

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.

Tex. Gov’t Code Ann. §§ 441.180 – 441.204 (West 1998 & Supp. 2002);
13 Tex. Admin. Code §§ 6.1 – 6.10 (West 2002).

b. If “No,” skip this whole section.

Additional comments:

In Texas, it is the subchapter of the Government Code that deals with Preservation and Management of State Records and Other Historical Resources.

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

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

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

The statute defines a “state agency” as “any department, commission, board, office, or other agency in the executive legislative, or judicial branch of state government created by the constitution or a statute of this state, including an eleemosynary institution” Tex. Gov’t Code Ann. § 441.180(9)(A) (West 1998).

Additional comments:

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

“Archival state record” is defined at Tex. Gov’t Code Ann. § 441.180(2).
“State record” is defined at Tex. Gov’t Code Ann. § 441.180(11).

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?

Tex. Gov’t Code Ann. § 441.189 says, “(a) Any state record may be created or stored electronically in accordance with standards and procedures adopted as administrative rules of the commission. (b) Certified output from electronically digitized images or other electronic data compilations created and stored in accordance with the rules of the commission shall be accepted as original state records by any court or administrative agency of this state unless barred by a federal law, regulation, or rule of court. (c) Certified output from electronically digitized images or other data compilations created before 9/1/97, in accordance with any applicable prior law shall be accepted as original state records or, in the absence of an applicable prior law, at the discretion of the court or administrative agency.”

13 Tex. Admin. Code §§ 6.91 – 6.99: there are separate rules for electronic state records, but they are still to be treated as state records; the separate rules seem to be aimed at those things that make creation and maintenance and retention of them different than paper records. For example, “A state agency must establish policies and procedures to (1) ensure that an electronic state record and any software, hardware, and/or documentation, including maintenance documentation, required to retrieve and read the electronic state record are retained as long as the approved retention period for the record . . .” 13 Tex. Admin. Code § 6.94(a)(1).

13 Tex. Admin. Code §§ 51.1 – 51.3: Authentication of Electronic Information—RMICC rules on what is considered authentic online public information.

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.

“A governmental body or, for information of an elective county office, the elected county officer, may determine a time for which information that is not currently in use will be preserved, subject to any applicable rule or law governing the destruction and other disposition of state and local government records of public information.” Tex. Gov’t Code Ann. § 552.004 (Vernon Supp. 2002).

Tex. Gov’t Code § 441.181 – State Archives Program

Tex. Gov’t Code § 441.182 – State Records Management Program

Tex. Gov't Code § 441.183 – Records Management Programs in State Agencies
Tex. Gov't Code § 441.185 – Record Retention Schedule
Tex. Gov't Code § 441.186 – Archival State Records

13 Tex. Admin. Code §§ 6.1 – 6.10: Records Retention Scheduling—each state agency must submit a records retention schedule to the state records administrator; retention periods for and disposition of certain state records must be in accordance with the Texas State Records Retention Schedule.

- 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.

13 Tex. Admin. Code §§ 6.94: Retention of Electronic State Records
13 Tex. Admin. Code §§ 6.97: Retention of Electronic Records

13 Tex. Admin. Code §§ 50.1 - .11: Records Management Interagency Coordinating Council (RMICC)—coordinates management of government records by (1) informing the legislature on records management issues and making recommendations to improve records management processes and accountability; (2) facilitating the transition from paper to electronic records; and (3) developing consistent records management in state agencies.

Additional comments:

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

Yes
 No

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

Tex. Gov't Code § 441.181(a) – “The commission shall take legal custody of and preserve archival state records and shall endeavor to collect and preserve other historical resources determined by the director and librarian to possess sufficient value to warrant continued preservation in the state archives.”

Tex. Gov't Code § 441.181(c)(4) – “Under the direction of the director and librarian, the state archivist shall: 4) encourage public use of state archival records and other historical resources held by the program and provide public access to them in accordance with rules adopted by the commission under Section 441.193.”

Additional comments:

7. Is a public records administrator, a public records commission or other officer/government entity responsible for administering the public records statutes/regulations?

Yes
 No

a. If "Yes," cite to applicable statutes/regulations and identify the responsible officer/government entity.

Tex. Gov't Code Ann. § 441.182(b) – The director and librarian (of the Texas State Library) shall designate a state records administrator to administer the state records management program. Duties are outlined in Tex. Gov't Code Ann § 441.182(c).

Tex. Gov't Code Ann. § 441.181(b) – The director and librarian (of the Texas State Library) shall designate a state archivist to administer the state archives program. Duties are outlined in Tex. Gov't Code Ann. § 441.181(c).

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

Tex. Gov't Code Ann. § 441.181 discusses the "preservation" of archival state records and other historical resources, as well as providing "research aids" to ensure access to the public of these records.

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?

13 Tex. Admin. Code § 6.95(a) – the rule was finalized and provides that: An electronic state record that is an archival record must be maintained by the agency through hardware and software migrations and upgrades as authentic evidence of the state's business in accessible and searchable form, except as otherwise determined by the state archivist.

13 Tex. Admin. Code § 3.1(15) – final rule provides for the Texas Records and Information Locator (TRAIL)--A program of the Texas State Library designed to locate, index, and make available state publications in electronic format.

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.

Public Information Act, Tex. Gov’t Code Ann. §§ 552.001 - .353 (West 1994 & Supp. 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.

The statute defines a “governmental body” as “a board, commission, department, committee, institution, agency or office that is within or is created by the executive or legislative branch of state government” And it “does not include the judiciary.” Tex. Gov’t Code Ann. § 552.003(1)(A), (B).

The Executive and Legislative branches, apart from their agencies, committees, offices, etc. are included. While the language of the statute doesn’t seem to expressly include the Governor’s

Office (or at least it seems like it could be read to exclude it), the Governor's website (<http://www.governor.state.tx.us/openrecords.htm>) cites to chapter 552 of the Texas Government Code which deals with open records and provides for a way to make requests from the Governor's Office.

A 1975 AG opinion says that the speaker is "custodian of public records" of the House of Representatives, and also refers to the House of Representatives as a "governmental body." Op.Atty.Gen.1975, No. H-621. This AG opinion has not been overruled.

Statutory language expressly including the Governor's Office or the Legislature may not exist, but it is clear both bodies would have a hard time arguing that they aren't a "governmental body."

Additional comments:

Section 552.0035(a) of the Gov't Code says, "Access to information collected, assembled, or maintained by or for the judiciary is governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules."

Public Access to Judicial Records is governed by Rule 12 of the Texas Rules of Judicial Administration.

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

Yes

No

a. If "Yes," discuss whether the freedom of information act statutes/regulations had been amended at any time to cover electronic records; cite to and provide amending language.

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

Additional comments:

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

Yes

No

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

From 2002 Public Information Handbook, chapter IX, Preservation and Destruction of Records: "Subject to state laws governing the destruction of state and local government records, section 552.004 addresses the preservation period of non-current records."

Tex. Gov't Code Ann. §§ 441.180 - 441.203 – provide for the management, preservation, and destruction state records under the guidance of the Texas State Library and Archives Commission.

Tex. Local Gov't Code Ann. §§ 201-205 – provide for the preservation, retention, and destruction of local records under the oversight of the Texas State Library and Archives Commission.

Tex. Gov't Code Ann. § 552.203 (Public Information Act) – provides in part that the Officer for public information, "subject to penalties provided in this chapter," has the duty to see that public records are protected from deterioration, alterations, mutilations, loss, or unlawful removal and that they are repaired as necessary. Public records may be destroyed only as provided by statute. A governmental body may not destroy records even pursuant to statutory authority while they are subject to an open records request.

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.

Tex. Gov't Code Ann. § 552.203 (Public Information Act) – provides in part that the Officer for public information, "subject to penalties provided in this chapter," has the duty to see that public records are protected from deterioration, alterations, mutilations, loss, or unlawful removal and that they are repaired as necessary. Public records may be destroyed only as provided by statute. A governmental body may not destroy records even pursuant to statutory authority while they are subject to an open records request.

Additional comments:

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

Yes
 No

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

Additional comments:

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

Yes
 No

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

Additional comments:

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

C. PUBLIC ACCESS LAWS

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

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

Yes
 No

a. If "Yes," cite each of your state's public access law statutes and the administrative regulations that supplement them.

Tex. Gov't Code Ann. § 323.0145 – Electronic Availability of Legislative Information Through the Internet

Tex. Gov't Code Ann. § 2001.007 – Certain Explanatory Information Available Through the Internet (part of the Administrative Procedure Act).

Tex. Gov't Code Ann. § 2002.057 – Electronic Availability of Administrative Code

Tex. Gov't Code Ann. § 2001.0151 – Electronic Availability of Texas Register

Tex. Gov't Code Ann § 2001.004 – Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions

Tex. Gov't Code Ann. §§ 405.011-405.014 – Secretary of State's responsibility to preserve and distribute official documents, including court reports and session laws.

Rules of Judicial Administration, Rule 12 – Public Access to Judicial Records

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

Additional comments:

In conjunction with public access laws, are a number of statutes regarding privacy of information. "With respect to information made confidential by statute, currently there are approximately 580 specific Texas statutes that make certain information confidential in the custody of governmental

entities in this state. Included with this memorandum is a table setting forth those statutes.” Attorney General memo to House Committee on State Affairs Subcommittee on Privacy Issues (2000), available at http://www.oag.state.tx.us/notice/privacy_acts.htm. The tables are available at http://www.oag.state.tx.us/notice/privacy_statutes.htm.

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.

See citations in C.1.

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.

Texas Register – 1 Tex. Admin. Code § 91.1(11) (West 2002)
Explanatory Info. Available through the Internet – 1 Tex. Admin. Code §§ 206.1-206.5

Additional comments:

The Texas Legislative Council is in charge of putting legislative information on the internet. As they are a state agency within the Legislature, they don't seem to have rule making authority and so, there are not any regulations.

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?

Public access laws require agencies to make the text of rules available on a public web site. Gov't Code Sec. 2001.007. The Secretary of State must make the entire Administrative Code and Texas Register available on the Internet. Gov't Code Sec. 2002.057; Sec. 2002.0151

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.

Since these are all public access statutes, they all address accessibility. See citations above.

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.

It seems that there are several statutes that work together to state and implement the policy.

Tex. Gov’t Code Ann. § 552.001 – “The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.”

Tex. Gov’t Code Ann. § 552.004 – “A governmental body or, for information of an elective county office, the elected county officer, may determine a time for which information that is not currently in use will be preserved, subject to any applicable rule or law governing the destruction and other disposition of state and local government records or public information.”

Tex. Gov’t Code Ann. § 441.181 – “(c) Under the direction of the director and librarian, the state archivist shall:

(1) identify and designate archival state records and arrange for their transfer to the custody of the commission in accordance with Section 441.186;

(2) according to accepted archival practices, arrange, describe, and preserve archival state records and historical resources that come into the possession of the commission through gift, purchase, or other means that the director and librarian determines shall be included in the state archives program;

...

(4) encourage public use of state archival records and other historical resources held by the program and provide public access to them in accordance with rules adopted by the commission under Section 441.193;

(5) cooperate with and, when practicable, provide training and consultative assistance to state agencies, libraries, organizations, and individuals on projects designed to preserve original source materials relating to Texas history, government, and culture”

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.

Department of Information Resources; Executive Director of the Department of Information Resources.

Tex. Gov’t Code Ann. § 2054.004, 2054.029 (West 2000).

- 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?

Tex. Gov’t Code Ann. §§ 2054.002, 2054.51, .052 (West 2000); created 1993

Additional comments:

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

Yes
 No

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

1 Tex. Admin. Code §§ 201.1 – 210.2 (West 20020).

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.

“‘State agency’ means a department, commission, board, office, council, or other agency in the executive or judicial branch of state government that is created by the constitution or a statute of this state, including a university system or institution of higher education as defined by § 61.003, Education Code.” Tex. Gov’t Code Ann. § 2054.003(9) (West 2000).

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:

The policy stated by the legislature is that it is the state's policy "to coordinate and direct the use of information resources technologies by state agencies and to provide as soon as possible the most cost-effective and useful retrieval and exchange of information within and among the various agencies and branches of state government to the residents of this state and their elected representatives." Tex. Gov't Code Ann. § 2054.001(b) (West 2000).

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.

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.

Texas Department of Information Resources; Tex. Gov’t Code Ann. § 2054.091

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

Texas Connected: Service at the Speed of Light : 1999 State Strategic Plan for Information Resources Management / Texas Department of Information Resources
<http://www.dir.state.tx.us/pubs/99ssp/99ssp.pdf>

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

Additional comments:

2. The technology plan covers which branches?

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

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

The Department of Information Resources which came up with the plan, defines a “State agency” as a “department, commission, board, office, council, or other agency in the executive or judicial branch of state government that is created by the constitution or a statute of this state, including a university system or institution of higher education as defined by § 61.003, Education Code.” Tex. Gov’t Code Ann. § 2054.003(9) (West 2000).

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.

Information created and maintained in an electronic format offers a unique usability not found in paper. It can be accessed and manipulated in different ways, enabling data collected for one purpose to be used for many others. Increased automation of state government information affects records management policies. The ease with which information is created, modified, and deleted in decentralized information systems increases the difficulty of managing and retaining it. Rapid obsolescence of information technology and the impermanence of electronic storage media puts the state at risk of losing critical government records and access to historical documents.

Programs

Records Management Interagency Coordinating Council
Texas Records and Information Locator

Texas Connected : Service at the Speed of Light : 1999 State Strategic Plan for Information Resources Management, p.20.

Additional comments:

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

F. STATE PRINTING OFFICE AND STATE PRINTER

1. Does your state have an official printing office (or equivalent) and/or an official printer (or equivalent)?

- Yes
- No

- a. If “Yes,” provide the complete official name for the printing office and/or official printer; cite to the statute giving that information.
- b. If “No,” skip this whole section.

Additional comments:

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

Additional comments:

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

- Yes
- No

- a. If “Yes,” cite the body of administrative regulations promulgated by the printing office/official printer.

Additional comments:

4. The printing office/official printer has jurisdiction over which branches?

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

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

Additional comments:

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

- a. Describe your state’s use of in-house agency publishing and/or commercial publishing of government information.
- b. What percentage of official state government documents are printed by the printing office/official printer?
- c. To what extent is the printing office/official printer involved in the electronic dissemination of government information?

Additional comments:

6. Are the powers/responsibilities of the printing office/official printer defined differently for electronic government information vis-à-vis print government information?

Yes
 No

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

Additional comments:

7. Do applicable statutes/regulations for the printing office/official printer set forth powers/responsibilities relating to "permanent public access" of government information?

Yes
 No

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

Additional comments:

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

Yes
 No

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

Additional comments:

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

Yes
 No

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

Additional comments:

10. Has the printing office/official printer undertaken any special initiatives or projects involving “permanent public access” of government information?

Yes
 No

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

Additional comments:

11. Has any litigation involving the printing office/official printer resulted from the state’s failure to “permanently” maintain government information?

Yes
 No

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

Additional comments:

12. Discuss any unique circumstances in your state relevant to the official printing office and/or official printer.

G. STATE ARCHIVES AND STATE ARCHIVIST

This section addresses your state’s official archives and state archivist. If these responsibilities are by law under the auspices of your state library and state librarian, please move on to Section H.

1. Does your state have an official archives (or equivalent) and/or an official archivist (or equivalent)?

Yes
 No

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

State Archivist – Tex. Gov’t Code Ann. § 441.181 (West 1998 & 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.

Tex. Gov’t Code Ann. § 441.181

Additional comments:

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

- Yes
 No

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

Additional comments:

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

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

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

The statute says that the Texas State Library and Archives Commission shall "take legal custody of and preserve archival state records" (Gov't Code § 441.181) and defines a state record as "any written, photographic, machine-readable, or other recorded information created or received by or on behalf of a state agency..." (Gov't Code § 441.180(11)) and defines a state agency as "any department, commission, board, office, or other agency in the executive, legislative, or judicial branch of state government..." (Gov't Code § 441.180(9)).

Additional comments:

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

- identify and designate archival state records and arrange for transfer to custody of the commission
- according to accepted archival practices, arrange, describe and preserve archival state records and historical resources
- prepare inventories, indexes, catalogs, or other research aids to state archival records and other historical resources
- encourage public use of state archival records and other historical resources held by the program and provide public access to them
- cooperate with and, when practicable, provide training and consultative assistance to state bodies on projects that will preserve original source materials relating to Texas history, government, and culture
- advise the director and librarian and the commission on all matters concerning the acquisition and preservation of archival state records and other historical resources; and
- perform other duties as required.

Additional comments:

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

Yes
 No

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

Additional comments:

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

Yes
 No

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

Tex. Gov’t Code Ann. § 441.181(c)(2) & (4):

“(c) Under the direction of the director and librarian, the state archivist shall:

...

(2) according to accepted archival practices, arrange, describe, and preserve archival state records and historical resources that come into the possession of the commission through gift, purchase, or other means that the director and librarian determines shall be included in the state archives program;

...

(4) encourage public use of state archival records and other historical resources held by the program and provide public access to them in accordance with rules adopted by the commission under Section 441.193”

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.

Texas Gov’t Code Ann. § 441.181(c) – “Under the direction of the director and librarian, the state archivist shall:

(2) according to accepted archival practices, arrange, describe, and preserve archival state records and historical resources that come into the possession of the commission through gift, purchase, or other means that the director and librarian determines shall be included in the state archives

program;

(4) encourage public use of state archival records and other historical resources held by the program and provide public access to them in accordance with rules adopted by the commission under Section 441.193.

Additional comments:

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

Yes

No

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

In the regulations promulgated by the Texas State Library and Archives Commission, there is a definition for "state archival record" that discusses preservation – and, therefore, permanent maintenance – of important documents for the use of the public. 13 Tex. Admin. Code § 6.1

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.

There is a project under way called TRAIL (Texas Records and Information Locator) that has the mission of providing access to Texas State government information contained in electronic publications. But, there's no mention of "permanency."

TRAIL searches and locates information from over 150 Texas state agency web servers. In and of itself, it does not archive the publications or ensure their preservation. There is in the works, an electronic depository program that should address the "information loss" caused by the fact that much government information published on the web is lost as pages are updated. It will address the problem by regularly downloading, dating and storing online government publications. Researchers will be able to review prior, non-current versions of web pages of the state government.

It is significant to note here that TRAIL is viewed as a first step toward establishing the state's Electronic Depository Program.

A few basic assumptions guide the formation of this plan:

- The people of the state of Texas have a basic right to no-fee access to state publications.
- It is the responsibility of state government to provide access to state publications and to preserve state publications for future access.
- All documents that meet the statutory definition of a state publication are considered worthy candidates of selection for inclusion in the Electronic Depository collection.
- Texas depository libraries provide valuable access points for citizen use of state publications. They offer knowledgeable, one-on-one assistance and create tools that guide the seekers of information to appropriate state publications.
- Texas depository libraries provide free access to state publications.
- State publications will be selected individually for inclusion in an electronic depository program. Complete web sites will not be harvested for inclusion at this time.

<<http://www.tsl.state.tx.us/lot/electronicdepositorylib.html>>

<<http://www.tsl.state.tx.us/lot/collectiondevelopmentplan.html>>

Additional comments:

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

Yes

No

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

Additional comments:

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

H. STATE LIBRARY AND STATE LIBRARIAN

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

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

Yes

No

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

Texas State Library; Director and Librarian; Tex. Gov't Code Ann. § 441.002 (for the director and librarian title, there's not really a statute for the Texas State Library. The just start calling it that.)

b. If “No,” skip this whole section.

Additional comments:

1839: Republic of Texas President Mirabeau Lamar signs into law an act establishing a “national library.” The library’s first acquisition is a 13-volume *Edinburgh Encyclopedia*. The Republic moves its archives - maintained separately from the library - to the new capital, Austin, from Houston.

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

Tex. Gov’t Code Ann. § 441.002 – Director and Librarian

Additional comments:

Tex. Gov’t Code Ann. § 441.006 defines the powers and duties of the Texas State Library and Archive Commission.

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.

13 Tex. Admin. Code §§ 1.21 – 9.21 (West 2002).

Additional comments:

The librarian makes rules as executive and administrative officer of the Texas State Library and Archives Commission.

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.

Tex. Gov’t Code Ann. § 441.180(9)(A) – “any department, commission, board, office, or other agency in the executive, legislative, or judicial branch of state government created by the constitution or a statute of this state, including an eleemosynary institution.”

Additional comments:

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

- record Texas State Library and Archive Commission’s proceedings
- keep an accurate account of the Commission’s financial transactions
- have charge of the state library and any book, picture, document, newspaper, manuscript, archive, relic, momento, flag or similar item contained in the library
- administer programs to carry out the duties of the commission and the director under the statutes
- ascertain the condition of all public libraries in the state and report the results to the Commission
- perform other duties as assigned.

Additional comments:

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

Yes
 No

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

Chapter 3 of Title 13 of the Texas Administrative Code outlines the differences between print and electronic resources when it comes to the State Depository Program. Some of the differences include multiple copies for print materials versus web access or computer disk distribution for materials in electronic format.

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.

Tex. Gov’t Code Ann. § 441.006(a)(8) – says that the TSLAC will “take custody of, preserve, and make available for public use state records and other historical resources that document the history and culture of Texas as a province, colony, republic, or state.”

Tex. Gov’t Code Ann. § 441.152 – expands that coverage to include local government records as well.

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 7.a. above. The state acknowledges that responsibility through the creation of and duties assigned to the Texas State Library and Archives Commission.

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 mission of the Texas State Library and Archives Commission (TSLAC) is below; one of their priorities is to "preserve" the record of government for public scrutiny.

"The mission of the Texas State Library and Archives Commission is to safeguard significant resources, provide information services that inspire and support research, education and reading, and enhance the capacity for achievement of current and future generations. To accomplish this, we

- Preserve the record of government for public scrutiny,
- Secure and make accessible historically significant records and other valuable resources,
- Meet the reading needs of Texans with disabilities,
- Build and sustain statewide partnerships to improve library programs and services, and
- Enhance the capacity for achievement of individuals and institutions with whom we work."

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.

See G.10. above; in Texas, the State Archives and the State Library constitute a single Commission and they work together.

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.

Tex. Gov't Code Ann. § 441.102; 13 Tex. Admin. Code 3.1 – 3.16

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?

Agencies must deposit with the State Publications Depository Program electronic state publications on external storage devices when they are not accessible to the public on the Internet. 13 Tex. Admin. Sec. 3.3(c). For state publications available on the Internet, the regulations address a variety of formatting, accessibility and retention issues. 13 Tex. Admin. Sec. 3.3(d). Note that superseded state publications on the Internet must remain available on the Internet.

Regulations require that changes to a state publication on the Internet must be reported to the depository program. 13 Tex. Admin. Sec. 3.3(d)(2)(D).

- 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:

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

The State Library is making great strides toward disseminating, preserving and providing access of electronic government information. Currently, the TRAIL program allows for searching state government websites for electronic publications. While there is not currently an electronic publications depository program in place, the State is testing an application this fall (2002) that will harvest and store electronic state information for archival/access purposes and provide the basis for an electronic depository program. They hope to have a debut of the service in November of 2002.

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.
- University of North Texas partners with the Texas State Library and Archives Commission to provide permanent storage and public access to the back issues of the Texas Register. See, <http://www.tsl.state.tx.us/lot/memorandumofunderstanding.html> for the Memorandum of Understanding on the project.
 - Tarlton Law Library, University of Texas School of Law, through a Texas Treasures Grant from the TSLAC has digitized the different constitutions for the state. Tarlton is about to implement a second grant that will digitize the journals from the Constitutional Conventions of Texas.

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:

While Texas doesn’t seem to go with the language “permanent public access,” there seems to be an unstated recognition that electronic access to materials and permanent access is important. Particularly in a state as geographically large as Texas with many small communities, most notably in West Texas, that are isolated from physical access to state publications.

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)

Carolyn Purcell
Executive Director
Chief Information Officer
Location:
300 West 15th Street, Suite 1300\
Austin, TX 78701
Mailing Address:
P.O. Box 13564
Austin, TX 78711-3564
Telephone: (512) 475-4700 or (800) 348-9157
Fax: (512) 475-4759
E-Mail: cio@state.tx.us

2. State Printer

N/A.

3. State Archivist

Chris LaPlante
Director and State Archivist
Lorenzo de Zavala State Archives and Library Building
1201 Brazos Street
Austin, TX 78701
Telephone: (512) 463-5480
Fax: (512) 463-5436

4. State Librarian and/or State Law Librarian

State Librarian:
Peggy D. Rudd
Director and Librarian
Lorenzo de Zavala State Archives and Library Building
1201 Brazos Street
Austin, TX 78701
Telephone: (512) 463-5480
Fax: (512) 463-5436

State Law Librarian:
Tony Estrada
Executive Director
Tom C. Clark Building
205 W. 14th Street
Austin, TX 78701
Telephone: (512) 463-1722
Fax: (512) 463-1728

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

Gregg Abbott
Office of the Attorney General
PO Box 12548
Austin, TX 78711-2548
Telephone: (512) 463-2100

M. IMPORTANT STATE RESOURCES

Provide URLs or other finding information for:

1. Official state home page

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

2. State agency portal

<<http://www.state.tx.us/category.jsp?language=eng&categoryId=6.9>>

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

No.

3. Legislative website

<<http://www.capitol.state.tx.us/capitol.htm>>

a. Does the website cover the current year only?

No – goes back to 1995

b. Are services free or fee-based?

Free.

4. Judicial websites

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

5. Regulatory agency websites

N/A

6. Freedom of Information Service Hotline

(877) OPEN TEX (673-6839).

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

No.

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

Yes.