

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.

N.Y. ARTS AND CULT. AFF. § 57.01 et. seq. (McKinneys Supp. 2002)
N.Y. COMP CODES R. & REGS. tit. 8 § 188

b. If “No,” skip this whole section.

Additional comments:

2. The public records statutes/regulations apply to which of the following branches?

Executive (Not the Executive Chamber)
 Legislative
 Judicial
 Administrative (applying to all agencies, no matter what branch of government)
 Other

“The state archives may accept records, or copies of records, of municipal, district, or public benefit corporation, providing the records have sufficient historical significance to warrant continued preservation by the state”. N.Y. ARTS AND CULT. AFF. § 57.05(6) (McKinneys Supp. 2002) See also comment for Item A.8

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

“Except as otherwise provided by law, the state archives shall acquire and assume the official custody and responsibility for preserving and making available for reference and use those official records of the legislature, the judiciary and the civil departments of the state government which are deemed to have sufficient historical value or other value to warrant their continued preservation by the state.” N.Y. ARTS AND CULT. AFF. § 57.05(4) (McKinneys Supp. 2002)

“Agency means any department, division, board, bureau, office, council, commission, authority, public benefit corporation having statewide responsibility, or a separate unit of the executive branch of state government created or established by law or executive order, but shall not include the Executive Chamber.” N.Y. COMP CODES R. & REGS. tit. 8 § 188.1(a)

Additional comments:

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

“For the purpose of this section, official records shall include all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the state or by the legislature or the judiciary in pursuant of law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities, or because of the information contained therein.” N.Y. ARTS AND CULT. AFF. § 57.05(2) (McKinneys Supp. 2002)

“Records means all books, papers, microform, computer-readable tapes, discs or other media, maps, photographs, film, video and sound recordings, or other documentary materials, regardless of physical form or characteristics, made or received by any agency or by the judiciary in pursuance of law or in connection with the transaction of public business and retained by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities, or because of the information contained therein, but shall not include the records of the Executive Chamber.”
N.Y. COMP CODES R. & REGS. tit. 8 § 188.2(h)

Additional comments:

There is a separate definition for executive chamber records located at N.Y. COMP CODES R. & REGS. tit. 8 § 188.25

There was a separate definition for public records prior to a revision of this chapter in 1997 which defined "public records". (Section 57.07) Section 2 of this section dealt with standards for permanent preservation.

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?

“A State agency or local government shall ensure that records retention requirements are incorporated into any plan and process for design, redesign, or substantial enhancement of an information system that uses electronic data processing or electronic optical imaging technologies to maintain or store electronic records.” N.Y. COMP CODES R. & REGS. tit. 8 § 188.20(a)

“A State agency or local government shall ensure that electronic records are not rendered unusable because of changing technology before their retention and preservation requirements are met. In the case of archival electronic records, a State agency or local government, in consultation with SARA must determine that the records will remain useable and accessible through conversion of the records to a new system hardware and software and through the creation of adequate documentation as defined in subdivision c of this section. If a state agency cannot accomplish such a conversion, it shall transfer the archival electronic records to the State Archives in a useable and accessible format”. N.Y. COMP CODES R. & REGS. tit. 8 § 188.20(b)

Subsections b-e of § 188.20 detail the procedures that agencies must follow to insure that electronic records will be useable.

Additional comments:

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

Yes
 No

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

An agency records management officer is responsible for participating in a comprehensive records management program conducted by SARA (State Archives and Records Administration). The officer is responsible for compiling and maintaining a current inventory of agency records and preparing and submitting to SARA proposed records retention and disposal schedules. The inventory should include the title, purpose, responsible program area, contents, arrangement, volume, dates and location of all records series and the hardware and software requirements for all electronic records. SARA reviews the disposition schedule and determines that the proposals demonstrate that the records are kept for a length of time sufficient to meet administrative, legal and fiscal requirements, that records of a temporary administrative, legal and fiscal value are disposed in accordance with sound records management practices. SARA shall review selected records disposition proposals to determine whether the records are archival and need to be preserved. The offices of the Attorney General and the State Comptroller review the inventory and must give approval for disposal. N.Y. COMP CODES R. & REGS. tit. 8 §§ 188.5-188.13

See also: N.Y. COMP CODES R. & REGS. tit. 8 §§ 185.4-185.7

Record retention schedules include electronic products and are available online at:
http://www.archives.nysed.gov/a/nysaservices/ns_serv_mg_genschedule.shtml

- 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.

No Attorney General opinions since 1980

"A state agency or local government shall ensure that records retention requirements are incorporated into any plan and process for the design, redesign, or substantial enhancement of an information system that uses electronic data processing or electronic optical imaging technologies to maintain or store electronic records.

N.Y. COMP CODES R. & REGS. tit. 8 § 188.20

"A state agency and local government shall have the authority to dispose of or destroy a record in accordance with arts and cultural affairs law, regardless of format or media".

N.Y. STATE TECHNOLOGY LAW § 105(2) (McKinneys, 2002)

"An electronic record shall have the same force and effect as those records not produced by electronic means." N.Y. STATE TECHNOLOGY LAW § 105(3) (McKinneys, 2002)

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.

"This part establishes a framework of policies and procedures for the creation, maintenance, disposition, and selective preservation of State government records. Based on this framework, the State Archives and Records Administration will work in partnership with state agencies, and where applicable with the judiciary, to carry out records management programs that support effective program management and public services delivery, promote economical and efficient management of information resources, and ensure that records of archival value are identified, protected, and, when appropriate, transferred to the State Archives for preservation."

N.Y. COMP CODES R. & REGS. tit. 8 § 188.1

“Notwithstanding any other provision of these rules, such archival judicial records shall be administered and made available for public use according to conditions mutually agreed upon by the commissioner and the Chief Judge for records of the Court of Appeals; a presiding justice for the records of the Appellate Division of the Supreme Court; and the Chief Administrator of the Courts for all other records of the Unified Court system”. N.Y. COMP CODES R. & REGS. tit. 8 § 188.24

“Executive chamber records which are identified as archival should ultimately be transferred to the State Archives and to be preserved and made available for research.” N.Y. COMP CODES R. & REGS. tit. 8 § 188.25

“Archival records shall be available for inspection at the State Archives research room...” “The records access officer shall not restrict or deny access to any record more than 75 years old, except pursuant to provisions of law which explicitly prohibit access to the records”. N.Y. COMP CODES R. & REGS. tit. 8 § 188.26

Creation of the New York State Archives Partnership Trust Board:

"The legislature finds that the archival records of state government are vital and irreplaceable. They protect our rights as citizens, ensure government accountability to the future, and enable us to pass New York's past and present on to our children's children." (Historical and Statutory Note 57.05)

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 commissioner of education shall have the power to promulgate rules and regulations to carry out the purposes of this section, providing no objection to those rules and regulations is made within thirty days prior to the effective date of the proposed rules and regulations by the following: the speaker of the assembly for rules and regulations relating to the records of the assembly, the president pro-term of the senate for rules and regulations relating to the records of the senate; the director of the division of the budget for rules and regulations relating to records of civil departments; and the chief administrator of the courts for rules and regulations relating to records of the judiciary. .” N.Y. ARTS AND CULT. AFF. § 57.05(9) (McKinneys Supp. 2002)

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.

N.Y. ATT’Y OPINION: I 94-10 “Public records must be retained and disposed of in accordance with the provisions of the New York State Arts and Cultural Affairs Law”.

Additional comments:

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

Yes

No

a. If “Yes,” cite to and briefly discuss the legislation/proposed regulation; what was the outcome?

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

Additional comments:

Current Legislation: A.623 / S. 690

“Reforms provisions on recordkeeping and preservation for governor and executive chamber records; requires governor to separately file public and private records; provides that upon completion of a term of office the office of the state archives shall assume control over such records; allows state archivist to dispose of records deemed of no research value; makes provisions regarding restrictions on access by the governor for a specified time period for records relating to appointments and documents exempted under the public officers law.”

(Status: Passed Assembly, currently in Senate Committee on Finance)

Justification:

“The State Archives is an appropriate repository for Executive Chamber records of enduring value, as it is mandated to preserve and provide access to the archival records of state government. The Governor and Lieutenant Governor are government officials, elected by and accountable to the citizens of the State. Records created by public officials in the course of governing belong to the government and to the citizens of the State. “

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:

People v. McFarlan, --- 744 N.Y.S.2d 287 (2002)

"In 1999, New York adopted ESRA as St. Tech Law Art. 1 (L.1999, c. 4 § 2), effective March 26, 2000. Under § 105 of ESRA, the Electronic Facilitator is authorized to issue Rules and Regulations. Under Part 540.5(a) of the Official Compilation of Codes, Rules and Regulations of the State of New York, issued under this authority, an electronic record has the same force and effect as a record not produced or maintained by electronic means. Under (b) of this section,

government entities of the State are authorized and empowered to make and keep electronic records. ESRA's purpose is to "ensure that persons who voluntarily elect to use ... electronic records can do so with confidence that they carry the same force and effect of non electronic ... records." Reg. § 540.01(b).

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.

N.Y. PUB. OFF. §§ 84-90 (McKinneys 2001 and supp. 2002)

N.Y. COMP CODES R. & REGS. tit. 19 § 80.1 et. seq.

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 (N.Y. PUB. OFF. § 88)
 Judicial
 Administrative (applying to all agencies, no matter what branch of government)
 Other

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

"Agency means any state or municipal department, board, bureau, division, commission, committee, public authority, public corporation, council, office or other governmental entity performing a governmental or proprietary function for the state or any one or more municipalities thereof, except the judiciary or the state legislature." N.Y. PUB. OFF. § 86(3) (McKinneys 2001 and supp. 2002)

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

“Record” means any information kept, held, filed, produced or reproduced by, with or for an agency or the state legislature, in any physical form whatsoever including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilm, computer tapes or discs, rules, regulations or codes. N.Y. PUB. OFF. § 86(4) (McKinneys 2001 and supp. 2002)

Additional comments:

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

Yes

No

See: New York. Dept. of State. Committee on Freedom of Information Law
Does the Freedom of Information Law apply to computer records?

<http://www.dos.state.ny.us/coog/foil.html>

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

Current bills in the legislature: A. 2644

Creates the "Electronic Access to Records Act"; requires all public records to be accessible on the Internet; instructs secretary of state to present to the governor and legislature a plan for public access to local government agency records via the internet and within ninety days of submission of such plan, the secretary of state shall promulgate rules and regulations therefor; amends provisions of the freedom to information law. (Status: In Assembly Committee on Governmental Operations)

Memo Accompanying Bill: “More than two decades ago, the Freedom of Information Law offered New Yorkers an unprecedented level of access to the workings of their government. As information technology throughout the world continues to develop in leaps and bounds, the availability and ease of retrieval of information of all types has become more and more effortless. The State of New York must act so that it does not lag behind any government, organization, or corporate entity in making available public documents through electronic resources, the Internet in particular.”

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

Additional comments:

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

Yes
 No

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

Additional comments:

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

Yes
 No

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

“The legislature hereby finds that a free society is maintained when government is responsive and responsible to the public, and when the public is aware of governmental actions The more open a government is with its citizenry, the greater the understanding and participation of the public in government. “

“The people’s right to know the process of governmental decisionmaking and to review the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality.” “The legislature therefore declares that government is the public’s business and that public, individually and collectively and represented by a free press should have access to the records of government in accordance with the provisions of this article. “ N.Y. PUB. OFF. § 84 (McKinneys 2001 and supp. 2002)

b. Additional comments:

Each agency is responsible for developing guidelines for access to its records. Each agency shall promulgate rules and regulations, in accordance with conformity with this article and applicable rules and regulations. N.Y. PUB. OFF. § 87(1)(a) + (b) (McKinneys 2001 and supp. 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.

New York State Committee on Open Government issues advisory opinions relating to the Freedom of Information Act <http://www.dos.state.ny.us/coog/findex.html>

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.

N.Y. LEGIS. § 47 (Mckinneys Supp. 2002) Officer and institutions entitled to receive volumes of journals, bills and public documents

To the legislative library - 3 copies of journals, bills and public documents

To the New York State Library, for its depositories, the United States Library of Congress and general exchange, thirty copies of the journals, thirty copies of the public documents, and one copy of the bills

To the executive chamber one copy of the bills

To the office of the secretary of state, one copy of the bills

To the office of the attorney general one copy of the journals and bills

The term "public document" as used in this section shall mean those documents defined by rules and regulations of the temporary president of the senate and the speaker of the assembly for their respective houses of the legislature

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.

Chief Information Officer of the State of New York
N.Y. EXEC. § 206 (McKinneys 2002)

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?

N.Y. EXEC. § 206-A (McKinneys 2002) The statute was first enacted in 1997

Additional comments:

Press Release : http://www.state.ny.us/governor/press/year02/jan29_1_02.htm

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

Yes N.Y. EXEC. § 206-A(11) (McKinneys 2002)
 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:

5. Are the powers/responsibilities of the office/officer defined differently for electronic government information vis-à-vis print government information?

Yes
 No

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

Additional comments:

6. Do applicable statutes/regulations for the office/officer set forth powers/responsibilities relating to “permanent public access” of government information?

Yes
 No

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

Additional comments:

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

Yes
 No

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

Additional comments:

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

Yes
 No

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

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:

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

N.Y. EXEC. § 208 deals with the responsibility of the Office to respond to the freedom of information law for certain data

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 New York State Office for Technology
N.Y. EXEC. § 10(A)

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

New York State Office for Technology, *Statewide Strategy Plan* . 2001

Plan can be found on the Internet at <http://www.oft.state.ny.us/strat/strategyplan.htm>

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:

3. 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 Commissioner of General Services shall have general supervision over the letting of all contracts for public printing provided to be made herein.”
N.Y. STATE PRINT. & PUB. DOCS. § 3 (McKinneys 1995)

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

Additional comments:

According to N.Y. STATE PRINT. & PUB. DOCS. § 2 “public printing is classified into principal parts. The first shall be known as the legislative printing. The second part shall be known as the department printing, which shall include all printing for the various offices, institutions and departments of the state other than legislative, classified as department printing by the commissioner of general services, pursuant to this chapter”.

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

N.Y. STATE PRINT. & PUB. DOCS. § 3 (McKinneys 1995)

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.

N.Y. COMP. CODES R. & REGS. tit. 2 § 11.1 et. seq

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.

Print jobs are contracted out if the printing facility does not have the manpower to complete the job in the time required by the agency

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

1/3 are contracted out for printing, remainder printed in-house

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

The state printing office has produced CD-ROMS for state agency distribution and has developed online electronic products for state agencies.

Additional comments:

Above information supplied by John Siniapkin, Plant Manager, State Printing Office

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.

State Archives: N.Y. ARTS AND CULT. AFF. § 57.05(1) et. seq. (McKinneys Supp. 2002)

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.

"There shall be continued within the education department, the state archives."

N.Y. ARTS AND CULT. AFF. § 57.05(1) et. seq. (McKinneys Supp. 2002)

"Except as otherwise provided by law, the state archives shall acquire and assume the official custody and responsibility for preserving and making available for reference use those official records of the legislature, the judiciary and the civil departments of government which are deemed to have sufficient historical value or other value to warrant their continued preservation by the state." N.Y. ARTS AND CULT. AFF. § 57.05(4) et. seq. (McKinneys Supp. 2002)

Additional comments:

3. Does the archive/archivist have power to promulgate administrative regulations?

Yes

No

a. If "Yes," cite the body of administrative regulations promulgated by the archive/archivist.

Additional comments:

The Commissioner of Education issues administrative regulations on behalf of the Archives

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 (selected local records)

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

Additional comments:

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

"The state archives shall acquire, appraise, preserve either in original or duplicate form, catalog, display, duplicate and make available for reference and use by state officials, and others those official records that have been determined to have sufficient historical value or other value to warrant their continued preservation by the state". N.Y. ARTS AND CULT. AFF. § 57.05(1) et. seq. (McKinneys Supp. 2002)

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?

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.

There is an understanding that materials of historical value should continue to be preserved by the state. This statement does not cover all materials that are issued by state government agencies

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.

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.

Additional comments:

While the Library’s collection of State documents is composed mainly of published materials (books, periodicals, newsletters, official reports, etc.), a sister institution, the New York State Archives collects a different type of State document. The Archives is a repository for records of State government that have legal or historical value. Never intended for distribution, these are the records that document the day-to-day business of an agency – memos, correspondence, files, ledgers, photos, plans or blueprints, etc. Many state agencies routinely transfer their older records to the State Archives, once they are no longer needed for regular business.

See <http://unix2.nysed.gov/histdoc.htm>

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

Yes
 No

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

Additional comments:

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

Yes

No

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

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.

New York State Library

"The state library and state museum shall be departments of the university, and the regents may establish such other departments and divisions therein as they shall deem useful in the discharge of their duties." N.Y. EDUC. § 232 (McKinneys 2000)

- 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.

"All books, pamphlets, manuscripts, records, archives and maps, and all other property appropriate to a general library, if owned by the state and not placed in other custody by law, shall be in charge of the regents and constitute the state library." N.Y. EDUC. § 245 (McKinneys 2000)

"The state law library and the legislative reference library shall be parts of the New York state library under the same government and regulations and shall be open for consultation to every citizen of the state at all hours when the state library is open and the law library shall be available for borrowing books to every duly admitted attorney residing in the state of New York, who shall conform to the rules made by the regents for insuring proper protection and the largest usefulness to the people of the said law library." N.Y. EDUC. § 247 (McKinneys 2000)

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.

The Regents of the University of the State of New York promulgate regulations on behalf of the State 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.

Additional comments:

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

Please see above

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.

"Manuscripts or printed papers of the legislature usually termed "on file" and which shall have been on file more than five years in custody of the senate and assembly clerks, and all public records of the state not placed in other custody by a specific law shall be part of the state library and shall be kept in rooms assigned and suitably arranged for that purpose by the trustees of public buildings." N.Y. Educ. § 248 (Mckinneys 2000)

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.

Conversation with Mary Redmond, Acting Director of the Research Division of the New York State Library. Library is responsible for collecting New York State documents.

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 Library is scanning documents received and listed in the *Checklist of Official Publications of the State of New York* for the years 1995 and forward. Most New York State documents are listed in Excelsior, the Library's online catalog. For many recent state documents, the catalog record contains a link to an electronic version of the document. Most of these online publications are scanned documents, which were created by the Library and made available online as TIFF (requires TIFF viewer plug-in) or GIF images. See <http://unix2.nysed.gov/statedoc.htm>.

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.

"It shall be the responsibility of the state library to serve as the central repository for the distribution of all public documents. In accordance with this responsibility the state library shall establish a public documents distribution system consisting of depository libraries throughout New York state which shall be know as the "New York state document depository system" and shall be responsible for the maintenance and distribution of documents within this depository system".
N.Y. STATE PRINT. & PUB. DOCS. § 11 (McKinneys 1995)

Section 12(iv): Responsibilities of State Agencies

"... to forward a copy of each public document recorded in an electronic or machine readable format to the gifts and exchange division of the state library in such electronic or machine readable format"

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

Additional comments:

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

Yes

No

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

- b. If “No,” explain whether or not the statutes/regulations have been construed to cover electronic government information?

Additional comments:

3. Do any depository library statutes/regulations assure “permanent public access” of electronic government information?

Yes
 No

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

Additional comments:

4. Do the depository library statutes/regulations or any other source of law supplementing them (particularly a declaration of legislative intent or a relevant attorney general opinion) declare the public policy of the state and address the scope of citizens’ access to government information or acknowledge the state’s responsibility to permanently maintain public records?

Yes
 No

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

Additional comments:

5. Have depository libraries as a whole undertaken any special initiatives or projects involving “permanent public access” of government information?

Yes
 No

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

Additional comments:

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

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

Additional comments:

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

The State Library is now providing online access to scanned documents. Scanned versions of documents listed on the *Checklist of Official Publications of the State of New York* from 1995- (<http://unix2.nysed.gov/edocs/education/chcktext.htm>) are available in either TIFF or GIF format at <http://unix2.nysed.gov/scandocs/> . There is no indication that these documents will be permanently available.

Additional comments:

The New York State Library is working with other state-funded organizations in New York on a project entitled, NOVEL (New York Online Virtual Electronic Library). Its mission is “to deliver high-quality, reliable digital information to all New Yorkers. NOVEL will contain digital resources that are commercially available and other valuable unique items digitized by libraries, museums and other institutions preserving our cultural heritage, such as the original Emancipation Proclamation in Abraham Lincoln's own handwriting in the New York State Library's collections. Resources will include full text electronic books and journals, online catalogs, digitized collections of photographs, images, maps, manuscripts, encyclopedias, journals, and other proprietary databases licensed for free public access.

The Advisory Group will assess the status of digitization efforts in New York, identify needs and issues, and recommend directions for future developments and initiatives. It will be charged to investigate the following:

- 1.Content-What are the priorities for materials to be digitized (based on an inventory of existing resources)?
- 2.Access-How can we assure access to digitized collections? Does retrospective conversion of records contribute to access?
- 3.Standards - What existing standards are relevant to this initiative? What standards need to be developed? What is the status of metadata development?
- 4.Migration - How will migration to future technology be ensured?
- 5.Criteria - How will competing priorities for proposed digitization projects be resolved?
- 6.Copyright - What are the intellectual content ownership issues?
- 7.Capacity - How can we provide adequate capacity to support digitization through training, facilities, and equipment? Should regional centers be developed?
- 8.Preservation - How does digitization relate to preservation?

<http://www.nysl.nysed.gov/library/novel/index.html>
<http://www.nysl.nysed.gov/library/novel/info.htm#faq>

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.

A bill (A. 623 / S. 690) introduced into the State Assembly in 2003 has suggested reforms that would require the governor to separately file public and private records. The Office of the State Archives would assume control over these records at the end of governor's term. There are, however, provisions in the legislation that would allow the state archivist to dispose records that he deems of no research value. A. 2644, introduced into the current session of the legislation mandates that all public records be available via the Internet. Both of these bills should be monitored closely.

- 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.”

It appears that the appropriate agencies to address “permanent public access” are the New York State Archives and the New York State Library. The Archives is already doing a good job of preserving and making available state records of permanent historical value. Permanent historical value is judged by a record’s legal, fiscal or historical value. Of particular concern are records of the Executive Chamber and legislation has been introduced to address this issue. The New York State Archives is responsible for acquiring traditional state publications and feels that it has a responsibility to permanently maintain these publications.

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)

James T. Dillon
Chief Information Officer
New York State Office for Technology
Albany, New York
Telephone: (518) 474-3421
Fax: (518) 402-2976
E-mail cio@oft.state.ny.us

2. State Printer

Kenneth J. Ringler Jr
Commissioner
Office of General Services
Corning Tower
Empire State Plaza
Albany, New York 12242
Telephone: (518) 474-5991

3. State Archivist (Acting)

Christine Ward

Acting Assistant Commissioner, New York State Archives and
Acting Executive Officer, Archives Partnership Trust

9C 49 Cultural Education Center

Albany, New York 12230

Telephone: (518) 473-7091

Fax: (518) 473-7058

E-mail : aptrust@mail.nysed.gov

4. State Librarian and/or State Law Librarian

Janet M. Welch

Assistant Commissioner for Libraries and State Librarian

New York State Library

Room 10C 34 Cultural Education Center

Albany, NY 12230

Telephone: (518) 474-5930

Fax: (518) 486-6880

E-mail: jwelch2@mail.nysed.gov

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

N/A

M. IMPORTANT STATE RESOURCES

Provide URLs or other finding information for:

1. Official state home page <http://www.state.ny.us/>
2. State agency portal <http://www.nysegov.com/citguide.cfm>
3. Legislative website <http://assembly.state.ny.us/>
<http://www.senate.state.ny.us/>

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

No

- b. Are services free or fee-based?

The Assembly and Senate websites are free. The Legislative Retrieval System, operated by the Legislative Bill Drafting Commission is a fee-based service that provides the added features of bill tracking, the New York administrative code and selected local resources.

4. Judicial websites <http://www.courts.state.ny.us/>
5. Regulatory agency websites http://www.gorr.state.ny.us/gorr/Reg_Guide.html

6. Freedom of Information Service Hotline

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

The office to contact is the Committee on Open Government, New York State Department of State.

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

No