

A GUIDE TO PUBLIC RECORDS AND RECORD RETENTION REQUIREMENTS

Government employees create and maintain public records as a part of their official responsibilities. These materials may be in paper, electronic, or other formats. This guide will assist you from the outset of your state service in:

- identifying public records that must be incorporated into agency files and maintained under the control of the commonwealth.
- distinguishing public records from extra or convenience copies of records
- identifying personal files that contain information not used to conduct agency business and that may be removed at your discretion, and
- maintaining personal files separate from public records under the control of the agency.

As specified in the Code of Virginia (42.1-88), any custodian of 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 kept or received in the transaction of official business. Any person who shall refuse or neglect to deliver public records for a period of ten days after a request is made in writing by the successor or the Librarian of Virginia shall be guilty of a Class 3 misdemeanor.

What are Public Records?

Public records are recorded information documenting a transaction or activity by or with any public officer, agency, or employee of state government or its political subdivisions. Regardless of physical form or characteristics, 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 records, maps, drawings, and any representations held in computer memory.

Each agency or locality is responsible for determining if the materials it creates meet this definition of a public record. Agencies must create and maintain records containing a full accounting of their organization, functions, policies, and activities. Agency records must also contain the information needed to protect the rights of the government and of the citizens of Virginia directly affected by government activities.

Paper records may be originals or copies, such as file copies of outgoing correspondence or copies forwarded for action. Multiple copies of the same document may each be a record if each serves a separate administrative purpose and if they are kept in separate filing or recordkeeping systems. Extra copies, such as distribution copies, stock copies, and copies maintained for

convenience or reference, are not public records. If electronically created records are maintained in paper recordkeeping systems, the information necessary for a complete record must be printed. Contact your agency's Records Officer for further guidance.

Many factors contribute to the determination that documentary materials are public records. If the answer to any of the following questions is "yes," the document is a public record.

- Did the agency require creation or submission and maintenance of the document?
- Was the document used to conduct or facilitate agency business?
- If the document is a draft or preliminary document created for background or a similar purpose, does it contain unique information that explains formulation of significant program policies and decisions?
- Was the document distributed to other offices or agencies for formal approval or clearance?
- Is the document part of an electronic information system used to conduct government business?

What Documentary Materials are not Public Records?

The Virginia Public Records Act (42.1-76) definition of records *excludes* three specific types of materials: reference books and exhibit materials made or acquired and preserved solely for reference or exhibition purposes; extra copies of documents preserved only for convenience or reference; and stocks of publications.

Are Preliminary Drafts and Working Papers Public Records?

Drafts and working papers should be filed and maintained as part of the agency's records if they explain how the agency formulated and executed significant program policies, decisions, actions, or responsibilities, or contain unique information such as annotations or comments.

What are Personal Files?

The term personal files refers to documentary materials that are either unrelated to the conduct of agency business (e.g., files relating to political activities, personal and family matters, or non-governmentally related social or civic activities), or indirectly related to agency business but outside the scope of the definition of public records (i.e., not used to conduct government business, except at the gubernatorial and secretariat level).

Personal files are those materials that belong to an individual, not the agency. Certain files are clearly personal, such as those that are not used in the transaction of agency business.

Personal files may contain references to or comments on agency business, but they are considered personal only if they are not used in the conduct of business. Traditionally, personal files have included the following categories of material:

- business or professional files created before entering government service, and files created during or relating to previously held positions, political materials, and reference files.
- private files brought into, created, or received in the office, and family and personal correspondence and materials documenting professional activities and outside business or political pursuits. Manuscripts and drafts for articles and books and volunteer and community service records are considered personal, even if created or received while in office, because they do not relate to agency business.
- work-related personal files including diaries, journals, notes, and personal calendars and appointment schedules (below the gubernatorial and secretariat level). Though work-related, they may be personal if they are used only as reminders and personal observations on work-related topics, not for the transaction of government business. This category is the most difficult to distinguish from records because of its work-related content.

What Do I Need To Do When I Enter State Service?

You and your staff should follow these recommended recordkeeping practices. This practice should begin immediately upon taking the position and be faithfully followed throughout your tenure in the position.

- Contact the agency's records officer for agency records management policies and procedures.
- Implement the records management policies and procedures issued by the agency records officer. Following retention schedule guidelines on records creation and procedures for filing (manually or electronically), for all types of records, including paper records and electronic records—including records generated with electronic mail, word processing, spreadsheet, and other desktop applications—audiovisual records, cartographic records, architectural and engineering records.
- Establish separate files and directories for public records and personal materials to avoid the difficult task of reviewing voluminous materials when you are ready to leave the agency.
- Decide if you want copies of records (usually those that you have originated, reviewed, signed, or otherwise acted upon) for later use, and consult with appropriate agency officials (e.g., records officer) to find out if the agency permits duplication and removal of duplicate.
- Make copies of public records for your personal use as they are being created.
- Document the substance of meetings and telephone and face-to-face conversations where decisions are made, issues are resolved, or policy is established.
- Extract government business information from documents that contain a mix of personal and business matters and include the business information in agency files.

Why Should I Care About Records?

You and other government employees have a legal obligation to ensure that your agency establishes and follows appropriate records creation and maintenance procedures. Good recordkeeping

- contributes to the smooth operation of your agency's programs by making the information needed for decision making and operations readily available;
- provides information useful to successor officials and staff for background and analysis, facilitating transitions between administrations;
- creates a complete record of your official actions that will remain with the agency for future use by agency officials and may later be transferred to the Library of Virginia as a historical record;
- ensures accountability to the administration, the General Assembly, and all Virginians;
- ensures that electronic records, especially those generated by desktop applications, will be available to all authorized personnel
- protects records from inappropriate and unauthorized access; and
- facilitates authorized removal of materials by avoiding the need to separate public records from extra copies of records and personal materials when you leave office.

What Happens To Public Records?

The law provides that public records may only be destroyed with the Library of Virginia's authorization. The Library staff appraises the records to determine which are permanent or archival, that is, records that have administrative, legal, fiscal, or historical value that justifies preservation as part of the collection of the Library of Virginia. All records not designated as permanent are considered temporary, though their retention periods may vary considerably.

Records retention schedules are compiled in conjunction with the records management and archival staff at the Library of Virginia. These provide written legal guidelines to agencies for determining the retention period and disposition of their records. Temporary records should be destroyed at the end of the retention period specified in the retention schedule and the destruction process is documented by appropriate forms.

Where Can I Get Further Information and Assistance?

Contact your agency's designated records officer or the records analysis section at the Library of Virginia. More information, including a glossary of terms used in this pamphlet, as well as a checklist to assist you and your staff, is available on the Library of Virginia's Web site.