

## 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.

Va. Code Ann. §42.1-76, et seq. (1999)  
17 Va. Admin.Code 15-10-10, et. seq.

b. If “No,” skip this whole section.

Additional comments:

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

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

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

Additional comments:

Officially the law says it applies to all public officers and employees. Reality is that it deals many with the Executive branch and occasionally the judicial branch.

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

Va. Code Ann. §42.1-77 (1999)

Additional comments:

§ 42.1-77. Definitions

As used in this chapter:

"Agency" means all boards, commissions, departments, divisions, institutions, authorities, or parts thereof, of the Commonwealth or its political subdivisions and includes the offices of

constitutional officers.

"Archival quality" means a quality of reproduction consistent with established standards specified by state and national agencies and organizations responsible for establishing such standards, such as the Association for Information and Image Management, the American Standards Association, and the National Bureau of Standards.

"Board" means the State Library Board.

"Council" means the State Public Records Advisory Council.

"Custodian" means the public official in charge of an office having public records.

"Data" means symbols, or representations, of facts or ideas that can be communicated, interpreted, or processed by manual or automated means.

"Database" means a set of data, consisting of one file or a group of integrated files, maintained as an information system managed by a database management system.

"Database management system" means a set of software programs that controls the organization, storage and retrieval of data in a database. It also controls the security and integrity of the database.

"Electronic record" means any information that is recorded in machine readable form.

"Electronic records system" means any information system that produces, processes, or stores records by using a computer, and is also called an automated information system.

"Information system" means the organized collection, processing, transmission, and dissemination of information in accordance with defined procedures, whether automated or manual.

"Librarian of Virginia" means the State Librarian of Virginia or his designated representative.

"Public official" means all persons holding any office created by the Constitution of Virginia or by any act of the General Assembly, the Governor and all other officers of the executive branch of the state government, and all other officers, heads, presidents or chairmen of boards, commissions, departments, and agencies of the state government or its political subdivisions.

"Public record" means recorded information that documents a transaction or activity by or with any public officer, agency or employee of the state government or its political subdivisions. Regardless of physical form or characteristic, the recorded information is a public record if it is produced, collected, received or retained in pursuance of law or in connection with the transaction of public business.

The medium on which such information is recorded may be, but is not limited to paper, film, magnetic, optical or solid state devices which can store electronic signals, tapes, mylar, linen, silk

or vellum. The general types of records may be, but are not limited to books, papers, letters, documents, printouts, photographs, films, tapes, microfiche, microfilm, photostats, sound recordings, maps, drawings, and any representations held in computer memory.

Nonrecord materials, meaning reference books and exhibit materials made or acquired and preserved solely for reference use or exhibition purposes, extra copies of documents preserved only for convenience or reference, and stocks of publications, shall not be included within the definition of public records as used in this chapter.

"Archival records" means all noncurrent records of continuing and enduring value useful to the citizens of the Commonwealth and necessary to the administrative functions of public agencies in the conduct of services and activities mandated by law. In appraisal of public records deemed archival, the terms "administrative," "legal," "fiscal," and "historical" shall be defined as:

1. "Administrative value": Records shall be deemed of administrative value if they have continuing utility in the operation of an agency.
2. "Legal value": Records shall be deemed of legal value when they document actions taken in the protection and proving of legal or civil rights and obligations of individuals and agencies.
3. "Fiscal value": Records shall be deemed of fiscal value so long as they are needed to document and verify financial authorizations, obligations and transactions.
4. "Historical value": Records shall be deemed of historical value when they contain unique information, regardless of age, which provides understanding of some aspect of the government and promotes the development of an informed and enlightened citizenry.

"Medical records" means the documentation of health care services, whether physical or mental, rendered by direct or indirect patient-provider interaction which is used as a mechanism for tracking the patient's health care status. Medical records may be technologically stored by computerized or other electronic process, or through microfilm or other similar photographic form or chemical process. Notwithstanding the authority provided by this definition to store medical records on microfilm or other similar photographic form or chemical process, prescription dispensing records maintained in or on behalf of any pharmacy registered or permitted in Virginia shall only be stored in compliance with [§§ 54.1-3410](#), [54.1-3411](#) and [54.1-3412](#).

"Official records" means public records.

"Persons under a disability" means persons so defined under subsection A of [§ 8.01-229](#).

"Preservation" means maintaining archival records in their original physical form by stabilizing them chemically or strengthening them physically to ensure their survival as long as possible in their original form. It also means the reformatting of written, printed, electronic or visual archival information to extend the life of the information.

"Retention and disposition schedule" means an approved timetable stating the retention time period and disposition action of records series.

"Software programs" means the written specifications used to operate an electronic records system as well as the documentation describing implementation strategies.

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?

Additional comments:

As a result of *Hall v. Commonwealth*, No. 1265-99-2 (Ct. of Appeals Apr. 18, 2000), "Public record" means, but is not limited to, all written books, papers, letters, documents, photographs, tapes, microfiche, microfilm, photostats, sound recordings, maps, other documentary materials or information in any recording medium regardless of physical form or characteristics, including electronically recorded data, made or received in pursuance of law or in connection with the transaction of public business by any agency or employee of state government or its political subdivisions."

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

Yes  
 No

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

Va. Code Ann. §42.1-82 (1999) - Duties and powers of Library Board states that "The State Library Board shall with the advice of the Council [State Public Records Advisory Council]:

1. Issue regulations to facilitate the creation, preservation, storage, filing, reformatting, management, and destruction of public records by all agencies. Such regulations shall establish procedures for records management containing recommendations for the retention, disposal or other disposition of public records; procedures for the physical destruction or other disposition of public records proposed for disposal; and standards for the reproduction of records by photocopy or microphotography processes with the view to the disposal of the original records. ...

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.

Records Management and Imaging Services Division of The Library of Virginia has issued Records Retention and Disposition Schedule, General Schedule No. 110, Schedule Title: Electronic Records, Scheduled Agencies: All State Agencies.

## POLICIES FOR ELECTRONIC RECORDS RETENTION AND DISPOSITION

This schedule provides for the disposition of electronic records, regardless of format or hardware. Electronic records consist of computer tapes and disks, optical disks, and any other form of magnetic, electronic or digital recordings and their associated programs, documentation, manuals or instructions.

The word "delete" as used in this schedule refers to the electronic erasure or deletion of computer records.

Refer to the Library of Virginia's (LVA) [Guidelines for Managing Electronic Records](http://www.lva.lib.va.us/whatwedo/records/electron/er-guide.htm) <http://www.lva.lib.va.us/whatwedo/records/electron/er-guide.htm> for additional information on the retention, storage and preservation of electronic records.

The purpose of this document is to provide guidelines for the creation, preservation, storage, filing, reformatting, management and disposition of electronic records for all state agencies and localities. The effective date of this publication is June 10, 2002

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.

Additional comments:

The Library of Virginia has issued the [Virginia Public Records Management Manual](http://www.lva.lib.va.us/whatwedo/records/manuals/00m-int.htm) and in the Introduction there is a note from the State Records Administrator <http://www.lva.lib.va.us/whatwedo/records/manuals/00m-int.htm> which states:

Virginia has one of the oldest state records management programs (1949) and State Archives (1902) in the nation. By instituting these programs, the Commonwealth established itself as a leader in protecting public records. These records protect the rights and responsibilities of both the governed and their government; they also provide current and historical documentation of our society. Public records provide administrative, legal, historical and fiscal accountability, as well as continuity in governance.

As officials for Virginia's state agencies and localities, it is our responsibility to ensure that government information-public records-exists and is available as required by records retention and disposition schedules, state statutes and rules.

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.

Va. Code Ann. §42.1-79 (1999) - Records management function vested in Board; State Library Board to be official custodian; State Archivist. – The archival and records management function shall be vested in the State Library Board. The State Library Board shall be the official custodian and trustee for the Commonwealth of all public records of whatever kind which are transferred to it from any public office of the Commonwealth or any political subdivision thereof. As the Commonwealth's official repository of public records, The Library of Virginia shall assume administrative control of such records on behalf of the Commonwealth.

The Library of Virginia shall name a State Archivist who shall perform such functions as the Librarian of Virginia assigns.

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

Additional comments:

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:

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.

Va. Code Ann. §2.2-3700 et seq. (2001)

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

Additional comments:

2. The freedom of information act statutes/regulations apply to which of the following branches?

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

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

Additional comments:

The answer to this question was a result of a phone conversation with the Executive Director of the Virginia FOI Advisory Council.

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

Va. Code Ann. §2.2-3701 (1991) - Definitions. –

"Public records" means all writings and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photography magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business.

Additional comments:

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

Yes

No

- a. If "Yes," discuss whether the freedom of information act statutes/regulations had been amended at any time to cover electronic records; cite to and provide amending language.
- b. If "Yes," also cite to and briefly discuss statutes/regulations addressing electronic records; how are they treated differently?

Additional comments:

Virginia hasn't framed the issue in this fashion. A public record is a public record, it's the technology that is different. Electronic records are treated the same as printed records.

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:

FOIA would try to guarantee "permanent public access" but there is nothing in the law that states this.

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.

Va. Code Ann. §2.2-3700 (2001). Short title; policy.—

By enacting this Chapter, the General Assembly ensures the people of the Commonwealth ready access to records in the custody of public officials and free entry to meetings ... All public records and meeting shall be presumed open, unless an exemption is properly invoked.

The provisions of this chapter shall be liberally construed to promote and increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government. ...

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.

b. If “No,” skip this whole section.

Additional comments:

2. For each public access law, specify the branches to which it applies.

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

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

Additional comments:

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

Additional comments:

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

Yes  
 No

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

Additional comments:

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

Yes  
 No

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

Additional comments:

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

Yes  
 No

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

Additional comments:

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

Yes  
 No

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

Additional comments:

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

Yes  
 No

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

Additional comments:

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

Yes  
 No

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

Additional comments:

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

**D. STATE OFFICE FOR TECHNOLOGY AND CHIEF INFORMATION OFFICER**

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

Yes  
 No

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

The position of “Secretary of Technology” was created in 1998 and codified in 1999 – the first cabinet-level chief information officer position in the nation. The statute creating the position is Va. Code Ann. §2.2-225 (2001).

Official Name: Secretary of Technology

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

Additional comments:

Secretary is responsible to the Governor for the following agencies and boards: Department of Information Technology, Department of Technology Planning, Innovative Technology Authority, Virginia Information Providers Network Authority, Virginia Geographic Information Network Advisory Board, and the Wireless E-911 Services Board.

2. Cite the “enabling” statute that created and defines the powers/responsibilities of the office/officer; when was the statute first enacted?

Va. Code Ann. §2.2-225 through 2.2-227 (2001). First enacted in 1999.

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.

See Va. Code Ann. §Section 2.2-226 (2001). According to the statute: “The Secretary shall function as the Chief Information Officer (CIO) of the Commonwealth. In addition to his powers and duties as Secretary, the CIO shall.... 3. Prescribe regulations necessary or incidental to the performance of his duties or execution of his powers...”

Additional comments:

None promulgated to date.

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:

The Secretary of Technology has jurisdiction over the Executive branch of government.

Va. Code Ann. §2.2-225 (2001). The Secretary is responsible to the Governor for the following agencies and boards: Department of Information Technology, Department of Technology Planning, Innovative Technology Authority, Virginia Information Providers Network Authority, Virginia Geographic Information Network Advisory Board, and the Wireless E-911 Services Board.

Va. Code Ann. §2.2-201 (2001). "Each Secretary shall be considered an extension of the Governor in the management coordination and cohesive direction of the executive branch of state government ensuring that the laws are faithfully executed."

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.

Va. Code Ann. §42.1-82 et seq. (1999) (Virginia Public Records Act) establishes The State Librarian as the custodian for all public records in the Commonwealth, including all state agencies and secretariats, and counties, cities, and towns. All affected public bodies are required to follow a record retention and disposition schedule and designate a records custodian.

Va. Code Ann. § 42.1-86.1 (1999). No agency shall destroy or discard public records without a retention and disposition schedule approved by the Librarian of Virginia as provided in § 42.1-82. No agency shall sell or give away public records.

Va. Code Ann. § 42.1-88 (1999). Establishes penalties for non-compliance. "Any custodian of any public records shall, at the expiration of his term of office, appointment or employment, deliver to his successor, or, if there be none, to The Library of Virginia, all books, writings, letters, documents, public records, or other information, recorded on any medium kept or received by him in the transaction of his official business; and any such person who shall refuse or neglect for a

period of ten days after a request is made in writing by the successor or Librarian of Virginia to deliver the public records as herein required shall be guilty of a Class 3 misdemeanor."

Va. Code Ann. § 2.2-3700 et seq. (2001). (Virginia Freedom of Information Act) ensures public access to official public records and public meetings.

Additional comments:

The Secretary of Technology works with The Library of Virginia in accordance with the Public Records Act to ensure all public records, no matter what medium (paper or electronic), are in compliance with the retention and disposition schedule. Permanent records are transmitted to the state archives based on the retention and disposition schedule.

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.

See above (Public Records Act, Virginia Freedom of Information Act).

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:

The Secretary of Technology recognizes the importance of public record management and retention issues, particularly in an electronic environment. To ensure records management and access issues are addressed in enterprise technology initiatives, the Governor has appointed the State Records Administrator to the Council on Technology Services (COTS). COTS is an advisory board created in 1998 and codified in 1999 to advise and assist the Secretary of Technology ([www.cots.state.va.us](http://www.cots.state.va.us)).

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.

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

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

Additional comments:

The official state IT plan is under development and will be released on or before September 15, 2002.

2. The technology plan covers which branches?

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

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

Additional comments:

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

Yes  
 No

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

Additional comments:

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

**F. STATE PRINTING OFFICE AND STATE PRINTER**

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

Yes  
 No

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

b. If “No,” skip this whole section.

Additional comments:

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

Additional comments:

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

Yes  
 No

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

Additional comments:

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

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

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

Additional comments:

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

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

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

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

Additional comments:

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

Yes  
 No

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

Additional comments:

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

Yes  
 No

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

Additional comments:

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

Yes  
 No

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

Additional comments:

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

Yes  
 No

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

Additional comments:

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

Yes  
 No

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

Additional comments:

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

Yes  
 No

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

Additional comments:

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

## G. STATE ARCHIVES AND STATE ARCHIVIST

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

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

Yes  
 No

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

State Archivist

Va. Code Ann. §42.1-79 (1999)

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

Additional comments:

The State Archivist falls under The Library of Virginia and the Librarian of Virginia.

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

1976 Va. Acts ch. 746.

Additional comments:

Powers/responsibilities of archives/archivist aren't really spelled out. Just that the archival and records management function shall be vested in the State Library Board and that the Library of

Virginia shall name a State Archivist who shall perform such functions as the Library of Virginia assigns.

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:

But only under the auspices of the State Library Board.

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.

Additional comments:

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

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.

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:

Only through the Public Records Act.

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.

The Public Records Act specifies in electronic records as being within the definition of public records. The Act directs that the archival and records management function shall be vested in the State Library Board and that the Library of Virginia shall name a State Archivist who shall perform such functions as the Library of Virginia assigns.

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.

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.

Va. Code Ann. §42.1-1 (1999). The Library of Virginia

The Library of Virginia is hereby declared an educational institution and an institution of learning. The Library of Virginia shall be the library agency of the Commonwealth, the archival agency of the Commonwealth, and the reference library at the seat of government. ...

Va. Code Ann. §42.1-13 (1999). Appointment

The Board shall appoint a librarian, to be known as the Librarian of Virginia.

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

Additional comments:

Note – there is a State Law Library managed by the Supreme Court (Va. Code Ann. §42.1-60 (1999).)

There shall be a State Law Library at Richmond, with a branch thereof at Staunton, maintained as at present, which shall be managed but eh Supreme Court. The Court shall appoint the librarian and other employees to hold office during the pleasure of the Court; provided, however, that the clerk at Staunton shall act as law librarian there without additional compensation therefore.

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

Va. Code Ann. §42.1-13 through 42.1-15.1 (1999).

Additional comments:

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

Yes  
 No

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

Additional comments:

But only under the auspices of the State Library Board.

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 (Responsible for local government as well)

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

Additional comments:

Records management also falls under the Library/Librarian of Virginia.

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

Additional comments:

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

Yes  
 No

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

Additional comments:

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

Yes  
 No

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

Additional comments:

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

Yes  
 No

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

Additional comments:

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

Yes  
 No

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

Additional comments:

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

Yes  
 No

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

Additional comments:

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

Yes  
 No

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

Additional comments:

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

## I. STATE DEPOSITORY LIBRARY LAWS

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

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

Yes  
 No

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

Va. Code Ann. §42.1-19 (1999). Establishment of depository system; sending state publications to members. – The Library of Virginia shall establish a depository system and send to the members thereof copies of state publications furnished pursuant to §2.1-467.2 (now §2.2-609B).

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?

They have not been construed to cover “born digital” 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.

Public records addressed in Va. Code Ann. §42.1-76, et seq. (1999); permanent records specified in Va. Code Ann. §42.1-86 (1999). With regard to government publications, no such policy statement has been made.

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:

Library of Virginia keeps 2 copies of every publication received from state agencies, one for the permanent collection and one that may circulate. Public retention schedules require one copy of each publication produced by an agency to be kept with the agency's permanent records.

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:

At present, the Library of Virginia knows of approximately 25 titles (mostly manuals and procurement materials) that are now electronic only. As for the number never before distributed, now distributed in electronic format – that is unknown.

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

Additional comments:

At this point, the Library of Virginia is not equipped either with staff, budget or legislative mandate to work on this issue. A committee has been formed at the Library of Virginia made up of archivist, records managers, IT professional and depository librarians to begin to address these issues.

## J. COOPERATIVE ARRANGEMENTS

One can imagine any number of cooperative arrangements to assure "permanent public access." A well-known example is the partnership between the Texas Electronic Depository program (involving the Texas State Library and Archives Commission) and the University of North Texas Libraries (see description for program C304 at Computers in Libraries 2002 on the Information Today website). A hypothetical example

of a less formalized cooperative arrangement is where a state's highest court relies on the state bar association to publish the court's decisions.

1. To secure PPA, has any state agency or other government entity (judicial, legislative or executive) partnered with any not for profit, educational, or for profit organization outside of government?

Yes  
 No

a. If "Yes," describe each partnership, noting whether it is funded by a grant or through a government appropriation; give a brief history and summary of accomplishments.

Additional comments:

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

Yes  
 No

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

Additional comments:

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

Yes  
 No

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

Additional comments:

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

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

a. If possible, cite to and discuss one or two specific places in statutes or other sources of law where the state legislature or a responsible agency might naturally insert basic reform language.

b. If specific places to insert reform language are not obvious, very briefly discuss what state agency or other government entity might naturally be made responsible for "permanent public access."

It would make sense in the public records act to require public access, as well as permanent retention to electronic 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)

George Newstrom  
Secretary of Technology  
Office of the Secretary of Technology  
202 N. Ninth Street, Suite 506  
Richmond, Virginia 23219  
Ph. 804-786-9579  
Fax 804-786-9584  
[Sotech@gov.state.va.us](mailto:Sotech@gov.state.va.us)

2. State Printer

None

3. State Archivist

Conley Edwards  
Director - Archival and Information Services  
The Library of Virginia  
800 East Broad Street  
Richmond, VA 23219  
804-692-3554  
[cedwards@lva.lib.va.us](mailto:cedwards@lva.lib.va.us)

4. State Librarian and/or State Law Librarian

Nolan Yelich  
Librarian of Virginia  
The Library of Virginia  
800 East Broad Street  
Richmond, VA 23219  
804-692-3535  
[nyelich@lva.lib.va.us](mailto:nyelich@lva.lib.va.us)

Ms. Gail Warren  
State Law Librarian

Virginia State Law Library  
Supreme Court Bldg.  
100 N. 9th St. 2nd Fl.  
Richmond, VA 23219  
Phone: 804-786-2075  
Fax: 804-786-4542  
Email: gwarren@richmond.infi.net

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

Jerry Kilgore  
Office of the Attorney General  
900 East Main Street  
Richmond, VA 23219  
Phone: 804-786-2071  
Fax: 804-786-1991  
Email: mail@oag.state.va.us

Marcia Everett  
Executive Director, Virginia Freedom of Information Advisory Council  
Virginia Division of Legislative Services  
General Assembly Building, 2nd Floor  
910 Capitol Street  
Richmond, VA 23219  
Phone: 804-225-3056  
Toll-Free 1-866-448-4100  
e-mail: foiacouncil@leg.state.va.us

**M. IMPORTANT STATE RESOURCES**

Provide URLs or other finding information for:

1. Official state home page

[www.vipnet.org](http://www.vipnet.org)

2. State agency portal

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

[www.vipnet.org](http://www.vipnet.org) - has a similar searching capability to FirstGov

3. Legislative website - <http://legis.state.va.us/>

a. Does the website cover the current year only? Goes back to 1994

b. Are services free or fee-based? Free

4. Judicial websites

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

5. Regulatory agency websites

<http://legis.state.va.us/codecomm/codehome.htm> - provides access to the Virginia Code Commission. Access regulatory materials through the state home page and the judicial website (click on Legal Links).

6. Freedom of Information Service Hotline

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

Yes, the Virginia Freedom of Information Advisory Council  
<http://dls.state.va.us/foiacouncil.htm>

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

Yes & No. Contact the attorney general's office which will provide direction to the Virginia Freedom of Information Advisory Council.