

Legal Q&A
By Christy Drake-Adams, TML Legal Counsel
September 2019

What is records management, and is a city required to establish a records management program?

The term “records management” is defined to mean

the application of management techniques to the creation, use, maintenance, retention, preservation, and disposal of records for the purposes of reducing the costs and improving the efficiency of recordkeeping. The term includes the development of records control schedules, the management of filing and information retrieval systems, the protection of essential and permanent records, the economical and space-effective storage of inactive records, control over the creation and distribution of forms, reports, and correspondence, and the management of micrographics and electronic and other records storage systems.

TEX. GOV'T CODE § 441.151(10), TEX. LOC. GOV'T CODE § 201.003(13).

A city is required to establish a records management program under the Local Government Records Act (LGRA), codified in Chapters 201 through 205 of the Texas Local Government Code. The LGRA provides that on or before January 1, 1991, the city council should have established a records management program by ordinance. TEX. LOC. GOV'T CODE § 203.026. For a city incorporated after September 1, 1989, the program must be instituted within one year after the date of “establishment” of the city. *Id.* § 203.047; *see also The Local Record*, Fall 1997, *available at* <https://www.tsl.texas.gov/slr/recordspubs/localrecord/archives/lr97fall.html> (concluding that water districts are “established” on the date canvassing the results of the election of the permanent government body). A copy of the ordinance establishing the records management program, and any subsequent amendments, must be filed with the director and librarian of the Texas State Library and Archives Commission (TSLAC) within 30 days of adoption. TEX. LOC. GOV'T CODE § 203.026. TSLAC model ordinances are available at <https://www.tsl.texas.gov/slr/forms#local>.

Who is responsible for administering a city’s records management program?

The city’s records management officer is responsible for administering a city’s records management program. TEX. LOC. GOV'T CODE §§ 203.023(2), 203.026(a). The LGRA provides that on or before June 1, 1990, the city council should have designated an individual, or an office or position, to serve as records management officer, and entered the same on the minutes. *Id.* § 203.025. For a city incorporated after September 1, 1989, the officer must be designated within one year after the date of “establishment” of the city. *Id.* § 203.047. A city’s initial designation of a records management officer, and any subsequent designations, must be filed with TSLAC within 30 days. *Id.* § 203.025.

Most cities include the designation of the records management officer in the ordinance creating the records management program. TSLAC reports that many “small cities and villages designate the office of city secretary or clerk as records management officer . . . , although some cities have

designated the office of mayor. Another type of officer frequently named in larger cities is the city manager or administrator.” TEX. ST. LIBRARY & ARCHIVES COMM’N, *Policy Model 3: By Ordinance in a Small Municipality*, available at <https://www.tsl.texas.gov/slrn/forms#local>.

Is a city’s “records management officer” also the “officer for public information”?

No, these are two separate positions. However, one person might serve in both roles.

The records management officer is designated by the city council. TEX. LOC. GOV’T CODE § 203.025. In contrast, the Public Information Act (PIA) designates the chief administrative officer of the city as the officer for public information. TEX. GOV’T CODE § 552.201.

The records management officer is generally responsible for administering the records management program (described in the two previous questions). TEX. LOC. GOV’T CODE § 203.023. Whereas the officer for public information is generally responsible for protecting public information and promptly making it available to the public for copying or inspecting. TEX. GOV’T CODE § 552.203.

Is a city’s “records management officer” also the “custodian of records”?

No, these are separate positions. However, one person might serve in both roles.

A custodian of records is an “appointed or elected public officer who by the state constitution, state law, ordinance, or administrative policy is in charge of an office that creates or receives local government records.” TEX. LOC. GOV’T CODE § 201.003(2). Among other things, a custodian must “maintain the records in the custodian’s care and carry out their preservation, microfilming, destruction, or other disposition” in accordance with the city’s records management program, and in cooperation with the records management officer. *Id.* § 203.022. Oftentimes cities name each department head as the custodian of records for their respective department.

A custodian of records must, at the expiration of the custodian’s term of office, appointment, or employment, deliver to the custodian’s successor all local government records in custody. *Id.* § 201.006. If there is no successor, the city council must determine which officer shall have custody of the records. *Id.* A custodian commits a Class A misdemeanor by intentionally failing to deliver records to a successor in office. *Id.* § 202.008.

What is a records control schedule, and does a city have to have such a schedule?

A records control schedule is a document prepared by or under the authority of the records management officer that lists the records maintained by the city, their retention periods, and other records disposition information that the records management program in the city requires. *Id.* § 201.003(12).

A city must have a records control schedule. With some exceptions, on or before January 4, 1999, the records management officer in your city should have prepared a records control schedule and filed it with TSLAC. *Id.* § 203.041. For a city incorporated after September 1, 1989, the schedule should be adopted and filed within one year after the date of

“establishment” of the city. *Id.* § 203.047. The records management officer must also file with TSLAC a written certification of compliance that any amended records control schedule complies with the minimum requirements established on records retention schedules issued by TSLAC. *Id.* A records control schedule may be filed on an office-by-office basis, or department-by-department. *Id.*

What is the retention period for a city record?

The retention period for a city record is the minimum time that must pass after the creation, recording, or receipt of a record, or the fulfillment of certain actions associated with a record, before it is eligible for destruction. *Id.* § 201.003(16), TEX. GOV'T CODE § 441.151(13).

Depending on the type of record at issue, a city record may have a retention period of anywhere from “destroy immediately” to “keep indefinitely.” The retention period for each record on the city’s records control schedule is determined by the city council (or under its direction), and in no case may be less than the retention period prescribed by: (1) federal or state law, regulation, or court rule; or (2) records retention schedules issued by TSLAC. TEX. LOC. GOV'T CODE § 203.042, *see also* TEX. GOV'T CODE § 441.158 (requiring TSLAC to adopt records retention schedules for each type of local government, and a schedule for records common to all types of local government), 13 Tex. Admin. Code § 7.125 (Tex. St. Library & Archives Comm’n, Records Retention Schedules). Most cities simply follow (i.e., do not adopt retention requirements more stringent than) the retention periods set out in law or issued by TSLAC. Retention schedules adopted by TSLAC are available at <https://www.tsl.texas.gov/slr/localretention>.

What is one of the most common records retention questions received by TML attorneys?

“How long does my city have to keep meeting minutes?” Assuming your city council has not established a longer period, TSLAC’s current record retention schedule provides as follows:

Figure: 13 TAC §7.125(a)(1) Effective April 17, 2016

PART 1: ADMINISTRATIVE RECORDS

SECTION 1-1: RECORDS OF GOVERNING BODIES

Retention Note: SCOPE OF SECTION - The retention periods established in this section also apply to the records of subsidiary boards, bureaus, commissions, or committees established by the governing body of a local government that have rulemaking or quasi-judicial authority over any activity or program of the government or that were established by ordinance, order, or resolution for the purposes of advising the governing body or a subsidiary body on policy. Consequently, the use of the term “governing body” in a records description includes the corresponding records of those subsidiary bodies.

Record Number	Record Title	Record Description	Retention Period	Remarks
GR1000-01	AGENDAS			
GR1000-01a	AGENDAS	Open meetings. 1) If the minutes describe each matter considered by the governing body and reference to an agenda is not required. 2) If the minutes do not describe each matter considered by the governing body and reference to an agenda is required.	2 years. PERMANENT.	
GR1000-01b	AGENDAS	Certified agendas of closed meetings.	2 years.	By law - Government Code, Section 551.104(a).
GR1000-02	DEDICATIONS		PERMANENT.	
*GR1000-03	MINUTES			Retention Note: The use of the term “audiovisual recordings” in (c)-(f) means any medium on which audio or a combination of audio and video is recorded.

GR1000-03a	MINUTES	Written minutes.	PERMANENT.
GR1000-03b	MINUTES	Notes taken during meetings from which written minutes are prepared.	90 days after approval of minutes by the governing body.
*GR1000-03c	MINUTES	Audiovisual recordings of open meetings, except as described in (d), for which written minutes are not prepared.	PERMANENT.

Local Schedule GR

Page 4 of 68

Figure: 13 TAC §7.125(a)(1)

Effective April 17, 2016

Record Number	Record Title	Record Description	Retention Period	Remarks
*GR1000-03d	MINUTES	Audiovisual recordings of workshop sessions of governing bodies in which votes are not made and written minutes are not required by law to be taken.	2 years.	
*GR1000-03e	MINUTES	Audiovisual recordings of open meetings for which written minutes are prepared.	90 days after approval of minutes by the governing body.	
*GR1000-03f	MINUTES	Certified audiovisual recordings of closed meetings.	2 years.	By law - Government Code, Section 551.104(a).

Local Schedule GR

Page 5 of 68

Do city councilmembers need to be familiar with the city’s records control schedule?

Absolutely. Recent amendments to the Public Information Act have renewed interest and discussion on how to educate officials about their responsibility to comply with a city’s adopted retention schedule.

Senate Bill 1368, enacted during the 83rd Regular Legislative Session, codified the attorney general’s long-held position that electronic communications (e.g., texts and emails) sent or received by a city officer (or employee) and relating to official city business are public information even when those communications are created or maintained on a personal electronic device. TEX. GOV’T CODE § 552.002.

To clear up any lingering doubts about a city official’s responsibilities, Senate Bill 944 was enacted during the 86th Regular Legislative Session. It explicitly authorizes a city to obtain city records stored on an official’s (or employee’s) private devices. The bill adds a definition for the term “temporary custodian,” which refers to a past or present councilmember (or employee) who, in the transaction of official business, creates or receives public information that has not been provided to the officer for public information of the governmental body. *Id.* § 552.003.

Senate Bill 944 also amended Section 552.004 of the PIA to provide that a city official who uses a personal device to conduct the transaction of public business is responsible for turning over those records to an official government account and/or preserving them on the personal device for the duration of the retention period. Furthermore, it applies existing records management laws (Government Code Chapter 441 and Title 6 of the Local Government Code) governing the preservation, destruction, or disposition to the records held by a temporary custodian.

This means that an official who uses a private device or account to conduct the transaction of city business should consider: (1) immediately forwarding any records on a personal device to a city device or account; (2) limiting the use of a personal device or account for only transitory information (as described in the retention schedules); or (3) using some method of capture to preserve the information for the required period of retention.

When may a city record be destroyed?

With certain limited exceptions, a city may destroy a city record only if: (1) the record is listed on a valid records control schedule and either its retention period has expired or it has been microfilmed or stored electronically in compliance with state law; (2) the record appears on a list of obsolete records; or (3) the record is not listed on a records retention schedule issued by TSLAC and the city provides notice to TSLAC at least 10 days before destroying the record. TEX. LOC. GOV'T CODE § 202.001. A city may not, however, destroy a record pertaining to litigation or a public information request. *Id.* § 202.002

Are there penalties for the improper destruction of a local government record?

An officer or employee of a city commits a Class A misdemeanor if the officer or employee knowingly or intentionally violates the LGRA or rules adopted pursuant to the LGRA by destroying or alienating a local government record. *Id.* § 202.008. City records are protected from destruction by state laws outside of the LGRA as well. *See, e.g.*, TEX. GOV'T CODE § 552.351 (providing that the willful destruction or mutilation of a public record is a criminal offense), TEX. PENAL CODE § 37.10(a)(3) (providing that the intentional destruction of a governmental record is a criminal offense).

Does an officer or employee have any personal or property right in a record that the officer or employee developed or compiled?

No. Under the LGRA, local government records created or received in the transaction of official business or the creation or maintenance of which were paid for by public funds are public property. TEX. LOC. GOV'T CODE § 201.005. There are statutory procedures by which a city can seek to recover a local government record. *Id.* § 202.005.

And in case the LGRA was not sufficiently clear, Senate Bill 944 (discussed above) amends the PIA to expressly provide that a current or former officer or employee does not have, by virtue of the person's position or former position, a personal or property right to records created or received while acting in an official capacity. TEX. GOV'T CODE § 552.233. In addition, it specifies that an officer or employee who possesses records on a personal device that have not been provided to the city, must surrender or return that information to the city not later than the 10th day after the date that the city's public information officer requests the custodian to surrender or return the information. Under this provision, the city has the ability to enforce its demand for such records by providing that a temporary custodian's failure to comply with such a request "is grounds for disciplinary action by the governmental body that employs the temporary custodian or any other applicable penalties provided by this chapter or other law." *Id.*

Is a city authorized to sell, donate, loan or transfer a local government record?

Yes. A city with custody of a local government record may sell, donate, loan, or transfer a record to (1) a public entity (e.g., museum, library, university) with the approval of the city's records management officer and after the expiration of the record's retention period; and (2) a private entity in some circumstances. TEX. LOC. GOV'T CODE § 202.004.

May a city get rid of its paper records by either microfilming the records or storing them electronically?

Yes, the LGRA authorizes a city to both microfilm its records and store them electronically. *Id.* §§ 204.001-205.010. Before beginning this process, it is important that the city review the relevant requirements in the LGRA and contact TSLAC.

Where can I get more information on records management?

The Texas Municipal Clerks Association and TSLAC offer courses solely focused on records management. See information on their respective websites at <http://municlerks.unt.edu/> and <https://www.tsl.texas.gov/slrn/training>. And, of course, the Texas Municipal League includes information about records management in its various training courses, available at <https://www.tml.org/31/Education>.