



INFORMATIONAL LEAFLET

July 2007

PUBLIC OFFICIALS: YOUR RECORDS RESPONSIBILITIES AND THE LAW

This leaflet provides an overview of public officials' records responsibilities, public records laws, and the roles of the State and Local Government Records Commissions and Alabama Department of Archives and History (ADAH) regarding public records. More detailed treatments of specific records-related issues may be found in other ADAH publications, as noted in the text. While Government Records Division staff are prepared to advise on information in this leaflet, state and local officials may also wish to consult the Attorney General's Office, their public officials' organizations, or their agency's legal staff for interpretation of Alabama's public records laws.

Who Are Public Officials?

Anyone who works for any level of state or local government—whether in an elected or hired position—is a public official and responsible for satisfying all records requirements. Under the Code of Alabama 1975, Title 36, Chapter 12, Article 1, the term “public officer or servant” includes public employees of counties and municipalities and all persons occupying positions in state government. Title 36, Chapter 25, adds to the definition anyone “who is paid in whole or in part from state, county, or municipal funds.”

What Are Public Records?

In Section 41-13-1, which affirms public ownership of governmental records and describes the records disposition process, the Code of Alabama defines “public records” as:

All written, typed, or printed books, papers, letters, documents, and maps made or received in pursuance of law by the public officers of the state, counties, municipalities and other subdivisions of government in the transactions of public business.

Although this Code section mentions only paper records, a later section (41-13-40) declares that microforms, “when duly authenticated by the custodian thereof, shall have the same force and effect at law as the original record.” Act 458-2001 of the Alabama Legislature (now codified under the Code of Alabama 1975, Sections 8-1A-1 through 8-1A-20) provided for the legal recognition of electronic signatures and certain electronic records, so long as the parties to a transaction agree to their use. The act also stipulates that electronic records, like records in any other format, are subject

to retention and disposition instructions approved by the State and Local Government Records Commissions. As set forth in state and local records disposition authorities (RDAs), those instructions are the same “regardless of the medium on which [the] records may be kept.” Finally, in *Birmingham News v. Mark D. Perry and Alabama Department of Public Safety* (1993), the circuit court for Montgomery County found that “computer tapes themselves are ‘public writings’ and are therefore under the purview of Alabama Code 36-12-40[1991],” the section that establishes public access to most state, county, and municipal records.

What Are the Records Responsibilities of Public Officials?

Records responsibilities derive from state and federal law and regulations, court decisions, Attorney General’s opinions, professional practices, and the administrative need to document decision making. These obligations affect the creation, maintenance, accessibility, and disposition of all public records. An effective system of records administration improves an agency’s overall accountability and helps to ensure that its records will be legally admissible in court.

Public officials are legally obligated to create and maintain records that adequately document the business of their agencies. Government records provide evidence of agency operations, document government and private rights and obligations, and serve as a mechanism of accountability. Therefore, public officials are responsible for ensuring that their records—in whatever storage medium (paper, microfilm, magnetic tape, digital optical disks, or compact disks)—are usable for as long as necessary to satisfy the record-keeping requirements set forth in state or local government RDAs.

The Code of Alabama 1975 contains two chapters that address the general responsibilities of public officials for the care and handling of records they create. Title 36, Chapter 12, and Title 41, Chapter 13, charge public officials to meet the following obligations:

- to create and maintain records that provide full and detailed information regarding the office’s business and activities (Section 36-12-2);
- to protect and preserve records from mutilation, loss, or destruction (Section 36-12-2);
- to transfer to one’s successors in office all current records pertaining to its business affairs or transactions (Section 36-12-4);
- to contact the Alabama Department of Archives and History when records pertaining to the conduct of office business cease to be current (Section 36-12-5);
- to keep the office’s books, records, and accounts, and to make reports, in accordance with procedures and forms prescribed by the Chief Examiner of Public Accounts for audit purposes (Section 41-5-23).

Almost every agency of state or local government has further record-keeping obligations specific to the records it creates. Additional requirements may be set forth in the Code of Alabama, legislative acts, or mandates from state or federal oversight authorities. Besides their general records responsibilities, therefore, public officials must educate themselves to perform these special duties. More information on a wide variety of records matters is provided by Attorney General’s opinions,

which provide specific cases of the Attorney General’s interpretation of the law. While clarifying the law for public officials, these opinions do not carry the force of law themselves. For opinions on a particular records issue, contact the ADAH Government Records Division or the Office of the Attorney General at (334)242-7300; website www.ago.alabama.gov.

Access to Public Records. The primary legislative statement regarding the right to inspect and copy Alabama’s public records is contained in the Code of Alabama 1975, Section 36-12-40:

“Every citizen has a right to inspect and take a copy of any public writing in this state, except as otherwise expressly provided by statute.”

Various statutes do exempt certain records from the open records law or restrict access to them, either permanently or for a specified period of years. Examples of restricted records are adoptions, commitments, voter applications, library circulation records, and criminal investigation files. Further limits on public access have been delineated by Alabama court decisions. In 1981, the Supreme Court established a balancing test to determine rights of access: “Courts must balance the interests of citizens in knowing what their public officers are doing . . . against the interests of the general public in having the business of government carried on efficiently and without undue interference” (*Stone v. Consolidated Publishing Company*). Later court decisions and Attorney General’s opinions have refined this principle, while tending to uphold “a presumption in favor of public disclosure of public writings” (*Chambers v. Birmingham News*) unless there are compelling reasons not to do so.

“Alabama Public Meetings and Records,” a leaflet prepared by the Alabama Press Association and Attorney General’s Office, fully cites and discusses these decisions and opinions. It is available on the press association’s website (www.alabamapress.org/Legals/legals_pom.html). An ADAH leaflet, “Providing Access to Government Records,” is designed to assist state and local officials in satisfying procedural requirements concerning public access to records. (See the ADAH website at www.archives.alabama.gov/officials/accesslft02.html.)

Who Determines Public Records’ Retention Requirements and Disposition Procedures?

Sections 41-13-5 and 41-13-20 through -24 of the Code of Alabama 1975 establish two commissions—the State and Local Government Records Commissions—“charged with the responsibility of determining which [state and local] records shall be permanently preserved because of historical value and which . . . records may be destroyed” after their mandated retention periods expire. ADAH Government Records Division archivists serve as support staff for both commissions. They work with state and local agencies to develop records disposition authorities (RDAs) for the commissions to approve. Under the Code, no state or local government official “shall cause any . . . record to be destroyed or otherwise disposed of without first obtaining the approval” of the State or Local Government Records Commission. Public officials fulfill this legal requirement by consulting the RDA pertaining to their records, contacting the Government Records Division, and following the prescribed records disposition procedure. Currently, state agencies with approved RDAs document records destruction in their annual reports, while local agencies submit a destruction notice (included in their RDA) each time that records are destroyed. State or local government records not covered by an RDA are not legally disposable.

What Are the Penalties for Failing to Comply with Records Responsibilities?

All public officials should be aware of the legal and practical consequences that may occur if they fail to comply with statutory requirements governing the management of public records. Under the Code of Alabama 1975, Section 13A-10-12, tampering with government records is designated as a Class A misdemeanor punishable by up to one year in jail. The section lists three ways in which an official can commit records tampering:

- Knowingly making a false entry in or falsely altering any government record;
- Knowing that s/he lacks the authority to do so, intentionally destroying, mutilating, concealing, removing, or otherwise substantially impairing the verity or availability of a record; or
- Knowing s/he lacks the authority to do so, refusing to deliver a government record after a proper request from a person lawfully entitled to receive it for examination or other purposes.

The law also holds a public official liable for the deliberate destruction of records, or failure to produce records, when investigation, litigation, or audit is imminent. In Sections 36-12-21 through -24, the Code offers a corrective mechanism:

- The official's successor may make a complaint to the judge of the circuit court, or to the judge of the probate court, of the county in which the official resides;
- If a former public official does not deliver the office's records to his or her successor, s/he may be committed to the county jail until the records are delivered;
- A search warrant may be issued to search for and seize records that a public official has unlawfully retained.

Aside from legal penalties, there are sound practical reasons why public officials should make every effort to fulfill their records responsibilities. When an agency fails to maintain appropriate records, destroys them improperly, or simply cannot find them, it may be cited during audit. If its records are not legally admissible, it may lose important court decisions. (See "Legal Admissibility of Public Records" at www.archives.alabama.gov/ol_pubs/leg_adm.html). Citizens denied access to public records may take their grievance to the newspapers, subjecting the agency to embarrassing publicity. Officials may waste space and money storing records they no longer need to keep, or investing in expensive new technology as an unnecessary "cure-all." Conversely, effective records management results in more efficient operation of the agency and better public service. (See "Making a Case for a Records Management Program" at www.archives.alabama.gov/officials/caserm03.pdf.)

For questions about Alabama's public records laws, or for assistance with developing a records management program, please contact: ADAH Government Records Division, P.O. Box 300100, Montgomery, AL 36130-0100; telephone (334)242-4452; FAX (334)353-4321; e-mail records@archives.alabama.gov; website www.archives.alabama.gov.