

Freedom of Access in Maine

Managing Digital Reality:
State Initiatives

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The Reality of Digital Records

“If William Shakespeare had written Hamlet
on a word processor, or...

If Thomas Jefferson had saved his drafts
of the Declaration of Independence
with a computer text editor, or...

If Alexander Graham Bell had documented
his experiments with the telephone
on floppy disks, or...

If Leonardo da Vinci had used a computer graphics system
to create the Mona Lisa...

Would Their Great Achievements Still Be Available To Us Today?

Unless they copied their work to a more durable medium,
the answer is no.”

Council on Library and Information Resources,
“Into the Future: On the Preservation of Knowledge in the Electronic Age”
<http://www.clir.org/PUBS/film/future/discussion.html>

FOAA and Records

- FOAA is a disclosure law and isn't intended to address records retention. However...

 - The public's right to access public records is only as real as the controls that governments have in place to ensure that records are:
 - retained
 - managed properly, and
 - available for future access and retrieval.
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Therein Lies the Problem...

“The growing volume, complexity, and diversity of email and other digital information in the possession of state and local governments makes [records retention, management and access in the future] more difficult than ever before.”

Managing Email and E-Records:
Unique Challenges for State and Local Governments,
Kahn Consulting Inc.

What is a "Record"?

"Record" means all documentary material, *regardless of media or characteristics*, made or received and maintained by an agency in accordance with law or rule or in the transaction of its official business.

1 M.R.S.A. § 409

In Other Words...

In Maine, a record can be anything that relates to official state business.

- email messages,
 - word processing documents,
 - spreadsheets,
 - data in a programming language,
 - voice mails, etc.
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Records Must Be Retained

Maine's Archives and Records Law directs each agency within state government to maintain government records in accordance with retention schedules.

5 M.R.S.A. § 91 *et seq.*

Records Must Also Be Managed

Each executive agency is required to establish a “records management program” that focuses on “...the complete cycle of records creation, records maintenance and use, and records disposition.”

Maine State Archives, State Agency Records Programs Rules
29-255 CMR 5 (A)(1)

The Reason For Records Retention and Management

Records management programs are intended to insure "...that records of continuing value are preserved, [and] that records no longer of current use . . . are promptly disposed of or retired."

Maine State Archives, State Agency Records Programs Rules
29-255 CMR 5 (A)(3)

The Function of State Records:

- Support the administration of government
 - Support the delivery of services and information to the public
 - Government accountability
 - Provide legal documentation
 - Evidence government's work
 - Provide the basis for future research
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Recognizing the Need for Change

While Maine's records law encompasses documentary material regardless of physical form or media, records management and archiving were until recently largely focused on paper records.

With the advances in technology, both records management and archiving have had to begin to account for the creation of records in a variety of electronic formats.

The (Mis)Perception of Electronic Records

- Email and other electronic records have been viewed and treated differently from the start.

 - The Bill of Rights exists today as an historical government record...but:
 - Do we know what the text of the first email ever sent was?
 - Or what the content of the first webpage was?

 - March 9, 1990: State's Information Services Policy Board adopts policy on access to public records that recognizes "to an increasing degree, information collected within State government, is being stored and maintained electronically rather than on paper, in books, ledgers, and files."

 - Despite the State's early policy, the true scope of issues associated with records "born digital" was not realized until recently when the use of technology for communicating increased.
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The Problem Created By Our Misperception

- History survives because we record facts.
- Without a record of our government, we face erosion of our institutional memory.
- “As digital records of our culture, science, history and government disintegrate or become unretrievable, we leave an incomplete, defective legacy to future generations.”

Council on Library and Information Resources,

“Into the Future: On the Preservation of Knowledge in the Electronic Age”

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Are We At Risk of Losing Records in Maine?

Maine is at risk of losing valuable government records. The following are examples of records already lost due to changing technology.

- ❑ Uniform Crime Report data of the early 1980's is on obsolete computer tapes.
 - ❑ State Planning Office data on 8" floppy disks is no longer readable by State equipment.
 - ❑ Mapping data originally on Geographic Information System (GIS) databases has been deleted by agencies who have no current need (e.g., early road locations).
 - ❑ Many scanned vital records are inaccessible because the indexing database was corrupted.
 - ❑ Email containing policy level material has either been deleted or exists on obsolete email systems no longer supported.
 - ❑ Hundreds of thousands of indexes to marriage records were lost when Human Services' data became unreadable. A gap covering 1967-1976 now exists in this data.
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Challenges to Change

- Capturing, retaining and maintaining the integrity and accessibility of electronic records over time is more challenging than paper records. Records can't just be printed and filed in a filing cabinet.

 - Two areas of primary concern:
 - Cultural Change
 - Accessibility of Electronic Records
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Cultural Change

- End-users must learn to recognize and treat the electronic records they create or receive the same as they would paper records.

 - Must address other issues end-users will have:
 - fear of technology,
 - fear of changing the way they do their work

 - Must bring IT and business worlds together in order to create systems that will allow for preservation of electronic records in light of retention schedules, etc.
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Accessibility of Electronic Records

- Records are vulnerable to new forms of loss
 - tampering,
 - storage failures,
 - obsolescence of data types, and
 - failure to archive all the data required to reconstitute a record.

 - Records can only last a short time in their original storage medium. Must continue to migrate the records as storage medium degrades.
 - Digital storage is among the least stable media of all time.
 - Records stored on a quality CD-ROM under ideal conditions might survive 50 years, 20 years for magnetic tapes.

 - Also, electronic records rely on the hardware and software with which they were created. In order to ensure you will have access to these records 10 or even 5 years from now — must be able to save the records in software-independent open standards.
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Public Access to Electronic Records

“I don’t e-mail. And there’s a reason.
I don’t want you reading my personal stuff.”

President Bush to the American Society of Newspaper Editors during an April 14, 2005 discussion on whether the US government is sufficiently forthcoming to the some 3.5 million FOIA requests a year.

Electronic Records and FOAA

- ❑ In Maine, emails and other electronic documents can be a Record.
 - ❑ Like any other records, electronic records must be retained according to the proper retention schedules.
 - ❑ Because electronic records must be retained for some period of time, they can also be subject to FOAA requests.
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Electronic Records and FOAA

- The state has approximately 13,000 email accounts.
 - A random sampling revealed that in one day nearly 650,000 emails were sent or received by state email accounts.
 - It is unknown what percentage of those emails constitute state records.
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Electronic Records and FOAA: The Costs

- What is known: FOAA requests for electronic records are increasing statewide.

 - One Example: Department of Environmental Protection
 - From August 2004 to present, estimated some 90 FOAA requests have been received.
 - With respect to Gulf Island Pond issue about 80,000 pages have been scanned.
 - Staff have reviewed more than 37,000 recovered emails and more than 1,000 recovered non-email data files.
 - A forensic evaluation of a computer's hard drive has been conducted.
 - Hundreds of hours of staff time have been spent on the Gulf Island Pond FOAA alone.
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Electronic Records and FOAA: The Costs

- Costs to the state to comply with the law and fulfill FOAA requests are increasing:
 - FOAA requests are being used as an end-run around discovery (of the some 90 FOAA requests received by DEP in the last 2 years, approximately 28 were from law firms).
 - Employee time spent searching for, retrieving and reviewing digital records is significant.

 - Risks to the state are increasing:
 - temporary records may remain on hard drives and other media long after they are needed.
 - records may be deleted prematurely while still needed for fiscal, legal, and administrative purposes.
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State Initiatives:

- FOAA Website created: www.maine.gov/foaa

 - State Employee Training initiatives
 - Recognizing Electronic Records
 - Electronic Records Management
 - FOAA

 - Procurement of an enterprise-wide records management and archiving system, beginning with an email component.
 - RFP will be issued this fall.
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