of the several states, the joint committee shall, at the direction and only upon the written request of the State Librarian, distribute or provide for the distribution of sets of the code to such libraries.¹¹⁰ The State Librarian receives reports of the Mississippi Legislature's Joint Committee on Performance Evaluation and Expenditure Review ("PEER") and annual reports of all state government agencies and state supported institutions and maintains the reports as part of its permanent collection.¹¹¹

Additional comments:

The State Librarian is currently working on a history of the Mississippi Supreme Court, including compiling biographies of all 114 Supreme Court judges and locating portraits of each judge.¹¹²

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.

¹⁰⁹ Mississippi Supreme Court Law Library web site <http://www.mssc.state.ms.us/Library/default.asp> (last visited June 28, 2002).

¹¹⁰ Miss. Code Ann. §§1-1-11, 1-1-57 (1972).

¹¹¹ Miss. Code Ann. § 27-101-3 (1972).

¹¹² Telephone conversation with Charlie Pearce, Mississippi State Librarian, July 2, 2002.

No legislation explicitly states that records must be kept permanently, but that is implied in several code sections. No person may “destroy, sell, loan, or otherwise dispose of any public record” without the consent of the Department.¹¹³ Public records may not be destroyed unless specified in the applicable records control schedule.¹¹⁴ § 25-59-23 describes the penalty for offenses involving the alteration or unauthorized destruction of records.¹¹⁵ Thus, permanency is assumed unless specified otherwise in the applicable records retention schedule which must be approved by the state records committee.

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.

The State Librarian keeps a permanent archive of the reports of the Mississippi Legislature's Joint Committee on Performance Evaluation and Expenditure Review ("PEER") and annual reports of all state government agencies and state supported institutions.¹¹⁶ Furthermore, the State Library has been a federal government depository since the early 1880s.¹¹⁷

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.

The State Librarian has begun a project of digitizing all the pre-1930 state codes. So far, this project has been extremely successful and well received by the librarian community in Mississippi. The State Librarian also plans to digitize all the state constitutions.¹¹⁸

Additional comments:

¹¹³ Miss. Code Ann. § 25-59-21 (1972).

¹¹⁴ Miss. Code Ann. § 25-59-23 (1972).

¹¹⁵ Id.

¹¹⁶ Id.

¹¹⁷ Telephone conversation with Charlie Pearce, Mississippi State Librarian, July 2, 2002.

¹¹⁸ Id.

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.

Miss. Code Ann. §§ 25-1-1 – 25-51-7 (1999) and Miss. Code Regs. §§ 60-035-01 – 60-035-04 (2001).

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

Additional comments:

The state depository for public records is the Mississippi Library Commission. The libraries of state agencies, public colleges and universities, and public libraries located within the state may also become depositories of these records when designated by the Mississippi Library Commission upon their request.¹¹⁹

The published administrative rules of the Mississippi Library Commission address the duties of the commission, access to its public records, and the rules for establishing a new public library in Mississippi.

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

Yes
 No

¹¹⁹ Miss. Code Ann. § 25-51-1 (1972).

- 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.

The depository library statute is silent on the issue of whether the library must permanently maintain public records. However, the depository library statute does address accessibility, stating that “records shall be made accessible by the depository receiving them to any person desiring to examine [them].”¹²⁰ The Public Records Act expands on this statement by declaring the legislature’s policy to be that “public records must be available by any person unless other provided. Furthermore, providing access to public records is a duty of each public body. . . .”¹²¹ § 25-61-2 repeats this same language, only saying that it is the policy of the *state* as well.¹²²

Although the depository library statute does not specifically require the Mississippi Library Commission to permanently maintain public records, the Commission does so.¹²³ The Archives and Records Management Law suggests that depository libraries must permanently maintain government information; according to the statute, public records may not be destroyed unless specified in the applicable records control schedule¹²⁴ making permanency the default.

Additional comments:

¹²⁰ Miss. Code Ann. § 25-51-3 (1972).

¹²¹ Miss. Code Ann. § 25-61-1 (1972).

¹²² Miss. Code Ann. § 25-61-2 (1972).

¹²³ Telephone conversation with Indira Bhowal, Mississippi Library Commission, June 9, 2002.

¹²⁴ Miss. Code Ann. §§ 25-59-21, 25-59-23 (1972).

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.

The University of Mississippi Law Library archives the Mississippi Daily Register, pages removed from the Code of Mississippi State Regulations, the Mississippi Attorney General Opinions, the opinions of the Mississippi appellate courts, briefs filed with the Mississippi Supreme Court. The effectiveness of the archives is poor as there is no index and the state does not publish one. (Note, however, that court publications and agency regulations are not part of the depository program.)

Additional comments:

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

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

The following titles are now distributed exclusively in electronic format.

Cash Reports - State Tax Commission (STC)
Casino Gross Gaming Revenues - STC
Diversions to Cities from Sales Tax Collection (STC)
State of Mississippi Strategic Master Plan for Information Technology (ITS)
State of Mississippi Technology Infrastructure Plan (ITS)
Department of Information Technology Services- Annual Report (ITS)

Additional comments:

Approximately three to four percent of state governmental documents are available in electronic format as well as in print format.

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

The Mississippi Library Commission does not have any special storage or archival procedures for electronic documents. They are still archiving the paper copies and whenever necessary, downloading the electronic copy in paper format for their archive.¹²⁵

¹²⁵ E-mail from Indira Bhowal, Government Services Manager, Mississippi Library Commission, to Lynn Murray, Public Services Law Librarian, University of Mississippi School of Law (Jan 13, 2003 10:29:31 CST) (on file with author).

The Mississippi Library Commission provides access to all state electronic government documents through this web site:

http://www.mlc.lib.ms.us/reference_and_information_services/state_documents/state_documents_online/

Additional comments:

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.

From August 1994 to September 2000, the University of Mississippi Law Library published and indexed the opinions of the Northern District of Mississippi on a web site. The project was funded by a private grant. Starting that fall, the Court began to implement its own system and the partnership has ended. This arrangement was informal.

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.
 - (1) At the end of § 1 of the Mississippi Public Records Act there should be a statement such as “subject to the rules of record retention established by the Department of Archives and History. Furthermore, such electronic records must be created and maintained in accordance with procedures established by the Department of Archives and History.”
 - (2) § 25-51-5 of the Mississippi Code, which defines the powers of the Mississippi Library Commission, should grant the Commission the authority to set retention and storage standards for state governmental publications furnished to depository libraries.
 - 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)

David Litchliter
Executive Director of the Mississippi Department of Information Technology Services
301 North Lamar St., Suite 508
Jackson, MS 39201-1495
Phone: 601-359-1395

2. State Printer

Eric Clark
Mississippi Secretary of the State

P.O. Box 136
Jackson, MS 39205-0136
Phone: 601-359-1350
Web site: <http://www.sos.state.ms.us/>

3. State Archivist

Mississippi Department of Archives and History
Capers Building
100 South State Street
P.O. Box 571
Jackson, MS 39205-0571
Phone: (601) 359-6850

4. State Librarian and/or State Law Librarian

Charlie Pearce
State Librarian
Carroll Gartin Justice Building
Jackson, MS 39205
Phone: 601-359-3672
E-mail: cpearce@mssc.state.ms.us

Sharman Smith
Executive Director
Mississippi Library Commission
1221 Ellis Avenue
Jackson, MS 39209
1-800-MISS LIB (647-7542)

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

Mike Moore
P.O. Box 220
Jackson, MS 39205
Phone: 601-359-3680

M. IMPORTANT STATE RESOURCES

Provide URLs or other finding information for:

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

2. State agency portal
<http://www.mississippi.gov/>

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

Yes

3. Legislative website

<http://www.ls.state.ms.us/>

a. Does the website cover the current year only?

No; the website covers from 1997 to the present.

b. Are services free or fee-based? Free

4. Judicial websites

The Mississippi Supreme and Court of Appeals, <http://www.mssc.state.ms.us/default.asp>
United States District Court, Northern District of Mississippi, <http://www.msnd.uscourts.gov/>
United States District Court, Southern District of Mississippi, <http://www.mssd.uscourts.gov/>
United States Bankruptcy Court, Northern District of Mississippi, <http://www.msnb.uscourts.gov/>

5. Regulatory agency websites

Agricultural Aviation Board of Mississippi, <http://www.msaaa.com/aabms.htm>
Mississippi Department of Agriculture and Commerce, <http://www.mdac.state.ms.us/index.asp>
Mississippi Office of the Attorney General, <http://www.ago.state.ms.us/>
Board of Animal Health, <http://www.mbah.state.ms.us/>
Mississippi State Board of Architecture and Landscape Architecture Advisory Committee, <http://www.archbd.state.ms.us/>
Mississippi State Board of Contractors, <http://www.msdoc.state.ms.us/>
Mississippi Department of Banking and Consumer Finance, <http://www.dbcf.state.ms.us/>
Mississippi State Board of Cosmetology, <http://www.msbc.state.ms.us/msbc/Cosmetology.nsf>
Mississippi State Board of Dental Examiners, <http://www.msbde.state.ms.us/>
Mississippi Department of Education, <http://www.mde.k12.ms.us/>
Mississippi Department of Environment Quality, <http://www.deq.state.ms.us/newweb/homepages.nsf>
Mississippi State Fire Marshall's Office, <http://www.doi.state.ms.us/marsha.html>
Mississippi Forestry Commission, <http://www.mfc.state.ms.us/>
Mississippi State Board of Funeral Service, <http://www.msfuneralboard.com/>
Mississippi Gaming Commission, <http://www.mgc.state.ms.us/>
Mississippi State Board of Registered Professional Geologists, <http://www.msbrpg.state.ms.us/>
Mississippi Department of Human Services, <http://www.mdhs.state.ms.us/index.html>
Hospital Equipment and Facilities Authority (no web site)
Mississippi Department of Insurance, <http://www.doi.state.ms.us/>
Mississippi Department of Marine Resources, <http://www.dmr.state.ms.us/>
Mississippi Board of Massage Therapy, <http://www.msbmt.state.ms.us/msbmt/msbmt.nsf>
Mississippi State Board of Medical Licensure, <http://www.msbml.state.ms.us/>
Mississippi Department of Mental Health, <http://www.dmh.state.ms.us/>
Motor Vehicle Commission, <http://www.mmvc.state.ms.us/>
Mississippi Board of Nursing Home Administrators, <http://www.bnha.state.ms.us/>
Mississippi State Board of Nursing, <http://www.msbn.state.ms.us/>
Mississippi State Board of Optometry (no web site)

Mississippi State Board of Pharmacy, <http://www.mbp.state.ms.us/>
Mississippi State Board of Public Accountancy, <http://www.msbpa.state.ms.us/>
Mississippi Professional Counselors Licensing Board (no web site)
Mississippi State Board of Registration for Professional Engineers and Land Surveyors,
<http://www.pepls.state.ms.us/>
Real Estate Appraiser Licensing & Certification Board, <http://www.mab.state.ms.us/>
Real Estate Commission, <http://www.mrec.state.ms.us/>
Mississippi State Board of Examiners for Social Workers and Marriage & Family Therapists,
<http://www.msboeswmft.com/>
Wildlife, Fisheries, and Parks, <http://www.mdwfp.com/>

6. Freedom of Information Service Hotline

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

No

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

Yes