

## Retention of Government Records

Government entities in Minnesota are required to create records documenting their official activities and maintain those records pursuant to an approved retention schedule. Ultimately, all records will either be permanently retained by a government entity, destroyed, or transferred to the State Archives.

***A government entity must create and maintain records of its official activities***

All officers and agencies within state and local government are required to create and preserve all records necessary to provide complete and accurate knowledge of their official activities. The term “official activities” refers to the government entity’s formal actions, decisions, and transactions. A government entity is not required to keep records documenting the deliberations or thought processes that underlie, but are not themselves part of, an official activity.

Records may be any type of physical or digital media (documents, maps, photographs, recordings, etc.). Reproductions may be maintained instead of the original documents, and it is not necessary for an entity to retain multiple copies of the same record. “Electronic records” (those existing only in digital format) are permitted and subject to the same statutory requirements as physical records. Also, all government records must be kept in an arrangement and condition that makes them easily accessible for convenient use by the public.

Ultimately, the chief administrative officer of a government entity is responsible for maintaining the entity’s records. But individual government officials must, upon leaving office, deliver all records in their custody to their successors in office.

***The records must be preserved according to a retention schedule that has been approved by the Records Disposition Panel***

A government entity must adopt a retention schedule that covers all of the entity’s records and states how long each type of record must be preserved. Document retention periods may be expressed in terms of time (“retain for four years” or “retain permanently”), in terms of a certain event (“retain until audit”), or a combination of the two (“retain six months after audit”).

Before a government entity is permitted to adopt a retention schedule, however, the schedule must be reviewed and unanimously approved by the state’s Records Disposition Panel. The Records Disposition Panel oversees the disposition of government records statewide. Its members include the attorney general, the director of the Minnesota Historical Society, the legislative auditor in the case of state records, and the state auditor in the case of local records. The panel reviews and evaluates proposed retention schedules for legal, fiscal, and historical considerations, and can approve a schedule as submitted or request changes and further review.

A government entity may choose to create an entirely new retention schedule based on an audit of the entity’s existing records. Usually, however, an entity will

use or adapt a model schedule that has been pre-approved by the Records Disposition Panel and made available by the state archives.

***After the applicable retention period has expired, records must be archived or destroyed***

When a record is no longer in use and its retention period has expired, the record must be disposed of in the manner prescribed by the retention schedule. Other than an approved retention schedule, the only way that a government entity may dispose of a record is if it applies for and receives a special order from the Records Disposition Panel. The unauthorized disposal of a government record is a misdemeanor offense, and a government entity must maintain a list of the records it has disposed of.

A government record may only be disposed of in two ways. If the record has some historical value, it may be transferred to the state archives of the Minnesota Historical Society. Other valueless records must be destroyed.

There is no mandated method for record destruction. However, records containing data classified as “not public” under the Minnesota Data Practices Act must be destroyed in a way that prevents their contents from being determined. This may entail the shredding of physical media or sanitization of electronic storage devices.

***Criminal penalties exist for the unauthorized destruction of records***

The unauthorized destruction of government records is a misdemeanor offense. A person who intentionally destroys a government record, or a public employee who knowingly permits someone to do so, may be subject to criminal liability.

The attorney general is also empowered to petition a court to return or “replevin” government records that have been unlawfully transferred or removed out of their proper office.

***The legislature may exempt certain records from these general rules***

The legislature may exempt certain types of government records from this general framework. For example, a county auditor is permitted—with the consent and approval of the county board and a district court judge—to destroy certain financial documents within specified periods of time. Other exemptions exist in statute, especially for highly sensitive government records such as those relating to juvenile criminal offenders and data submitted to the criminal gang investigative data system.

**For more information:** Contact legislative analyst Nathan Hopkins at 651-296-5056.

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