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Joan Shear

Boston College Law Library, joan.shear@bc.edu

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Massachusetts

by Joan Shear, Boston College Law Library

- ✓ **Is Massachusetts Addressing Permanency/Public Accessibility of Government Information on the Web?** Massachusetts has begun to address the issue of the permanency/public accessibility of government information on the web via a draft policy issued by the Records Conservation Board in conjunction with the State Archivist and the Supervisor of Public Records. The draft policy, *Statewide Records Disposition Schedule*, calls for the permanent retention of publications posted on web sites as well as an archival review of snapshots of websites after their administrative use ceases. The State Librarian has requested a special server on which to archive government publications currently available electronically that agencies want to remove from their web sites for reasons of space. Currently the library collects the publications on disk and is committed to migrating them to new formats to keep them available.

Permanent public access to state government publications and records, regardless of format, is required by law in Massachusetts. The state is developing plans to deal with the logistical and economic barriers to ensuring permanent public access to those government records created in electronic format.

The definition of public record in Massachusetts includes all documentary materials or data made or received by any governmental employee, regardless of physical form or characteristics, unless it falls within one of twelve specific exemptions. (MASS. GEN. LAWS ch. 4 § 7 cl. 26) The Massachusetts Public Records Law provides that any person has an absolute right of access to public information, including the right to inspect, copy, or have copies made for a reasonable fee. (MASS. GEN. LAWS ch. 66 § 10(a)) “The availability of information in the custody of Massachusetts governmental entities is dependant on the substance of the information, rather than the form in which it is maintained.” (*SPR Bulletin* No. 3-96 June 6, 1996)

The Supervisor of Public Records under the authority of MASS. GEN. LAWS ch.66 § 1 has promulgated regulations with the stated purpose of ensuring the public prompt access to all public records created by or for the government, and ensuring that disputes regarding access to particular records be resolved expeditiously and fairly. (MASS. REGS. CODE tit. 950 § 32.02)

A Records Conservation Board, comprised of the State Archivist, Supervisor of Public Records, State Librarian, State Comptroller, Commissioner of Administration and Finance, and Attorney General, or their designees, requires all departments of the commonwealth to report which series of records they hold, to set standards for the management and preservation of such records, and to establish schedules for the

destruction, in whole, or in part, and transfer to the archives or state records center, records no longer needed for current business. (MASS. GEN. LAWS ch. 30, § 42) The Board holds monthly meetings, which are open to the public, to review disposal schedules of records with no permanent value or potential legal, fiscal and administrative usefulness, to review permissions for transfer to the state archives, the state records center, or disposal, and to discuss policy relating to the management of state records. (*Records Conservation Board* available at <http://www.state.ma.us/sec/arc/arcrfb/rcbidx.htm>).

The Records Conservation Board in conjunction with the Massachusetts Archives and the Supervisor of Public Records are seeking comments on a *Statewide Records Disposition Schedule* which, when approved will replace all other existing schedules. (*Seeking Comments on the "Statewide Records Disposition Schedule"* (draft of Sept. 4, 2002 available at <http://www.state.ma.us/sec/arc/arcrmu/rmuwn/scidx.html>)). The schedule applies to all records, regardless of media or format, including those found in electronic form, audiotape, and hardcopy. The draft policy recognizes that electronic records are public records as defined by MASS. GEN. LAWS ch. 4 MGL § 7 cl. 26 and requires agencies to transfer those of a permanent nature to either the State Librarian or the State Archivist using procedures and formats necessary for the transmission of electronic data. The draft policy also calls for the permanent retention of publications that were posted on the web as well as an archival review of snapshots of websites after their administrative use ceases. The draft policy recognizes that e-mail is a transitory messaging system not adequate or proper for the ongoing storage of information, so substantive e-mail is recommended to be transferred outside the email system for retention to a proper file, which can be an electronic file.

The Supervisor of Public Records is required to take all necessary measures to put the records of the commonwealth in custody and condition required to secure their preservation. (MASS. GEN. LAWS ch. 66 § 1) The draft *Statewide Records Disposition Schedule* allows the Librarian or Archivist to require publications or records to be transferred in eye-readable format.

At this time, the procedures in place in Massachusetts are more concerned with preserving government information which would then be available to the public than it is with retaining it in its original format or making it available directly on the web.

Table 1: Massachusetts laws addressing the permanency and public accessibility of electronic government records and publications

Laws	ELECTRONIC RECORDS		ELECTRONIC PUBLICATIONS		Comments
	Permanency addressed	Accessibility addressed	Permanency addressed	Accessibility addressed	
Public records statutes	✓	✓	✓	✓	See notes 1
Freedom of Information Act		✓		✓	See note 2
Public access laws				✓	See note 3
Permanent public access statutes					
Depository library laws			✓	✓	See note 4
Other					

Notes

- Public records include “any documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of any political subdivision thereof, or of any authority established by the general court to serve a public purpose,” unless such materials or data fall within enumerated exemptions. See Comment for Item A.2.a of Survey Report.
- The equivalent FOIA statute in Massachusetts is known as the Massachusetts Public Records Law. See Item B. 1. Mass. Reg. Code tit. 950, § 32.02950 shall be construed to ensure the public prompt access to all public records in the custody of state governmental entities and in the custody of governmental entities of political subdivisions of the Commonwealth, and to ensure that disputes regarding access to particular records are resolved expeditiously and fairly. See Item 6.a
- Mass. Gen. Laws ch. 30A §§ 6 & 6 requires publication of the *Massachusetts Register* and the *Code of Massachusetts Regulations*. Mass. Gen. Laws ch. 5 § 2 requires the publication of laws, constitutional amendments, a table of changes and an index. Mass. Gen. Laws ch. 5 § 6 requires reports made by permanent state departments, officers and commissions to be printed annually. See Item C. 1.a.
- The State Library is a depository for Massachusetts state publications “in order that all state publications of the Commonwealth are preserved and made available for the use of citizens of the State.” See Item H. 8.a.

Table 2: Massachusetts state entities addressing the permanency and public accessibility of electronic government information

	Addressing permanency of information				Addressing accessibility of information				Comments
	As controlled by law In actions under way	In planning only	As Professional Practice or "Best Practice," Etc. In actions under way	In planning only	As controlled by law In actions under way	In planning only	As Professional Practice or "Best Practice," Etc. In actions under way	In planning only	
State Entity									
Public Records Board	✓								See note 1
Chief Information Technology Officer/Office		✓			✓				See note 2
State Archivist/Archives	✓				✓				See note 3
State Librarian/Library	✓	✓			✓	✓			See note 4
State Law Librarian/Library									
Depository Library Program	✓				✓				See note 5
State Printing/Printing Office									
Individual agencies creating information	✓				✓				
Other									

Notes

1. A Records Conservation Board is comprised of the State Archivist, Supervisor of Public Records, State Librarian, State Comptroller, Commissioner of Administration and Finance, and Attorney General, or their designees. The Board requires all departments of the Commonwealth to report which series of records they hold, to set standards for management and preservation of records and to establish schedules for the transfer of records of permanent value to the State Archives. See Item A. 5.a.
2. The Chief Information Officer is working with the State Librarian to develop specifications for a server to archive and make available electronic publications removed from agency websites. See Item D. 9.a and Item H. 10.a.
3. The mission of the State Archives is "to ensure the preservation and accessibility of the records of government." See Item G. 9.a of Report
4. State Librarian is currently collecting, on disk, documents withdrawn from agency websites. The library is committed to migrating documents to new formats to make them available. See Item H. 10.a.
5. Since the definition of public document includes electronic publications, it is reasonable to assume that the State Library has responsibility for acquiring and making available public documents in electronic format through the state depository library program.

Table 3: Massachusetts laws that distinguish electronic government information from print formats and specifically address electronic format issues

Laws	PROVIDE THAT ELECTRONIC FORMAT IS EQUIVALENT TO/SUBSTITUTE FOR PRINT	REQUIRE/PERMIT STATE AGENCIES/ENTITIES TO CREATE/MAINTAIN ELECTRONIC FORMAT	SPECIFY SOFTWARE/HARDWARE REQUIREMENTS	ADDRESS RETENTION ISSUES	ADDRESS AUTHENTICATION ISSUES	Comments
Public records statutes		✓		✓		See note 1
Freedom of Information Act						
Public Access Laws						
Permanent public access statutes						
Depository library laws						
Other						

Notes

1. The State Archives has issued, *Guideline for the Documentation of Electronic-Record Keeping Systems*. In addition, the Supervisor of Public Records has issued the following bulletins relating to electronic records: *Recording Material for Permanent Public Records*; *Backing up and Archiving of Electronic Records*; *Application of the Public Records Law to Electronic Records Access*; *Fee for Access and Copying of Electronic Public Records and Electronic Mail*