



STATE OF WASHINGTON

LOCAL RECORDS COMMITTEE

Office of the State Auditor • Office of the Attorney General • Office of the State Archivist
PO Box 40238 • Olympia, Washington 98504-0238 • (360) 586-4900

June 27, 2013 – 10:00 a.m.
State Archives Conference Room
1129 Washington St SE, Olympia, WA 98504

MEETING MINUTES

Members Present: Cindy Evans (Chair) – State Auditor's Office; Sharon James (formerly Payant) – Attorney General's Office; Steve Excell – State Archivist

Staff Present: Russell Wood – State Records Manager; Julie Blecha – Local Government Records Retention Specialist; Tracy Rebstock – Southwest Regional Branch Archives

Guests Present: Denise Millard – King County Superior Court Clerk's Office; Patty Holmquist – Tacoma Public Utilities; Carol Shenk and Ryan Wadleigh – King County; Tri Howard – Port of Tacoma; Danelle Court – City of Bellevue; Amy Cleveland – City of Olympia, Andrew Penta – Clark County

I. ROUTINE ITEMS

A. Call to Order

Cindy Evans called the meeting to order at 10:00 a.m.

B. Introduction of Guests

C. Approval of Minutes for January 31, 2013

Motion to adopt the minutes as presented; Evans, second by Steve Excell.

Resolution: Motion carried

D. Adoption of June 27, 2013 Agenda

Motion to adopt the agenda as presented; Sharon James, second by Excell.

Resolution: Motion carried

II. NEW BUSINESS

A. Prosecuting Attorney (PA) Records Retention Schedule (Version 2.0) – Julie Blecha

The meeting packet includes the most recent version of the retention schedule, which includes the result of eight months of work by the many attorneys who provided their expertise and guidance which completely transformed the previous version (1.0).

The retention schedule was revised primarily in order to reflect current statute, specifically RCW 13.50.050 relating to juvenile offender records. Thanks to Tsering Kheyap, Assistant Attorney General, who provided guidance regarding the interpretation of RCW 13.50.050 relating to early destruction of some juvenile offender records.

In addition, at the request of local government attorneys, records series were simplified and consolidated into "bigger buckets". Also, duplications and contradictions were eliminated and gaps were filled, such as victim/witness/survivor advocacy case files.

Several major transformations took place, most notably the removal of records series covering assigned counsel case files.

In September of 2012, 15 attorneys volunteered to be subject matter experts, 4 or 5 from each of the following associations: Washington Association of Prosecuting Attorneys (thanks to Tom McBride, Executive Secretary), Washington Defender Association (thanks to Christie Hedman, Executive Director); and the Washington State Association of Municipal Attorneys (thanks to Pat Mason, Secretary/Treasurer).

By May of 2013, the Washington Defender Association raised concerns about whether public defender records were subject to chapter 40.14 RCW. They consulted with the Washington State Office of Public Defense, who then asked Jeff Evan, Solicitor General with the Office of Attorney General, to review the matter. A meeting took place to discuss this issue on May 23rd and included Jeff Evan, Tsering Kheyap, State Archivist Steve Excell, State Records Manager Russell Wood, and Blecha. It was determined that public defender case files were governed by court rule, the Washington Bar Association, and the rules of profession conduct. Consequently, all records series relating to public defender records were extracted from the retention schedule, and the title and scope were changed to reflect this.

WSA was made aware that agencies, in some cases, were possibly not noticing that civil cases **where the agency is a party to a civil case** are covered in the *Local Government Common Records Retention Schedule (CORE)*, while civil cases **where the agency attorney is acting on behalf of "the people"** are covered in the PA schedule. The significance being that civil cases *where the agency is a party* may have historic value and have, therefore been designated as Archival; the others have a Non-Archival designation.

In early June, it was suggested that perhaps consolidating all agency attorney records into one retention schedule would make it easier for end-users. Having one place to look for agency attorney records could possibly help to prevent the inadvertent early destruction of civil case files *where the agency is a party*. Therefore, two series were removed (and one series discontinued) from *CORE* and put into the draft, renamed as "Attorney Legal Services". Future revisions to the PA schedule would improve the two series. This is the draft that was distributed in the agenda packet.

Soon thereafter, WSA realized that taking *CORE* series and putting them in the attorney schedule violated the *common records belong in CORE* philosophy. Consequently, the Prosecuting Attorney schedule in the meeting packet is precisely what the reference group finalized, and *CORE 3.0* remains unaltered.

Two letters were submitted in support of the revision project, one from Pat Mason, who commented on the inclusive revision process, the other from Ramsey Ramerman, Assistant City Attorney, City of Everett, who stated his appreciation for the removal of the *CORE* series from the draft.

Regarding AT52-07-04A, *Criminal Case Files - Convictions (Class A Felony and Persistent Offenders)*, Sharon James inquired about death penalty cases. Evans stated that this series covers only the prosecutor's files, and that the court case file would be retained forever. Members felt that any death penalty case files would be covered by AT2013-009, *Notorious/Historically Significant Case Files*, and the advice sheet WSA will issue in conjunction with this revision will be modified to specifically include death penalty cases.

Steve Excell commented that the Governor retains complete extradition case files permanently, so it makes sense that the prosecutors may dispose of their extradition case files after one 1 year.

Cindy Evans inquired about AT52-07-04C, *Criminal Case Files – Convictions (Class C Felony and DUI)* and current discussions in the Legislature about tightening DUI statute. Blecha stated that according to

Grant Blinn (Misdemeanor Division Chief, Pierce County Prosecuting Attorney's Office), the official court record is sufficient to prove previous convictions; the prosecutor's case file is not necessary. The minimum retention requirements of 20 years, 10 years, and 5 years are because those are the maximum sentences for the respective class of crime (Class A Felony, Class B Felony, etc.).

Evans confirmed that all concerns expressed by the legal community about public defender records have been resolved, due to the removal of all public defender records from the retention schedule.

Evans asked if there were any other concerns about the draft as presented; Blecha stated that there were no concerns that she was aware of.

Excell mentioned the robust conversations that took place around the public defender records, including the issue of counties who contract for services with private law firms, and others who have employees. As it turns out, the Bar Association has a formal opinion that says, basically, that client records belong to the client, so they are not government records. It's a moot point for state and local government agencies, because the government is the client.

Two advice sheets are being prepared, the first, entitled "What to do with Public Defender Case Files and Indigence Determination Records" is being reviewed by the Office of Public Defense.

Evans expressed concern that the draft provided in the agenda packet differs from the version put forward at the meeting, asked the other Members if they shared her concern.

Denise Millard, King County Superior Court Clerk's Office, asked why court reporter notes don't have the same retention requirements as the prosecutor case files. Blecha announced that the Superior Court Clerk retention schedule was the very next one being revised, and invited Millard to participate on the reference group, which is having its first meeting on August 21st.

James asked the meeting attendees if anyone would have preferred to have more time to review, acknowledging that there are no changes, only omissions. Patty Holmquist, Tacoma Public Utilities, stated that insertion of the two CORE series was the only part they didn't have a chance to review, and since the two series have been removed, that is no longer an issue.

Excell suggested that they could approve the schedule with amendments, since the language was all out there in terms of public notice, but he would defer to the Chair. Evans suggested that out of concern for transparency and openness, the item tabled until the next meeting and notice be provided to the general public to give anyone a chance to review the proposed changes.

Motion to table the *Prosecuting Attorney Records Retention Schedule (Version 2.0)*; Evans, second by Excell.

Resolution: Motion carried

B. Local Government Common Records Retention Schedule (Version 3.1) – Julie Blecha
Proposed changes to *CORE Ver. 3.0* have been withdrawn.

III. WASHINGTON STATE ARCHIVES UPDATES

A. Revision of Records Retention Schedules – Julie Blecha

The *County Clerks and Superior Court Clerks Records Retention Schedule* reference group has been formed. It is comprised of six County Clerks and will have its first meeting on August 21st. Another meeting is scheduled to take place during the Washington Association of County Officials (WACO) conference in October.

The *Housing Authorities Records Retention Schedule* has commenced. Many federal requirements for these records are shorter than our state requirements; Evans cautioned that federal requirements change constantly, and we need to do what is best for Washington's agencies and not *necessarily* reflect the federal requirements in our retention schedule.

The *Coroners and Medical Examiners Records Retention Schedule* is also up for revision, and Blecha has been asked to meet with them at the WACO conference in October. Many of their records are Archival.

CORE – Human Resources is the next CORE functional area up for revision.

WSA staff is awaiting a list of priorities from stakeholders before embarking on the next update to the *Utility Providers Records Retention Schedule*.

Evans requested that a schedule of *tentative* upcoming retention schedule revision projects be posted online. The list should state “best estimate, subject to change” in order to accommodate any alterations to the plan.

There are currently 2,436 subscribers on the local government listserv, including 59 new subscribers since the last meeting. WSA’s long-term goal is to register multiple people from every local government agency so that our bulletins are sure to reach every agency.

Evans stated that SAO is looking for guidance on text messages and the use of private phones for public business. Excell shared that the Office of the Secretary of State (OSOS) has been developing an internal policy on “BYOD” (bring your own device) and texting, and will share the draft with Evans.

Discussion ensued about records management challenges resulting from technological advances, employee lawsuits being filed as a result of BYOD practices, what agency policies should include, challenges retrieving messages from various carriers, the dynamic issues Port of Tacoma has confronted over the years, the problem with co-mingling public and private records, etc.

Excell described two current court cases worth reading that involve public employees using personal devices for business purposes, O’Neill vs. City of Shoreline, and Nissen vs. Pierce County.

B. Announcements from the State Archivist – Steve Excell

Washington State Archives continues to deal with space challenges system wide. The Legislature suggested using the Wheeler Building space, but the floors would not support the weight of the records and a \$6 million dollar structural remodel would be required. The Archives will be completely full in 2014, and a decision package will be prepared to deal with the issue. The Legislature and the Office of Financial Management (OFM) need to be educated about the risk to public records if there’s a moratorium on records intake due to lack of space.

A recent surprise acquisition came from former Senator Gordon Walgren, whose autobiography details his life in public service and his role in Gamscam, the gambling scandal that took place in the late 70’s, early 80’s. He walked into the front door of WSA and delivered boxes of Gamscan tapes that he got from the FBI and Department of Justice, and all of his attorney files.

NEXT MEETING – August date to be determined.

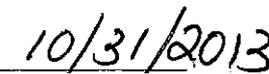
ADJOURNMENT: 10:55 am

CERTIFICATION OF MEETING MINUTES OF THE LOCAL RECORDS COMMITTEE:

I, Cindy Evans, Chair of Local Records Committee, certify that the above is a true and correct transcript of the minutes of a public meeting of the Local Records Committee of the State of Washington held in the State Archives Building conference room on June 27, 2013, and that the public meeting was duly called and held in all respects in accordance with the laws of the State of Washington, and that a quorum was present.



Chair Signature



Date