

Government Preservation Act and Public Records Act

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OUR GOAL:

KSHS records management section's purpose today is to provide the knowledge and skills training that will enable you, the participant, to understand the Kansas governmental recordkeeping process that is designed to ensure compliance with state and/or federal regulations and statutes.

In addition to this presentation, KSHS facilitates this through publication of the State and Local Government Records Management Manuals in 1997; the KSHS website; correspondence by email, post, fax or telephone; and other presentations across Kansas.



KSHS Mission

KSHS, founded in 1875 by newspaper editors, has this mission: to identify, collect, preserve, interpret, and disseminate materials and information pertaining to Kansas history in order to assist the public in understanding, appreciating, and caring for the heritage of Kansas.

We can accomplish part of the Society's mission through records management.



Kansas History Center Complex

- *Center for Historical Research:*
- State Archives
- Library
- Federal Depository
- Manuscript, Photograph, and A-V Collections
- State and Federal Registers of Historic Places
- Archeology Office
- KSHS, Inc
- State Records Center (off-site)
- Kansas Museum of History
- Stach School
- Koch Educational Center in the Potawatomie Baptist Mission
- Discovery Place
- Nature Trails



Organizational Structure of the Kansas State Historical Society



- 7 Separate Divisions:
- Administration
- Cultural Resources
- Education/Outreach
- Historic Sites
- Library/Archives
- Museum
- KSHS, Inc.



Unique Composition of the Library/Archives Division

- Records management section incorporated within a historical society is unusual
- Archival and records management staff can more easily coordinate efforts to identify, preserve, and collect records



Which Collections within KSHS Apply to Statutory Authority?

State and Local (County, municipality, township) Records
Photographs (some)
Maps (some—plat, highway, etc.)
Architectural Drawings (some—capital improvement projects, etc.)



Which Collections within KSHS Do Not Apply to Statutory Authority?

Business Records
Newspapers
Legislative papers
Published Materials
Diaries and journals
Maps (some)
Architectural Drawings (some)
Photographs (some)
Correspondence (some)



Records Management and the Law

Government Records Preservation Act

(K.S.A. 45-401 through 45-413)

Public Records Act

(K.S.A. 75-3501 through 75-3518)

Open Records Act

(K.S.A. 45-215 through 45-229)

Electronic Media

(K.S.A. 45-501)



Records Management and the Law

Tampering with Public Records Act

(K.S.A. 21-3821)

Standard Sized Paper

(K.S.A. 45-502)

Uniform Electronic Transactions Act

(K.S.A. 16-1602 through 16-1620)

Governor's Records

(K.S.A. 75-104)



Records Management and the Law

- **Information Technology Governance Structure**
(K.S.A. 75-201 through 75-7212, K.S.A. 75-2935(f), K.S.A. 65-3739, K.S.A. 75-5147, K.S.A. 76-3,100 and K.S.A. 60-2616)



Government Records Preservation Act

- Defines a "record"
- Defines a "non-record"
- Declares records to be state property and prohibits unauthorized destruction
- Lists duties & responsibilities of the State Records Board
- Designates the KSHS as the official state archives
- Specifies the duties and responsibilities of the State Archivist
- Authorizes the State Archivist to access confidential information
- Requires state and local agencies to cooperate with the SRB and the State Archivist
- Exempts legislative and judicial records from SRB control
- Stipulates the conditions for the destruction of records after microfilming



Public Records Act

- Complements and expands the Government Records Preservation Act
- Defines “records”
- Creates, establishes the composition, and outlines the responsibilities of the SRB
- Requires agency compliance with micrographic and optical disc records
- Authorizes the admissibility in court of micrographic and optical disc records
- Establishes the State Records Center as the depository of inactive state government records
- Provides guidelines for the use of acid-free and permanent paper

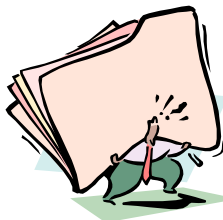


Electronic Media

- **K.S.A. 45-501** (applies to state and local governments)
- Authorizes electronically accessed media
- Notice to State Records Board if records are only available electronically
- Availability of electronic records



Standard Size Paper



- **K.S.A. 45-502**
- State agencies and courts shall permit the filing of documents and pleadings on standard size forms
- Does not prohibit the use of nonstandard paper



Tampering with Public Records Act

- **K.S.A. 21-3821**
- Knowingly and without lawful authority altering, destroying, defacing, removing, or concealing any public record
- Class A misdemeanor



Information Technology Governance Structure

- **K.S.A. 75-201 through 75-7212, 75-2935(f), 65-3739, 75-5147, 76-3,100 and 60-2616**
- Repeals K.S.A. 75-3739 and the KIRC
- Permits sole source procurement
- Increases the dollar amount of purchases that can be bid by telephone, fax, or sealed bids to \$25,000
- Establishes the Joint Committee on Information and Technology
- Allows the Director of Purchases to delegate agency authority to make direct purchases of less than \$25,000
- Establishes the Information Technology Executive Council
- Establishes Chief Information Technology Officers for the three branches
- Authorizes posting of public notices for 3 days to solicit bids for purchases between \$25,000 and \$50,000



Uniform Electronic Transactions Act

- **K.S.A. 16-1601 through 16-1620**
- Includes definitions
- Scope of the law
- Prospective application
- Electronic signatures allowed
- Legal recognition of electronic records and signatures
- Retention of electronic records



Governor's Records

- **K.S.A. 75-104**
- Seven categories of records are required to be maintained by the governor remain with governor's office during and three years after term ends
- Following the three year period the records shall be transferred to the state historical society
- Other governor's records shall be transferred to the state historical society
- Former governor is considered the custodian until death



Disposal of Government Records

- **K.S.A. 75-3504** grants authority to the SRB to order the destruction, reproduction, temporary or permanent retention and disposition of public records and to establish records disposal schedule for the orderly retirement of records.



Government Records are Public Property

- **K.S.A. 45-403**
- Records made or received by and all government records coming into the custody, control, or possession of state or local agencies in the normal course of business shall not be mutilated, destroyed, damaged except as permitted by retention/disposition schedules
- Statute also applies to records deposited in the state archives



Records Management and the Law

Municipality records

NOT including sources cited above:

K.S.A. 12-120 through 12-123 list destruction of certain records, statutory basis for record disposal of documents of temporary value after a reasonable time, reproduction of records on film, evidence in courts or administrative agencies.

K.S.A. 10-111 lists cancellation of bonds and coupons.



Records Management and the Law

Municipality records

K.S.A. 13-518 defines the general duties of the city clerk, records and accounts, deputies, and salaries.

K.S.A. 58-2224 lists the recordation of instruments, papers or documents; making of photographic or microphotographed copies deemed recording and record books.



Records Management and the Law

Municipality records

K.S.A. 60-465 covers authentication of copies of records.

K.S.A. 60-469 details photographic copies to prove content of business and public records.

F.L.S.A. 29 C.F.R. § 516.5 and § 516.6 cover payroll records, employment records, purchase of goods and supplies.



Records Management and the Law

Municipality records

A.G. Opinion #76-88 denotes public records and destruction of certain police records

Kansas Supreme Court Administrative Order No. 138 lists the minimum retention for certain municipal ordinance convictions of misdemeanors.



Records Management and the Law

State, District and Municipal Courts

The State Records Board no longer has authority over court records in Kansas, but the retention and disposition of court records are defined in **Supreme Court Rule 108**, which KSHS assisted with. This can be accessed at:

<http://www.kshs.org/government/records/localgovt/supremecourtrule108.htm>



R/D Statutory Definition

- **K.S.A. 45-402(g)** defines r/d schedules as “lists of series of government records specifying which series have enduring value, authorizing disposition of other series of records, and indicating how long certain series of records should be retained before disposition of them”



State General Schedule

- **K.A.R. 53-3-1**
- Records common to most agencies/offices
- Establishes the minimum retention
- Generally reflects audit requirements
- Apply access restrictions with caution
- Be aware there may be other state or federal retention requirements



Agency/Office Specific Schedules

- Records unique that agency or office
- Establishes the minimum retention
- General reflect audit requirements
- Apply access restrictions with caution
- May be other state or federal statutes or requirements
- Filed sequentially with the Secretary of State's Office



We will discuss retention and disposition schedules in more detail in the second half of our presentation.



Records Officers—Responsibility and Authority

The records management officer should be given the responsibility and authority to coordinate:

- Development of a records retention schedule
- Legal destruction of obsolete records
- Development of micrographics, electronic and data processing systems
- Training of staff or other persons on techniques



Records Officers—State Agencies

Kansas Administrative Regulation 53-4-1 requires the director of each state agency to appoint a **records officer** for the agency or for each major organizational subdivision. This regulation was approved to implement the Public Records Act, K.S.A. 75-3501 to 3516, by designating someone within each agency to oversee the efficient management of agency records.



Records Officers—State Agencies

Essentially, records officers, on behalf of the agency, may be responsible for all issues of records management policy and statutory compliance with the Public Records Act, the Records Preservation Act, and the Open Records Act, the three major laws dealing with state records in Kansas.



Records Officers—State Agencies

The duties of the records officer shall be to:

- (1) Maintain a Liaison between the agency, the state records board, and the State Archives of the Kansas State Historical Society;
- (2) prepare and maintain an inventory of each record series in the custody of the agency in cooperation with the archives staff;
- (3) prepare and submit retention and disposition schedules for the state agency's records for approval or modification to the state records board in cooperation with the archives staff;



Records Officers—State Agencies

The duties of the records officer shall be to:

- (4) periodically review the agency's records retention and disposition schedules, and submit requests for any needed modifications to the state records board;
- (5) disseminate pertinent information regarding records management to appropriate staff members within the state agency; and



Records Officers—State Agencies

The duties of the records officer shall be to:

- (6) formulate and oversee implementation of agency records management policies and procedures with the assistance of the archives staff to ensure compliance with all applicable federal and state statutes and regulations.
 - (A) Precautions against the destruction or other disposition of agency records without authorization of the state records board, except that these records may be transferred to the state archives with the consent of the state archivist under K.S.A. 45-405;



Records Officers—State Agencies

The duties of the records officer shall be to:

- (B) storage conditions and procedures for handling agency records with enduring value that will minimize damage and deterioration;
- (C) security arrangements that prevent loss, defacement or destruction of agency records due to theft or vandalism; and
- (D) procedures to ensure that all microfilm copies of records with enduring value meet the requirements of K.S.A. 75-3506 and K.S.A. 45-412.



Records Officers—State Agencies

The duties of the records officer shall be to:

- (b) At the discretion of each agency director, the records officer may be responsible for ensuring adequate public access to agency records as required by the open records act, K.S.A. 45-201 et seq., and for ensuring that satisfactory safeguards exist against unauthorized disclosure of confidential records.
- (c) Each records officer shall be a staff member holding an administrative or professional position. The duties of the records officer may be collateral duties to an existing position in the agency.



County Officers' Responsibilities

All governments in Kansas, be they local or state, are obligated by statute, regulation, and principle to follow proper records management and preservation procedures.

The State Records Board assists counties in this task by approving the records retention schedule of county government records, establishing best practices, and recommending, though not mandating, similar guidelines for municipalities and townships.



County Officers' Responsibilities

K.S.A. 45-404 details State Records Board (and subsequently KSHS) authority over all county public records, and recommendations for other types of local governments.

- NO state or county record can be destroyed without approval from SRB
- SRB approves r/d schedules for counties
- Counties can act on approved r/d schedules
- Counties can transfer any non-current record to the State Archives, or non-restricted records to appropriate institutions like a historical society or library



County Officers' Responsibilities

K.S.A. 45-404 continued . . .

- Approve of microphotographic standards
- Approve the destruction of original government records should they be appropriately filmed



County Officers' Responsibilities

K.S.A. 45-409 states that local governments should cooperate with state archivist representatives if they choose to inspect, list, microfilm, or improve the arrangement of government records. That local governments do not have to provide money or staff for this purpose, but they should heed the recommendations provided.



State Records Board

- **K.S.A. 45-404** describes the duties of the State Records Board
- **K.S.A. 75-3502** authorizes the State Records Board and its members
- **K.S.A. 75-3503** establishes ex officio members
- **K.S.A. 75-3504** provides records disposition authority



Primary Responsibility of the State Records Board

K.S.A. 75-3504 states that the board “...shall be specifically required to safeguard the legal, financial, and historical interests of the state...”



It is the goal of the State Records Board that all records created or received by state agencies and local governmental offices in the normal course of business be covered by either the General Schedule or an agency specific schedule.



State Records Board Procedures



- Nine provisos including:
- Quarterly meetings Jan. April, July, Oct.
- Records requests must be submitted to the KSHS first
- KSHS provides support staff



Records Inventory—What exists, and Where is It?

Part of one’s success at accessing and controlling information is knowing what exists, and where it is. A records inventory accomplishes this on many levels. Having an understanding to the records retention and disposition schedules within the state of Kansas is vital. By studying, or even creating these, one can discover the answers.



Records Inventory— What is a Records Retention and Disposition Schedule

A **timetable** that identifies a record grouped into series, listing its description, appropriate length of time to be retained, its disposition, and even authority or restrictions throughout its life cycle.



Records Inventory—What exists, and Where is It?

Thus,

A records retention and disposition schedule is required for all state agencies and county offices, and somewhat required for municipalities, so what better place to look for a record first than the index to the record's management?



Types of Retention Schedules

- General. Includes records series common to most agencies and offices such as correspondence, or accounts payable, contracts, or bids, etc.
- Agency/Office Specific. Includes records unique to an agency or office, such as deed records, notices of approved intents to drill, emergency dispatch logs.



State General Schedule

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Appraising Means Analyzing Records' Values

In order to establish the final retention and disposition of a record, it is necessary to appraise it through four key values:

- Administrative
 - Used in performing current and future work. Includes policy and operational.
- Fiscal
 - Financial transactions and accounting. Includes attention to audit requirements.

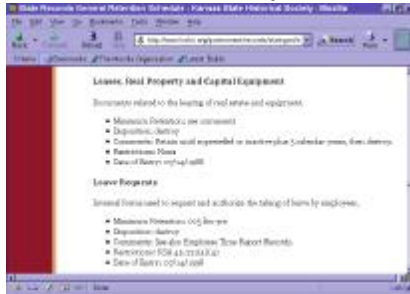


Appraising (continued)

- Legal
 - Evidence of legally enforceable rights or actions. Includes legal decisions, opinions, agreements such as contracts, records of actions taken such as claims.
- Historical
 - Even after possibly losing Administrative, Fiscal, or Legal value, these records provide authentic essential evidence of enduring value. Includes organizational origin and structure, policies or actions, and events.



Sample Retention Schedule Entry



Components of a R/D Schedule

Title:

Provides a title that most accurately describes the records series. It should avoid pseudonyms or nicknames, but may contain these nonetheless.

Also look out for different names for the exact same record series—uncommon, but it does happen.

Components of a R/D Schedule

Description:

This should summarize the nature and purpose of the record series, and possibly explain why a series was created and its function. It should include a complete list of document types, such as records interfired or with a common retention. It is best if it does not repeat the series title.

Some r/d schedules do not give a description and rely on the title to describe the series, this is not an ideal situation because it leaves the description to interpretation.

Components of a R/D Schedule

Minimum Retention:

Minimum retentions outnumber maximum retentions by far in records management practice. Minimum retention refers to the earliest a document can be disposed of (destruction, donation, archiving, etc.). Maximum retention mandates the latest a record can be retained before disposition. A number and a calendar or fiscal year usually occupies this space.

Minimum retention is the standard for Kansas state and county governments.

Components of a R/D Schedule

Disposition:

This portion of the record series entry relates the way that a record is dealt with in regards to the retention requirements. It commonly is reflected by terms such as destroy or permanent, or will refer to the comments field. Disposition can include destruction, donation, or permanent (archiving), etc.

Components of a R/D Schedule

Comments:

This could note any statutes or regulations that affect management of the record series, or any other aspect of the record series entry, including description, retention, or disposition.

Components of a R/D Schedule

Restrictions:

This cites what restrictions exist, and their exact reason. It cannot be assumed that it addresses all possible restrictions under local, state, or federal law or regulation, but it should be fairly comprehensive or cite NONE. This can be the more difficult part of a r/d schedule for its creators.



Components of a R/D Schedule

Date of Entry/Approval:

It aids the agency, office, and researcher to know when a record series date of entry/approval is for a record series. Considering its status as a K.A.R., its existence has legal considerations on top of its other values. One should be able to tell its dates of origin, or modification, or even when a record series became obsolete. This can affect a records officer's/custodian's obligations under the law.



Digital Storage Considerations

- KSA 75-3501 through 75-3518 allows optical disks as per SRB standards
- Check our many guidelines for electronic records on our web site at: <http://www.kshs.org>; contact Scott Leonard, Electronic Records Specialist, sleonard@kshs.org, 785-272-8681 ext. 280
- Indexing control is vital
- Compatibility issues with changing technology
- Quality control
- Security



Digital Storage Considerations

More and more, people rely on digital storage of information. Some records never even see hardcopy status. Some couldn't.

Governor Sebelius' Executive Order 03-02 mandates that the state employees' directory will be on the web only to save the state \$45,000.

A group of state employee professionals is currently working on a digital storage pilot project that in the very near future will be the home of digital format state publications. Check out www.KSPACe.org.



State Records Center

- K.S.A. 75-3509 through 75-3511
- Authorized in 1957 and funded in 1992
- Depository for inactive state government records under authority of the KSHS
- Receive, store, and provide ultimate disposition of inactive and non-current records
- Not required
- SRC shall make records available promptly to the originating agency
- Originating agency's approval is necessary for use by other state agencies
- Legal custody remains with the originating agency

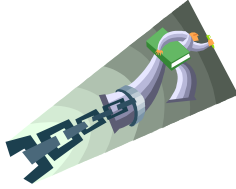


Mission of the State Records Center

It is the mission of the state records center to provide centralized and secure storage for inactive state government records; provide efficient and timely retrieval of records to the office of origin, and provide for the transfer of inactive state government records to the state archives.



Advantages of the SRC



- Cheaper to store off-site than expensive office space
- Frees staff from devoting time and energy trying to find records
- Reduces the need for expensive filing equipment
- Provides better security for confidential records



SRC Procedures

- Agency must have r/d schedule before transfer
- Inactive records only
- Agency must have an assigned records officer to oversee the process
- Agency must complete an authorization for access form
- Public is not allowed access
- **K.S.A. 75-3511** prohibits the use of state agency records by other state agencies without the originating agency's consent
- Prior arrangements can be made to accommodate auditors or staff requiring a large quantity access



Record Formats

Government Records can come in any format: **paper, micrographic, or electronic**. A number of statutes and regulations allow for the standardization and proper use of all of these formats.

People are still most comfortable with paper. It is by far the most utilized format throughout human history. There is something inherently valuable (even if it is imagined on occasion) about the tactile feel of information on paper. But, again, it is only data (save for intrinsically valuable documents). This data can be stored in other means.



Record Formats—Hard Copy v. Paper

The records retention and disposition schedule, the records officer/custodian, or anyone with institutional memory can provide clues or answers to locations of records in their respective formats.

Hard copy v. paper refers to micrographics versus paper. How does one know what format the record is in? Ideally, whichever is the better medium. The discussion includes several key points . . .



Record Formats—Hard Copy v. Paper

If the records need to be kept long term or permanently, then micrographics is still the number one industry standard for archiving—in tests more stable than paper or electronic format.

Additionally, if there is little space to store paper, then micrographics can be the answer.

Moreover, consider if the data is more important than the format, this is where micrographics can be useful.



Record Formats—Hard Copy v. Paper

Electronic/digital format provides the premier accessibility format for just about any record. It can be recalled instantly, modified, secured, and stored with little physical space. However, it is the most easily corrupted, and information migration year after year can be difficult and costly.

With all of the formats, retentions, accessibilities, and storage issues, government records can exist in any medium. **What validates each format, and makes it admissible as best evidence?**



Best Evidence

Best evidence as far as courts are concerned is usually ranked: paper, then micrographics, then electronic format (of course, it depends on the nature of the record). If the original record still exists, even though microfilmed, the paper may be the format of choice. This is also true of an electronic copy, should the paper or micrographics exist. But, statutes and regulations allow for the admittance of electronic and micrographic formats.



Best Evidence

K.S.A. 45-412 sets the rules for microphotographic or optical disc copies of records and image recognition and information storage systems and describes the disposition of the original record.

- State Archivist and State Records Board set standards.
- Originals may be destroyed if standards are followed, unless SRB judges the original format to be of enduring value.
- Security negative/backup and accessibility provisions.
- Agencies/offices must offer to KSHS before disposition of originals.
- Allows for deposit of originals or copies at KSHS.



Best Evidence

K.S.A. 75-3506 to 75-3507 give permission to reproduce records on film or disc and allow for them as evidence in courts or administrative agencies providing that they followed the standards recommended by the State Archivist and State Records Board pursuant to **K.S.A. 45-412**.

K.S.A. 16-1612 lists aspects relating to electronic records retention.



Best Evidence—Electronic

K.S.A. 16-1607 to 16-1620 describe legal recognition of electronic records like electronic signatures and electronic contracts.

- A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.
- A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.
- If a law requires a record to be in writing, an electronic record satisfies the law.
- If a law requires a signature, an electronic signature satisfies the law.

K.A.A. 16-1613 states that in a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.



Record Formats—Electronic

Government agencies/offices must maintain an **electronic record register** as required by the Kansas Open Records Act (K.S.A. 45-221(a)(16)). This ideally is a document that details all records kept in electronic format.

However, this requirement may be adapted through the application of an **Electronic Record Keeping Plan**, which is reviewed by the Electronic Records Committee which serves to advise the State Records Board on technical matters.



Record Formats— Applicability/Business Practices

Courts and institutions tend to trust the integrity of a record created during normal business practices of an agency or office.



In Conclusion:

Governments create or acquire records as part of their everyday business practices and should follow a formal system of rules backed by statute and administrative regulation. Understanding this system, in addition to just knowing whether a record should be open, facilitates records access.

