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# **Montana Local Government Records Management Guidelines**

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# **TABLE OF CONTENTS**

Introduction.....	i
Authority.....	ii
Definitions.....	iii-iv
Legal Considerations.....	v-vi
General Guidelines.....	vii
Retention Schedules.....(see: <a href="http://www.sos.mt.gov/records/local">www.sos.mt.gov/records/local</a> )	
Appendix A: Request For Records Disposal or Transfer Authorization Form.....	A1
Appendix B: Transfer Authorization Form (Example).....	A2

# **INTRODUCTION**

## **Why Schedules?**

Records Retention Schedules have been created to help agencies fulfill their recordkeeping responsibilities. Records retention and disposition schedules help to manage records, systematically, by specifying how long they must be kept, in what format, and what their final disposition will be.

The Local Government Records Committee, with help from local records custodians, appraises the records and finalizes the retention and disposition schedules. The scheduling process is ongoing and involves close cooperation among local records custodians, local government officials and at times, state government agencies whose policies and procedures affect local government records or who have the expertise to provide valuable assistance. If there are any changes, additions or questions about Schedules – please contact the Local Government Records Committee or complete the Request for Change in Records Schedule forms found on the [www.sos.mt.gov/records/local](http://www.sos.mt.gov/records/local) webpage.

## **What Schedules Include**

Every record series listed on a schedule includes a title (and variant titles if needed for identification), a brief description of the records series' function and its contents (if necessary), a retention period (the length of time the record must be maintained), and related comments.

The General Records Schedule is designed for categories of records that many offices have in common; for example, correspondence and subject files. The Local Government Records Committee also produces specific schedules designed for specific offices.

## **Related schedules**

Records relating to agency functions may exist in multiple offices. For example, records may be maintained in county offices and state agencies. Records in other offices may have different retention requirements – and therefore different retention periods.

Many times, duplicate documents have a shorter life span than the “record” copy or official copy of a document. The “owner” of the “record” copy should be consulted to ensure any other copy may be considered a duplicate copy. Any record with a “permanent” retention should be considered the “record” copy.

## **Records not listed in a schedule**

Local government offices may still have records that are no longer created and do not conform to the record types listed in a schedule. To prevent the accidental destruction of historically-significant records, please notify the Local Government Records Committee before destroying or otherwise disposing of records that may not appear in a schedule.

# Authority

**MCA** In 1993, the State Legislature created a Local Government Records  
**2-6-401** Committee to “approve, modify, or disapprove proposals for local  
**2-6-402** government records retention and disposition schedules.” The  
**2-6-403** Committee also can approve or disapprove requests to dispose of or  
**2-6-405** destroy records; establish categories of records for which a disposal  
request is not required; respond to requests for technical advice on  
matters relating to local government records; and provide leadership  
and coordination in matters affecting the records of multiple local  
governments.

The Committee is composed of the State Archivist, the State Records Manager, a representative of the Local Government Services Bureau in the Department of Administration, two local records custodians, appointed by the director of the Montana historical society, two additional local records custodians, appointed by the secretary of state, and a citizen representing the Montana genealogical society, appointed by the secretary of state, who shall serve as a volunteer.

The State Archives also was given authority to accept transfers of records that local governments may no longer have room to store themselves. Agencies may want to consider depositing records with their local library, museum, or historical society. If the decision is made to deposit records locally, the Local Government Records Committee strongly recommends a written agreement is used to transfer records. See Appendix B.

## **Disposition approval**

An important component of any records management program is the disposition of records that have reached their prescribed retention period. The legislature established a Destruction Subcommittee who must approve the disposal of local government records, via request. The Subcommittee is composed of the State Archivist and a representative of the Local Government Services Bureau in the Department of Administration. The Local Government Services Bureau is concerned with records that need to be saved for audit purposes and the State Archivist is interested in preserving records that have ongoing administrative, legal, or research value. Per the 2001 Legislature, a law was passed that required local officials to provide 180 days notice to certain interested parties before destroying any record that is 10 years old or older. For more information about the disposal of local government records, see the Secretary of State Records and Information Management Division website at [www.sos.mt.gov/records/local](http://www.sos.mt.gov/records/local) or contact them at 406-444-9000 or [sosrecords@mt.gov](mailto:sosrecords@mt.gov). Please see Appendix A for a copy of the Request For Records Disposal or Transfer Authorization form. The disposal form also includes a “Certificate of Destruction,” which provides agency proof that the records were actually destroyed or transferred.

# Definitions

<b>Active records</b>	Records frequently referred to and used on a daily, weekly, or monthly basis.
<b>Administrative records</b>	Records relating to budget, personnel, supply, and similar operational or facilitative functions common to most offices, in contrast to program records.
<b>Case files</b>	Material related to a specific action, event, person, organization, location, or project. Also known as project files.
<b>Destruction</b>	Methods of destroying records include: <ul style="list-style-type: none"><li>■ burning, pulping, shredding macerating, burial,</li><li>■ discarding with other waste materials, and</li><li>■ selling or salvaging the record medium (e.g., recycling).</li></ul>
<b>Disposition</b>	Disposition is the actions taken regarding records no longer needed for current government business, including: <ul style="list-style-type: none"><li>■ transfer to a storage facility,</li><li>■ transfer from one department or government entity to another,</li><li>■ transfer of permanent records to an archives, and</li><li>■ destruction of temporary records.</li></ul>
<b>Inactive files</b>	Records infrequently referred to; generally used less than once every three months.
<b>Local government</b>	As defined in 2-6-401, a local government means: <ul style="list-style-type: none"><li>■ any city, town, county, consolidated city-county, or school district;</li><li>■ any subdivision of an entity named above.</li></ul>
<b>Non-current records</b>	Records no longer required in the conduct of active business.
<b>Office of record</b>	Office which maintains the “record” copy of a document.

# Definitions – cont.

<b>Program records</b>	Records relating to the mission or the unique, substantive functions of an office.
<b>Project files</b>	Material related to a specific action, event, person, organization, location, or project. Also known as case files.
<b>Public records</b>	Quoting from 2-6-401, a public record includes “any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other document, including all copies of the records, <i>regardless of physical form or characteristics</i> , that has been made or received by any local government, in connection with the transaction of official business, and preserved for informational value or as evidence of a transaction and all other records or documents required by law to be filed with or kept by any local government in the state of Montana.”
<b>Reading files</b>	Material, such as correspondence and reference materials, filed in chronological order; generally used for reference and convenience.
<b>Record copy</b>	The “record” copy is the principal copy of any letter or document. Also referred to as the official file copy.
<b>Record series</b>	File units or documents arranged according to a filing system or kept together because they relate to a particular subject or function, result from the same activity, document a specific kind of transaction, take a particular form, or have some other relationship arising out of their creation, receipt, or use. Generally handled as a unit for disposition purposes.
<b>Records schedule</b>	A records schedule - or records retention and disposition schedule – is a document providing minimum period of time records must be retained and instructions for what to do with records no longer needed for current government business.
<b>Subject files</b>	Material filed by subject, usually in alphabetical order.
<b>Transitory records</b>	Records which do not have value beyond the immediate purpose for which the document is created, such as transmittals and meeting notices.
<b>Vital records</b>	Records that are essential to resume or continue operations during and after an emergency; records necessary to recreate the local government’s legal and financial position; and records necessary to preserve the rights and interests of the local government, its employees, residents, and other individuals directly affected by the local government’s activities.

# Legal Considerations

## **Destruction of confidential records**

State and federal laws mandate that public records must be made available to the public. However, there are also state and federal laws that mandate that certain public records containing sensitive information must be maintained as “private”, “confidential”, or “restricted access”. Confidential records should only be made available to those authorized to receive them. Some examples of these types of records are: birth records; adoptions; motor vehicle registrations and health records; just to name a few. Precautions should be taken to protect the Right to Privacy of individuals whose personal information is found in public records.

Departments should adopt standard operating procedures that ensure the handling of sensitive records, plus become familiar with the laws that pertain to them. It is the responsibility of the departments holding these records to protect them from unintentional use or distribution.

Care should also be taken to protect the information contained in confidential or private records from being seen by individuals who may be able to view the information, but are not authorized (i.e., displayed on computer monitors, hardcopy documents on desks).

## **STORAGE AREA**

Confidential/private records should be stored in a lockable, secure area. Security procedures should include the names of who is authorized access or who keys are issued to. If the storage area is shared with other departments, measures should be taken that the document content is not shown or displayed. This can be accomplished by creating a unique numbering system for boxes, and having a cross reference index held confidentially in the custodial office.

## **DESTRUCTION OF CONFIDENTIAL RECORDS**

Destruction of confidential records should be done only AFTER the appropriate destruction request forms are signed and approved.

Records should be destroyed in a manner that ensures the information will not be recoverable, such as by shredding. If you hire a disposal service to destroy the records, they must be able to certify confidential destruction of the records. Burying is not recommended for confidential records; information has been known to be readable many years after being buried. There are many reasonably priced office-sized shredders on the market. Cross-cut shredders with the smallest shred size offer the best protection. Some shredding vendors have lockable bins available, to put confidential garbage in, that they empty periodically.

**Destruction of financial records**

The Local Government Services Bureau recommends an “audit + 7 years” retention to meet statute of limitation requirements.

For further help with financial records, contact the Local Government Services Bureau at 406-841-2909.

**Stopping scheduled destruction**

When an agency or a department becomes aware of a law suit or potential law suit, it is very important that destruction of records, that may be pertinent to the law suit, is stopped. Even if the records have already met their scheduled retention period. If destruction continues it may appear that intentional disposal took place.

- Immediately tell legal counsel.
- Get an explanation from counsel about what is involved in the case so it’s known what records exist and what records should not be destroyed.
- Coordinate with counsel about which records are needed and when.

**Right to Privacy vs. the Right to Know**

The Montana Constitution assures citizens of both the right to know (Article II, Section 9) and the right to privacy (Article II, Section 10). When it comes to public records, these two sections sometimes appear to be in conflict. In addition to the constitutional right to know, MCA 2-6-102 also provides citizens the right to inspect and copy public records. Which is more important, an individual’s right to privacy or the right to know?

There is a body of case law where Montana courts have done a balancing act between the two sections and decided which is more important in specific instances. These existing cases can be used to provide guidance. Also, it is possible to provide the information a citizen seeks without allowing the person to look at the confidential portions of the records. When in doubt about whether something is confidential and or whether you have to allow access, consult legal counsel.

# General Guidelines

## **Applying retention periods**

Retention periods assigned to records are minimums. It is not required that records be destroyed or otherwise disposed of at the end of the minimum. Records may always be kept longer, but they cannot be disposed of sooner. The disposition actions of each office should depend upon its own needs and capabilities to keep records.

For local governments that are not required to have an audit, retention periods begin at the end of the fiscal year in which the records are created. For those required to have an audit, the retention period begins the month that the commissioners/council/directors or trustees receive the Final Fiscal Year Audit Report.

## **Microfilming local government records**

The Attorney General has ruled that microforms may be considered as a permanent storage medium for public records, *so long as the original source document was readable; providing a readable copy*. Local governments may keep and preserve public records through the use of microforms (film or fiche) providing the filming, development, and storage of the camera master meet applicable standards. The Records and Information Management Division in the Secretary of State Office will test if film meets the national standards. Contact: them at: PO Box 202805, Helena, MT 59620-2805, by phone at 444-9000 or email to [sosrecords@mt.gov](mailto:sosrecords@mt.gov).

When deciding whether or not to film, local governments should consider factors such as the retention periods and cost of microfilming. If a microform is chosen as the official source document and storage medium, quality assurance of the film must include readability for historical access. Paper records should be retained if fading, light writing or other issues that cause poor contrast from the original paper source. If paper records become duplicate records, due to filming, the paper records may be destroyed without obtaining approval from the Destruction Subcommittee once the film has been verified.

## **Imaging local government records**

The Local Government Records Committee adopted an administrative rule concerning the use of optical imaging for local government records. Optical imaging provides ease of access, multiple users, etc. It was not designed for long-term storage of records and does not currently meet the storage requirements for records with retention of ten years or more. For that reason, Administrative Rules 44.14.201-203 are in effect for all local governments: Electronic records storage systems may be used for the daily management, storage, and retrieval of documents. For records with a retention period of 10 years or more, electronic records storage systems may be used if the records also are maintained in paper form or on archival quality microfilm, whereas original, readable source documents provide readable copies from microfilm. For the complete Rule's text see: <http://www.mtrules.org/>.