

## 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.

Public Records Act, N.J. STAT. ANN. § 47:1-1; Destruction of Public Records Law, N.J. STAT. ANN. § 47:3-15; N.J.ADMIN. CODE tit. 15:3-1.1 – 15:2-6.6

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.

These statutes and regulations apply generally to state administrative agencies as well as local and county governments. *See* N.J. STAT. ANN. § 47:3-16

Additional comments:

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

N.J. STAT. ANN. § 47:3-16; ; N.J.ADMIN. CODE tit. 15:3-1.2

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?

. N.J. STAT. ANN. § 47:1-12; 47:3-16; 47:3-26; . N.J.ADMIN. CODE tit. 15:3-4.1.

Additional comments:

P.L. 1994, c. 140 amends §12 of P.L. 1953, c. 410; N.J. STAT. ANN. § 47:3-26) and other sections of the New Jersey statutes to allow the use of image processing systems for keeping public records under procedures set forth by the Division of Archives and Records Management in the Department of State, with the approval of the State Records Committee. The intent of the 1994 statute is to ensure the preservation of public records in image processing systems by the establishment of standards, procedures, and guidelines. *See* N.J.ADMIN. CODE tit. 15:3-4.1(d).

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

Yes  
 No

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

*See* N.J. STAT. ANN. § 47:3-17. This section provides that no person shall destroy any public record, archives, printed public documents, which are under his control or in his care and custody, without having first advised the Bureau of Archives and History in the Department of Education of their nature and obtained the written consent of the bureau. These functions have been transferred to the Division of Archives and Records Management (DARM).

A "public record" is a record, either print or electronic, which has been made or is required to be received for filing, by any agency, commission or authority of the state, or one of its political subdivision, in connection with the transaction of public business and which has been retained by such recipient as evidence of its activities. The terms "archives" and "printed public documents" are not defined in the statute. The regulations implementing the statute define the terms "permanent records" and "archival records". "Permanent records" are records having an enduring administrative, legal, fiscal, or research value, and therefore should be retained or preserved indefinitely.. 15:3-1.2. An "archival record" is a permanent record which is non-current and therefore not required to be retained in the office in which they originate. *Id.*

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.

N.J. STAT. ANN. § 47:3-26 provides that DARM, with the approval of the State Records Committee, shall formulate procedures and rules for preserving electronic public records. The Division implemented this statutory provision in complex series of regulations set forth in N.J.ADMIN. CODE tit. 15:3-4.1 *et seq.* The purpose of these regulations is set forth in N.J.ADMIN. CODE tit. 15:3-4.1(d): “The intent of P.L. 1994, c. 140 is to ensure the *preservation*, integrity, and accessibility of public records in image processing systems by the establishment of standards, procedures, and guidelines.

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.

The state’s public records statutes do not contain such an explicit declaration of policy, but the legislative history of the Destruction of Public Records Law explicitly states that the purpose of the statute is assure the preservation of the public records of the state. In *New Jersey Land Title Association v. State Records Committee Division*, 315 N.J. Super 17, 24, 716 A.2d 541, 545 (1998), the Court discussed the purpose of this legislation, quoting from the Assembly Bill preceding the enactment of the Destruction of Public Records Law (the Statement to Assembly Bill No. 538 (Sept. 18, 1953):

The object [of the statute] . . . is to establish a sound archival program which will insure that basic public records in this State will be safely preserved for posterity and which will permit the systematic destruction, under approved schedules, of public records which have outlived their usefulness. It provides for the establishment of a State records committee to advise on the legal, fiscal, and historical aspects of records considered for destruction.

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.

The Destruction of Public Records Law originally created the Bureau of Archives and History in the Department of Education and a State Records Committee to establish policies concerning the preservation and maintenance of public records. *See* N.J. STAT. ANN. § 47:3-17 – 47:3-20. Eventually, as noted, the functions of the Bureau of Archives and History in the Department of Education were transferred to the Division of Archives and Records Management in the Department of State. *See* Executive Reorganization Plan No. 002-1996 (1996) (reprinted in the New Jersey Annotated Code after N.J. STAT. ANN. § 18A-26)(hereinafter cited as the “1983 Reorganization Plan”).

- c. 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.

The term “public record” in the statute and in the regulations refers to a document which is made or required by law to be made by any agency in connection with the transaction of public business. *See* N.J. STAT. ANN. § 47:3-16. This definition would not necessarily include many government publications which are not produced pursuant to any particular legal requirements. For example, tape recordings of municipal hearings held for the purpose of explaining proposed sewer district projects to residents of a municipality are “public records”. *Guarriello v. Benson*, 90 N.J. Super. 233, 217 A. 2d 22 (1966). However, numerous publications issued by New Jersey agencies would not come within the definition of public records. For example, the Department of Consumer Affairs issues a Consumer’s Guide to the New Jersey Lemon Law. This publication is clearly not a “public record” under the statute.

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?

See the answer to question #5(d).

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

Additional comments:

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

Yes  
 No

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

Additional comments:

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

## B. FREEDOM OF INFORMATION ACT

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

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

Yes  
 No

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

Examination and Copies of Public Records, N.J. STAT. ANN. § 47:1A-1, *et seq.*; *See also* Public Access to Government Records Law, P.L. 2001, c. 404 (2002).

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.

These statutes create a right to examine records which are required by law to be made, maintained, or kept on file by any board, body, agency, department, commission, or official of the State, or of any political subdivision of the State. *See* §1, Public Access to Government Records Law, P.L. 2001, c. 404.

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

*See* §2, P.L. 2001, c. 404 (2002).

Additional comments:

The recent amendment to the Right-to-Know also contains the following definition of a "government record" or "record":

Government record" or "record" means any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file in the course of his or its official business by any officer, commission, agency or authority of the State or of any political subdivision thereof, including subordinate boards thereof, or that has been

received in the course of his or its official business by any such officer, commission, agency, or authority of the State or of any political subdivision thereof, including subordinate boards thereof. The terms shall not include inter-agency or intra-agency advisory, consultative, or deliberative material.

§2, P.L. 2001, c. 404 (2002).

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

As quoted above in the answer to question #3, the recent amendments to the Right-to-Know law defines "government record" or "record" to clearly encompass both print and electronic records.

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

See the definition of "government record" in §2, P.L. 2001, c. 404.

Additional comments:

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

Yes  
 No

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

Additional comments:

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

Yes  
 No

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

Section 1 of the recently enacted Public Access to Government Records Act provides as follows:

Section 1 of P.L.1963, c.73 (C.47:1A-1) is amended to read as follows:

C.47:1A-1 Legislative findings, declarations.

1. The Legislature finds and declares it to be the public policy of this State that: government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, with certain exceptions, for the protection of the public interest, and any limitations on the right of access accorded by P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented, shall be construed in favor of the public's right of access;

all government records shall be subject to public access unless exempt from such access by: P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented; any other statute; resolution of either or both houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; Executive Order of the Governor; Rules of Court; any federal law, federal regulation, or federal order;

a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy; and nothing contained in P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented, shall be construed as affecting in any way the common law right of access to any record, including but not limited to criminal investigatory records of a law enforcement agency.

§1, P.L. 2001, c. 404 (2002).

Additional comments:

After examining New Jersey's Right-to-Know Law and the cases construing the statute, I conclude that the statute does not support the proposition that the state has an obligation to permanently maintain either public records or government publications. This is simply not the purpose of this statute. What the statute provides is a *right of access* to public records. In *Home News v. State of New Jersey*, 144 N.J. 446, 677 A.2d 195 (1996), the Court described the purpose the statute: "Under the Right-to-Know Law, New Jersey citizens have an absolute right to inspect, copy, or purchase records 'required by law to be made, maintained or kept on file' by public officials." 677 A.2d at 197. Indeed, the common law background from which the statute derives supports this view. The Court in *Atlantic City Convention Center v. South Jersey Publishing Company*, 135 N.J. 53, 637 A.2d 1261 (1994), described this common law right as a right of citizens to "inspect public records." 135 N.J. at 58, 637 A.2d at 1263. In describing the reasons for the legislature to adopt this statute, the Court added: "At common law . . . courts required citizens to demonstrate some "personal" or "particular" interest in the material sought to be examined. . . . In order to overcome that requirement and make official government records available to the general public for inspection and copying, the legislature adopted the Right-to-Know Law . . ." (emphasis added) *Id.* This interpretation is further supported by the declaration of policy in the recently enacted Public Access to Government Records Law: "The legislature finds and declares it to be the public policy of this state that: government records shall be readily accessible for inspection, copying, or examination by the citizens of this state. . . ." §1, P.L. 20012, c. 404 (2002).

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

Yes  
 No

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

Additional comments:

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

Yes  
 No

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

Additional comments:

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

### C. PUBLIC ACCESS LAWS

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

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

Yes  
 No

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

NJ Office of Information Technology; Chief Technology Officer. This agency was not created by a statute. Rather, it was established by Executive Order #87 (September 4, 1998). The Order

took effect on September 4, 1998. The order can be found on [www.state.nj.us/infobank/circular/eow87](http://www.state.nj.us/infobank/circular/eow87).

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?

As noted, the Office of Information Technology was created pursuant to Executive Order #87, rather than by statute.

Additional comments:

Executive Order #87 stipulates that the NJ Office of Information Technology shall be headed by a seven member governing board that meets quarterly. The governing board sets the policy for the NJ Office of Information Technology, reviews and approves the annual budget request for the NJ Office of Information Technology, and appoints and advises the CTO. The governing board reviews and approves the strategic plan for the NJ Office of Information Technology and ensures that such plan is consistent with the strategic direction established by executive branch agencies as embodied in the statewide strategic plan for information technology.

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

Yes  
 No

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

Additional comments:

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

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

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

Additional comments:

As outlined in Executive Order #87 the CTO works with the Executive Branch Agencies to develop and implement the Statewide Strategic Plan for Information Technology and the CTO leads, coordinates and integrates statewide information technology policies and activities.

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 purpose of the agency is to deal with electronic records.

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.

See the discussion of the Public Records Act above at pp. 4-6.

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:

The primary responsibility of Office of Information Technology is to work with public records as defined in the state's public records statutes. In general, these records include the business records of state. OIT does not deal government publications.

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.

## 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 current Statewide IT Strategic Plan was developed in 2001 and was intended to span from Fiscal Year 2001 to 2003, however with the election of an new Governor and the appointment of a new CIO, the plan is being revised to reflect the new IT vision for the state. Under Executive Order 87, the Chief Information Office (CIO) will work with the Executive Branch agencies to develop and implement the Statewide Strategic Plan for Information Technology and shall lead, coordinate and integrate information technology policies and activities.

- b. If "Yes," also provide complete bibliographic information about the plan; when was it published?  
c. If "No," skip this whole section.

Additional comments:

2. The technology plan covers which branches?

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

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

Additional comments:

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

- Yes
- No

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

Additional comments:

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

As stated above the plan is outdated and will be revised.

## **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.

Division of Archives and Records Management in the Department of State (DARM). This Division was created by the 1983 Reorganization Plan rather than by statute.

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

Additional comments:

Originally, the state archives were part of the state library. Under the 1983 Reorganization Plan, the state records management office was combined with the state archives into one division in the Department of State.

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

Additional comments:

As noted, DARM was created by the 1983 Reorganization Plan, rather than by statute. The agency is responsible for administering the Public Records Act. As described above, DARM, with the approval of the State Records Committee, formulates procedures and rules for preserving public records as defined in the Public Records Act. N.J. STAT. ANN. § 47:3-26. In addition, DARM is responsible for determining that agency records have historical value and should be preserved, even though they are not technically "public records" under the statute.

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.

See N.J.ADMIN. CODE tit. 15:3-4.1, *et seq.*

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.

Under the Destruction of Public Records Act, DARM is responsible for the record retention policies of both state administrative agencies and county and municipal governments. *See* N.J. STAT. ANN. § 47:3-16.

Additional comments:

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

DARM assures that government records are maintained in accordance with the state's public records laws. The Division places all public records on record retention schedules that list the minimum time periods they must be retained. Final approval of the schedules comes from the State Records Committee, which is comprised of representatives of the attorney general, state treasurer, state auditor, director of local government services, and the director of the division.

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?

As noted on p. 4, P.L. 1994, c. 140 amends §12 of P.L. 1953, c. 410 (N.J. STAT. ANN. § 47:3-26) and other sections of the New Jersey statutes to allow the use of image processing systems for keeping public records under procedures set forth by the DARM, with the approval of the State Records Committee. The intent of the 1994 statute is to ensure the preservation of public records in image processing systems by the establishment of standards, procedures, and guidelines. *See* N.J.ADMIN. CODE tit. 15:3-4.1(d).

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.

N.J. STAT. ANN. § 47:3-26 provides that the DARM, with the approval of the State Records Committee, shall formulate procedures and rules for preserving electronic public records. The Division implemented this statutory provision in complex series of regulations set forth in N.J.ADMIN. CODE tit. 15:3-4.1 *et seq.*, whose purpose is to “ensure the *preservation*, integrity, and accessibility of public records in image processing systems by the establishment of standards, procedures, and guidelines.” N.J.ADMIN. CODE tit. 15:3-4.1(d).

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.

While it is clear that DARM has a responsibility to permanently maintain government information, N.J. STAT. ANN. § 47:3-26, N.J.ADMIN. CODE tit. 15.3-4.1(d), it is important to keep in mind what is meant by the term “government information”. This term includes both agency records and government publications. DARM, generally, does not deal with government publications. For example, the New Jersey governor kept detailed records of investigations into the riots that occurred after Martin Luther King’s death. This type of record is covered by the Public Records Act and would have to be maintained permanently under schedules approved by DARM and the State Records Committee. However, state agencies produce thousands of publications, many in electronic form, which are not “public records” as defined by the statute. These publications can be found at <http://www.njstatelib.org/cyberdesk/gbgday2.htm>. Arguably, DARM has the authority to take actions concerning such publications (N.J. STAT. ANN. § 47:3-17 states that no person shall destroy a “public record, archive, or *printed public document*” without getting DARM approval). However, DARM defines its mission as essentially preserving the records of state agencies which memorialize their business activities.

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 discussion above.

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.

It is the statutory responsibility of this agency to preserve government information. See discussion above as to different types of government information.

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.

The one case I have located in New Jersey addressing this issue is *New Jersey Land Title Association v. State Records Committee*, 315 N.J. Super. 17, 716 A.2d 541 (1998). In that case the clerks of two counties decided to destroy a series of public records consisting of notices of settlement, *lis pendens* and federal tax liens whose statutory effective dates had expired. DARM and the State Records Committee approved this request. The New Jersey Land Title Association brought suit to prevent the destruction of the records. The Court held that, while DARM and the State Records Committee had the authority to make this decision, they had done so arbitrarily and reversed the Committee’s decision. In so holding the Court noted that Title 47 created a comprehensive scheme to guide and direct state and county offices in the proper care, and control required for maintaining, preserving, and disposing of public records. Under the statute, county clerks cannot destroy any public records without first obtaining the consent of the DARM and State Records Committee as provided in the Destruction of Public Records Law.

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.

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.

N.J. STAT. ANN. § 18A:73-27, *et seq.*

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.

See the answer to question #5.

Additional comments:

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

N.J. STAT. ANN. § 18A:73-35 describes the functions of the State Library:

- 1.) The library maintains resources and information services which affect the educational, intellectual, cultural, economic, and political life of the state.
- 2.) The library provides special library services for the legislative, executive, and judicial branches of state government, supplemental library service for New Jersey libraries, and direct library service for the handicapped (the State Library for the Blind and the Handicapped).
- 3.) The library purchases and maintains a general collection of books, periodicals and other library materials for the use of State and local governments, libraries, and the public generally.

4.) The library coordinates the statewide system of libraries in New Jersey and administers State and federal programs for the development of libraries, library facilities, library resources, and library resources in New Jersey.

5.) The library supervises the state's regional library network and 312 local library systems.

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.

See discussion of the state's public records statutes on pp. 3-6.

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 views this as her professional responsibility.

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.

N.J. STAT. ANN. § 52:14-25; N.J. STAT. ANN. § 52:14-25.2.

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.

The State Documents Interest Group of the Documents Association of New Jersey issued a report on June 1, 2002 providing recommendations concerning policies that should be adopted by state government to assure permanent public access to electronic government information. *See Staying Digital: Recommendations on Preserving New Jersey Government Information in the Digital Age*, 30 *DttP: A Quarterly Journal of Government Information Practice and Perspective* 14 (2002).

Additional comments:

The State Documents Interest Group in its June 1, 2002 report made the following recommendations:

- (1) The state should develop a plan to preserve government information from the point of its creation and throughout its life cycle.
- (2) A central depository in the state is needed to assure permanent access to government documents created by state and municipal entities.
- (3) In light of the State library's efforts to provide Internet access to documents created by many state agencies, additional funding is needed to support the state library's efforts to safeguard valuable government information created in both electronic and tangible formats.
- (4) Documents that have legal, historical, or cultural value are best protected by distributing them in both tangible and electronic formats.

*See Staying Digital: Recommendations on Preserving New Jersey Government Information in the Digital Age, 30 DttP: A Quarterly Journal of Government Information Practice and Perspective 14 (2002).*

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:

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

The State Library has created a web site that provides excellent access to government publications, but the State Library has taken no actions to assure permanent access to these electronic publications. The library has done nothing to implement the recommendations in the report prepared last year by the Documents Association of New Jersey.

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.

Additional comments:

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

Yes

No

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

Additional comments:

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

Yes

No

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

Additional comments:

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

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

- a. If possible, cite to and discuss one or two specific places in statutes or other sources of law where the state legislature or a responsible agency might naturally insert basic reform language.
- b. If specific places to insert reform language are not obvious, very briefly discuss what state agency or other government entity might naturally be made responsible for "permanent public access."

Additional comments:

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

Additional comments:

## L. DIRECTORY

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

Provide official contact information for:

1. State Chief Information Officer (or equivalent)

Judith Teller

Chief Information Officer

PO Box 001

Trenton, NJ 08625

Telephone : 609-777-2245

E-mail : [judith.teller@gov.state.nj.us](mailto:judith.teller@gov.state.nj.us)

2. State Printer

There is no State Printer.

3. State Archivist

Karl Niederer

Division Director

State Archives

225 West State St.

P.O. Box 307

Trenton, New Jersey

Telephone: 609 633-2454

E-mail: [karl.niederer@sos.state.nj.us](mailto:karl.niederer@sos.state.nj.us)

4. State Librarian and/or State Law Librarian

Norma Blake

State Librarian

New Jersey State Library

P.O. Box 520

Trenton, N.J. 08625

Telephone: (609) 292-6200

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

Office of the Attorney General

P.O. Box 080

Trenton, N.J. 98625

Telephone: (609) 292-4925

## M. IMPORTANT STATE RESOURCES

Provide URLs or other finding information for:

1. Official state home page

<http://www.state.nj.us/>

2. State agency portal

There is no State agency portal

3. Legislative website

<http://www.njleg.state.nj.us/>

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

No

- b. Are services free or fee-based?

Free

4. Judicial websites

<http://www.judiciary.state.nj.us/>

5. Regulatory agency websites

<http://www.state.nj.us/njdepts.htm>

This site provides links to all state agencies.

6. Freedom of Information Service Hotline

There is none.

- 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?

The author is not aware there is a specific point of contact.