REPORT

OF THE

WORKING GROUP ON FREEDOM OF ACCESS

TO THE JUDICIARY COMMITTEE

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Thomas Warren
Assistant Attorney General

James Henderson
State Archivist

Arthur Henry
Bureau of Information Services

Dorisann Wagner, Esq.
Maine Press Association

Reinald Nielsen

Diantha Carrigan
Maine Municipal Association

117th MAINE LEGISLATURE

JOINT STANDING COMMITTEE ON JUDICIARY

Report of the Working Group on Freedom of Access Issues

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EXECUTIVE SUMMARY:

I. BACKGROUND

In the spring of 1995, the Judiciary Committee held hearings on LD 702, a bill which was intended to improve public access to government documents stored on computers. The bill was not approved by the Committee, and it was not enacted, but the Committee requested that the parties interested in the legislation meet and consider questions arising from the debate.

The parties formed a Working Group in response to the Committee's request. The group included the State Archivist, the Director of the State's Bureau of Information Services, and a representative of the Attorney General's Office. It also included two supporters of the bill: Reinald Nielsen, who originally proposed the measure, and Dorisann Wagner, representing the Maine Press Association. The Maine Municipal Association (MMA), an opponent of the bill, was also included in the group, representing town and city governments across the state. MMA invited concerned municipal officials to participate in the talks, as well, and many did.

Meetings were held on August 3, 1995 at the State House, and on August 18, September 12, October 5, and October 19 at the MMA's office in Augusta. The Working Group was not funded or supported by the Legislature or by state government. It was a voluntary effort in response to the Committee's request. Representatives of the Legislature's Office of Policy and Legal Assistance attended meetings to monitor the talks.

II. ISSUES

The Judiciary Committee asked the group to "consider concerns raised by that bill" and to answer two specific questions:

QUESTION ONE: Does the Freedom of Access Law need to be amended to ensure public access to government computer files?

RECOMMENDATION: The working group believes that the law does not need to be amended. We do recommend that the Archives Advisory Board, working with the State Archivist, undertake a rulemaking to enhance the accessibility of public records, as described in more detail below.

QUESTION TWO: Does the Freedom of Access Law apply to private organizations or people who contract with a public entity to manage data or provide advice or reports?

RECOMMENDATION: The Working Group believes that the courts would rule that, in appropriate circumstances, records in the possession of organizations or persons who contract with state or local governments to manage data or to provide advice or reports would be in constructive possession of the governmental entity and would therefore be subject to the Freedom of Access law.

OTHER ISSUES: Other important considerations were discussed by the group, but the press of time and lack of resources militated against firm conclusions. Among them are: indexes for public records in machine form, record format information, reasonable costs to be charged for copying records, drafts and intermediate record documents prepared by contractors, standard formats for textual and graphical data, etc.

III. DISCUSSION

The Working Group believes that both statute and case law call for computerized public records to be accessible to the public except when they are specifically designated as confidential by statute. Whether the Freedom of Access law would apply to records in the hands of persons or entities that contract with public agencies would depend on the specific facts and circumstances.

The Working Group believes that where the public agency has the right to obtain or control the records in question, it is likely that the courts would hold that those records are in the constructive possession of the governmental entity and are therefore subject to the Freedom of Access law. Computer data access problems are not due to deficiencies in the law, but to its interpretation and administration by particular officials at the state, county, and municipal levels.

Discussions among group members revealed several apparent reasons for such problems. Both the state and municipal governments are adapting to the computer age at an irregular pace as evidenced by the fact that every municipal official is not equally well-trained in procedures to copy computerized public records. Responses to public record requests thus vary with the skill level of the official responding.

In addition, some software leased by municipalities is specifically designed not to copy computer files to discs or magnetic tape unless an additional license is purchased from the vendor. In such cases, the municipality is economically unable to copy public records for distribution unless the license is paid for and acquired.

Thus, misinterpretation of the Freedom of Access Law, skill level of public officials, and limitations of software can inhibit access to computerized government records. These are problems that cannot be corrected instantly, but the working group's recommendation for rulemaking is designed to draw attention to the problems and create a reasonable timetable for resolving them.

IV. RULEMAKING

The working group supports the Archives Advisory Board in a rulemaking proceeding to set standards for long-term data storage and retrieval of computerized public records data.

We recommend that the proposed rule provide that the State Archivist can certify computer programs meeting the standards criteria, so that governments considering purchase of software can determine whether it meets the requirements for both public access and archival storage before a purchase commitment.

The proposed rule should also set an implementation schedule to require that, sometime in the future, all new data processing systems installed by governments must be capable of creating usable electronic copies of public records for distribution to the public in compliance with the Freedom of Access law.

The implementation schedule should reflect the recognition by the working group that taxpayers have made substantial investments in their governments' current data processing systems. The group believes that it would be unreasonable for the state to mandate requirements necessitating immediate replacement for costly elements of existing data processing systems.

FREEDOM OF ACCESS ACT WORKING GROUP - REPORT TO JUDICIARY COMMITTEE:

At the request of Joint Standing Committee on Judiciary Chairs Senator S. Peter Mills and Representative Sharon Treat, the Freedom of Access Working Group was formed and first convened on August 3, 1995. In their June 27, 1995 charge to the group, Chairs Mills and Treat asked the Working group "to meet over the next few months to consider the concerns raised by . . ." LD 702, a bill considered and rejected by the Judiciary Committee, and address two questions specific to computer files that are public records. Representatives from the Attorney General's Office, the State Bureau of Information Services, the State Archives, and proponents and opponents of LD 702 were invited to participate. Upon invitation of initial Working Group members, several other persons joined group discussions after the first meeting[1]. A November 1, 1995 delivery date was set for Working Group conclusions and recommendations.

The first Working Group meeting was a general discussion of the Freedom of Access law and the questions posed by the Judiciary Committee. Though it may be expected that Working Group members have greater familiarity with the Freedom of Access law than the general public, the discussion revealed substantial misinterpretations relative to computer-mediated public records ("mechanical or electronic data compilations" in Freedom of Access law terminology).

Regardless of any need to modify the Freedom of Access law, there seems to be a need to publicize, for the benefit of citizens and public officials alike, statutory access requirements on public records in machine-readable form.

Following answers to the specific questions, highlights of Working Group discussions will be presented together with conclusions and recommendations for action.

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[1] See Appendix A for a list of Working Group participants.

I. Judiciary Committee Questions

The specific Judiciary Committee questions are answered as follows:

A. Freedom of Access law relation to machine records

"Does the Freedom of Access law need amendment to ensure that government computer files are as accessible to the public as other records?"

Working Group members discussed a variety of changes for the existing Freedom of Access law. The purpose or viewpoint represented by most of the changes seems to have been addressed by Law Court or Attorney General opinions. Therefore, though educational value might be gained by changing the Freedom of Access law, the Working Group recommends no alterations in its language (1 MRSA Section 401 through 410).

The Working Group supports rule-making, by the State Archivist, to minimize problems recognized by the Archivist, and to clarify requirements of existing law for machine-readable records management. The Group recommends that the proposed rule provide that the State Archivist can certify computer programs meeting standards criteria so that governments considering purchase of software can determine whether it meets the requirements for both public access and archival storage. The proposed rule should also set an implementation schedule for all future data processing systems to be capable of creating usable electronic copies of public records for distribution to the public in compliance with the Freedom of Access law.

B. Freedom of Access law demands on private organizations

"Does the Freedom of Access Law apply to private organizations contracting to manage data or to advise or report to a governmental agency?"

Many private organizations, and citizens, "report" to various governmental agencies. The act of reporting should not place those organizations and citizens under the Freedom of Access law umbrella.

However, private citizens and organizations performing functions that are properly the responsibility of a government agency apparently stand under that umbrella. In *Lewiston Daily Sun v. City of Auburn*[2], the Law Court held that actions of an unpaid

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[2] *Lewiston Daily Sun v. City of Auburn*, 544 A.2d 337.

citizen committee advising the Auburn mayor and council constituted public proceedings because its functions "if not delegated to it would have been exercised directly by the city's governing authorities,".

Insofar as the Freedom of Access law (1 MRSA Sec. 401) requires public proceedings "actions to be taken openly and that the records of their actions be open to public inspection", records of private entities executing public proceedings appear to be public records.

A subsequent Superior Court interpretation[3] of the Freedom of Access law and *Lewiston Daily Sun v. City of Auburn* warned that the law cannot be bypassed by delegating a governmental "function to another entity created expressly for the purpose of performing this function."

The specific issue raised when records are in the possession of a private contractor is whether those records meet the statutory requirement of being "in the possession or custody of any agency or public official of this State or any of its political subdivisions." In any case, the answer to this question would depend on the specific facts and circumstances. The Working Group believes, however, that where a public agency has the right to obtain or control records that are technically in the possession of a private contractor, there are good grounds to believe that the courts would hold that those records are in the constructive possession of the governmental entity and are therefore subject to the Freedom of Access Law.

In this connection, the Working Group has been informed that certain state contracts provide that the data created by private contractors is the property of the state. Such contractual provisions obviously would further the argument that the Freedom of Access law applies to records containing such data.

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[3] *Guy Gannett Publishing v. City of Augusta*, No. CV-88-383 (Me. Superior Court, Kennebec County, October 25, 1988).

II. Highlights of Working Group Discussions

Rather than concentrating on the text of LD 702, the Working Group preferred reliance on group member experience and insight into problems with public records in machine-readable form. Agendas were prepared for successive meetings but discussions were not as neat as implied by the following text. Formal voting was not used to summarize opinions. R. S. Nielsen tape recorded the discussions; these highlights have been taken from the recordings.

Appended to this report is a copy of 1 MRSA Secs. 401-410 used as the Freedom of Access law reference by the Working Group. A substantial reference to Law Court and Attorney General interpretations of the Freedom of Access law was an article in the Maine Law Review by Anne C. Lucey (A Section-by-Section Analysis of Maine's Freedom of Access Act, 43, 169-223). Software Development - A Legal Guide by Stephen Fishman (Nolo Press, Berkeley, 1994) provided information about trade secret and copyright questions related to computer programs and data files.

Most Working Group members had knowledge of or experience with problems of citizens seeking access to machine-readable public records. In effect, discussions of member experiences inspired attention to the following topics.

The meaning and applicability of the term "public records" was often revisited as other topics were discussed. 1 MRSA Sec. 402.3 defines the term to include "any written, printed or graphic matter or any mechanical or electronic compilation" that is in possession or custody of a public agency, and "has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business" with a number of confidentiality exceptions. Though several arguments were advanced to except classes of computer mediated or computer related public records from this broad definition (on grounds other than existing statutory confidentiality), none was accepted by the Working Group.

In essence, the group agreed that existing Freedom of Access law language satisfactorily addresses machine-readable public records.

A. "possession or custody" - agency

Under the Freedom of Access law, one of the requirements for records to be accessible to the public is that they be "in the possession or custody of an agency or public official of this State or any of its political subdivisions." As noted above, the question of whether records in the possession of a private contractor wold be subject to the Act would depend on the specific facts and circumstances. This topic was discussed several times, as

new members joined the group, with the conclusion that where a public agency has the right to obtain or control records that are technically in the possession of a private contractor, there are good grounds to believe that the courts would hold that those records are in the constructive possession of the governmental entity and are therefore subject to the Freedom of Access law.[4]

Had the Freedom of Access law definition of public record included the term constructive possession it would minimize or eliminate questions about access to public records created or held by private organizations serving a public agency. It is the opinion of one group member that constructive possession is implied in the 1 MRSA Sec. 401 demand that the law "shall be liberally construed and applied to promote its underlying purposes . . . ." However, he believes, facts in individual situations will dominate rather than any general principle now apparent.

Contractors are often engaged to deliver a specific product - a comprehensive plan report, economic impact analysis, etc. The status of intermediate documents (drafts, internal notes, etc.) arising in the course of preparing the final document was discussed. A strong argument was presented to the effect that intermediate records often are the best description of the reasoning leading to the formal conclusions presented in the final report and the intermediates are or should be public records.

The Law Court opinion in *Wiggins v. McDevitt* indicates that intermediate records may be subject to disclosure if they were prepared for use in connection with the transaction of public business or contain information relating to the transaction of public business. Once again, however, whether such records would be subject to disclosure in the hands of private contractors would depend on whether there were specific facts and circumstances (or specific contract language) from which a court could conclude that such records were in the constructive possession of the governmental agency.

The group had no conclusion or recommendation about the status of intermediate documents and records.

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[4] "Statutory definition of a public record as a document containing information relating to transaction of public or governmental business unless it has been designated confidential by statute or is within the scope of privilege against discovery or use as evidence does not turn on availability of other sources for the information sought and, if document contains information relating to transaction of public business, document is a public record unless it has been designated confidential by statute or is within scope of a privilege agains discovery or use as evidence. 1 MRSA Sec. 402.3.", *Wiggins v. McDevitt*, 473 A.2d 420.

See also Lucey's discussion of *Lewiston Daily Sun v. City of Auburn, Maine Law Review*, 43, 177-180.

B. Confidential records

The Freedom of Access law, as well as various statutes, designates several types of public records as confidential. The Working Group considered several problems that might arise from statutory confidentiality considerations; privacy was often mentioned. One individual suggested that citizens should be able to forbid disclosure of their names and addresses appearing in property assessment records and voting lists, etc. The Working Group came to no specific conclusions.

C. Format information

Machine-readable records are obviously meaningless (illegible) to an un-aided human reader. However, to be usable in an automatic data processing system, machine-readable records must be organized (formatted) in a known and specific manner. This fact inspired much discussion. The Group reviewed a *Scientific American*[5] article carrying a general discussion of machine record formats; Nielsen submitted a discussion of specific experience with Town of Whiting assessor records. A copy of the Nielsen memo is appended.

In 1975, Gordon Scott assisted in creating the existing language defining a "public record" which includes "any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of aural or visual comprehension." "It did not occur to people, at the time, that there might be a preference for the data in precisely the form in which it is stored electronically", to quote Scott. As a result, machine record format questions never arose.

The Working Group agreed that format conventions are an integral part of machine-readable public records. Several suggestions for format standards were discussed, but no conclusions reached. Because the State Archivist confronts a problem similar to the citizen seeking access to machine-readable records, the group agreed that the format problem should be considered during rule-making as the Archivist answers his problem.

While textual material represents the overwhelming majority of public records in machine form, maps and other graphical materials are also public records and increasingly are managed with automatic data processing systems. The group discussed format standards for graphical data, but reached no conclusion. It did note that graphical data formats and archives media should be addressed when Archives rules are formulated.

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[5] *Ensuring the Longevity of Digital Documents*,
J. Rothenberg, *Scientific American*, January 1995, pp.42-47.

D. Machine records, translations, and paper replicas

Several group members have confronted problems of equivalence between a machine record and a paper replica. For a variety of technical reasons, it is difficult to recognize actual or practical equivalence for a machine record and a corresponding paper record.

The group discussed the matter at length, but the Law Court opinion in *Wiggins v. McDevitt*, seems to render it moot. In that case, the Court ruled that access to a particular public record "does not turn on the availability of other sources for the information sought."[6]

Several group members described computer programs, in wide use among Maine communities, which cannot copy internal computer files to magnetic tape or disc. It was also pointed out that, among the three most popular assessment data management programs, there is no commonality among file formats, data representations, file organizations, etc. These problems arise from the competition among program vendors and are not inherent in the technology. One member pointed out that software vendors will provide any desired functionality when customers ask for it.

The Freedom of Access law (Sec. 408) states that when inspection of a public record "cannot be accomplished without translations of mechanical or electronic compilations into some other form, the person desiring inspection may be required to pay the State in advance the cost of translation and both translation and inspection may be scheduled to occur at such time as will not delay or inconvenience the regular activities of the agency or official . . . ."

Consistent with the remarks of Scott, noted above, translation of mechanical or electronic compilations was an important, and perhaps burdensome, task in a 1975 context. The task may still be a burden for an agency with limited printing equipment in its automatic data processing system.

A copy of a machine-readable record can be produced relatively quickly and economically on a magnetic recording tape or disc, or similar removable recording medium that is compatible with the automatic data processing system of a public agency. Group members who are also public agency employees affirmed their preference for delivering machine-readable copies of their records rather than translations on paper.

The Working Group had no conclusion on this matter. In effect the choice between translation or copy should be left to discretion of the machine record requester and the public agency.

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[6] See Footnote 4 above.

The group discussed costs that might reasonably be charged to a citizen for the task of copying or translating a public record. A variety of principles for defining costs were presented together with anecdotes about actual practice in several communities.

No conclusion resulted from the conversations though there seemed to be agreement that governmental agencies use a variety of principles in calculating copying-translating costs.

The Attorney General has stated that citizens must receive the non-confidential portions of requested public records when those records have confidential commercial data commingled.[7] Similarly, the Law Court has required public agencies to release any non-confidential part of a public record containing confidential data.[8]

The problem of commingled data initiated an extended discussion. A suggestion was made that confidential data might be protected by printing a copy of the file in question, blacking out sensitive data, and keying the remainder back into a machine. It was pointed out that the same result can be achieved, more economically, using a terminal to display file data, and editing out sensitive material. Ideally, sensitive data would have been identified (tagged) when first entered into a machine; relatively simple programs could then be used to copy or translate only the non-tagged data to create a sanitized file. Until government agencies begin such a practice, disentangling commingled data will be more or less difficult. The question was raised, and unanswered, as to who pays for the cost of editing out the confidential data to produce a sanitized record.

E. Indexes to or inventories of agency records

As automatic data processors have become common in execution of government agency tasks, the number and variety of records associated with those tasks have increased. One Working Group member commented that he is aware of thousands of machine-readable public records used by his agency; many of these public records are transitory and, though important if not necessary to agency functions, they are created and destroyed so rapidly that indexing or inventorying them would be impossibly expensive.

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[7] Opinion Me. Attorney General 5, September 2, 1976.

[8] *Guy Gannett Publishing v. University of Maine*, 555 A.2d 470, 472.

Such records pose a problem for knowledgeable public employees because the Law Court has ruled that, when a person asks for information that falls within Freedom of Access law disclosure demands, a government agency (employee), knowing it has records containing relevant information, must make that fact known to the requester.[9]

The Working Group came to no conclusion on the problem of public record indexing.

F. Commercial versus private citizen access

Public records data is valuable to private citizens concerned about functions of government and may also be valuable to a commercial firm for marketing purposes. It was pointed out that the cost of accumulating public records data is assumed by government because the data serves a public purpose; any additional marginal value in the data is free to the taxpayer.

The idea of greater charges, relative to private citizens, to commercial firms for public records data arose before automatic data processing and machine-readable records became common. The difficulty of defining equitable differential charges for commercial and private users of public records data has prevented imposition of such differentials. Though the notion of local taxpayers providing data to national firms is distasteful, the group came to no conclusion on the matter.

G. Trade secret and copyright law

Trade secret and copyright law was discussed. Computer programs are generally leased to users rather than sold. Because computer programs have little or no value as public records, they should not be classed as public records. Trade secrets may be present in specific programs used by public agencies. The Attorney General opines that holders

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[9] *Bangor Publishing Co. v. City of Bangor*, 544 A.2d 736
"[5] We also reject the only other argument made by the City, that it properly refused to comply with the Bangor Daily's request since the newspaper in fact sought a nonexistent 'list' of names and addresses and the Freedom of Access Act does not require a governmental entity to take affirmative steps to gather and compile information. (See 1 MRSA Sec. 408) Despite the absence of such a requirement, when a person requests information that falls within the Act's disclosure requirements and a governmental entity knows that it has particular records containing that information, the entity must at least inform the requesting party that the material is available and that he may come in and 'inspect and copy' the information sought."

of trade secrets must exhibit diligence in protecting those secrets, and their presence must be mentioned in contracts if State agencies are to assume responsibility for protecting those secrets.

Additionally, some aspects of computer programs can merit copyright protection. Copyright protects the tangible expression of an original work of authorship. "In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery . . . ." 17 U.S.C. 102(b). To the extent public records contain facts or other non-protectable material, they fall beyond the ambit of copyright law. If an owner of a copyrighted work asserts a trade secret in that work, the material remains protected.[10]

H. Machine records preservation - archiving

The State Archivist is charged to "Establish schedules, in consultation with the heads of state agencies and local government agencies, under which each agency shall retain records of continuing value, and dispose as provided by this chapter, of records no longer possessing sufficient administrative, legal or fiscal value to warrant further keeping for current business;" and to provide for the transfer to the state archives of those records that have archival value. The Archivist is also charged "To authorize and receive confirmation of the destruction of state records of any state or local agency . . . ."[11]

Because public records are increasingly stored, manipulated, and consulted via automatic data processing systems, the Archivist has several problems. Among others, he must store machine-readable records on archival-quality media, he must define or obtain a format definition for each machine record, and he must solve an equivalence problem for machine records and paper translations while assuring that archived records permit citizens to "derive maximum benefit from a knowledge of state affairs,".

At the first Working Group meeting, Archivist James Henderson distributed copies of a draft standard for archival media suitable for storing machine-readable records. His descriptions of his work and problems clarified many discussions about access to computer-mediated public records. At the 12 September meeting, Henderson distributed draft copies of *Long-Term Retention of Digital Records: A Strategy for Maine Government* which was presented to the Information Services Policy Board on September 14, 1995; a copy is appended.

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[10] See S. Fishmân Chapters 3 and 4 for extended discussions of copyright and trade secret law applied to computer software.

[11] 5 MRSA Secs. 95.7, 95.8, 95.9.

The Information Services Policy Board (ISPB) endorsed Henderson's memorandum and started action to implement it. Policies of the ISPB are specific to State government agencies and, formally, are irrelevant for local governments. The records retention procedures described by Henderson will apply to the State Archives and Archivist. The Archives Advisory Board presumably will use the ISPB procedures and standards as it promulgates rules for local government management of archive material.

The State Archivist is granted rule-making authority by subsection 3 of Section 95, 5 MRSA, Part 1, Chapter 6. A Working Group member noted the absence of county in the definition of local government (5 MRSA 92-A, sub. 2-A). The omission seems inadvertent since Attachments B and C are specific to county records in the Rules for Disposition of Local Government Records (90 General Government, 517, Ch. 1).

I. Summary of unresolved topics

Several aspects of public access to computer-mediated public records may require further public discussion. The Working Group is not unanimous about the following topics or considerations, but each was raised during discussions.

1. Machine record format information

Because machine-readable public records are incomprehensible in the absence of formatting conventions while the machine form (or media) is a most economical means for copying and delivering records to a requester, the status of format conventions should be clarified. Can a government agency refuse to deliver formatting information as it copies and delivers machine-readable public records on magnetic tape or discs, etc.?

2. Freedom of Access law and contractors to public entities

Should final and intermediate documents created or managed by a contractor to a public agency be placed in constructive possession of the contracting government agency by appropriately amending Freedom of Access law language? Shall access to public records data held by contractors be left to the discretion of each government agency?

3. Machine records confidentiality

In what circumstances should machine-readable records of public data become confidential apart from existing statutory assignments of confidentiality? Should ease of access to public records in machine form be restricted to protect privacy interests of individuals?

4. Indexing agency records

The Freedom of Access law carries no demand that a public agency create an index of its existing public records. Some agencies maintain conventional paper documents as well as machine-readable public records (some of which may be similar to paper records). Because the Law Court holds that a public agency must inform a

requester about its existing records with pertinent information, the question of "permissible" agency ignorance arises. What knowledge of its machine-readable and paper records must a government agency possess?

5. Records sanitizing

Public records data files, in some government agencies, are commingled confidential and non-confidential data. Because the Law Court has declared that commingled non-confidential data must be delivered to a requesting citizen, it seems necessary to ask: who bears the costs for excising confidential data from such records? Shall the State Archive accept files of such commingled data? Is there a preferred practice for addressing this problem?

6. Copying and translation costs

The Freedom of Access law authorizes government entities to charge a requester for the cost of copying and translating a computerized public record. Should a definition of *reasonable costs* for these services be created for the benefit of public agencies and officials?

7. Public records as profit centers

Many state and municipal agencies are hard-pressed to fund maintenance, let alone upgrading, for their automatic data processing systems. If copying and translation costs are rationalized, can a modest extra fee be charged (in effect, a profit) to be used for ADP system equipment and program expenses? Such a profit would not be applied to ADP system day-to-day operating costs.

8. Counties as local government

Shall the omission of county from the definition of local government in 5 MRSA 92-A sub.2-A be corrected?

III. Conclusions and Recommended Action

Fundamentally, there is but one conclusion - many people need education about the current Freedom of Access Law. The two Judiciary Committee questions were essentially an appeal for specific information. Discussions among Working Group members recounted or illustrated the need for better understanding among citizens and government employees alike.

The Working Group discussed two means for solving this problem. First: the Maine Municipal Association will communicate study results to its members and alert them to Freedom of Access issues related to computer-mediated public records.

Second: the State Archives Advisory Board should initiate rule-making to define and clarify requirements for long-term retention of computer-mediated public records. During the course of rule-making, many aspects of the Freedom of Access law will be addressed because they apply to archived material just as the Freedom of Access law applies to current records held by public entities. Preferably, rule-making should start before or during the coming Legislative session to permit Representatives and Senators to comment on the proposed rules.

Public hearings required in the course of rule-making can effectively educate public agency officials and the general public about machine-readable public records. Several topics might properly be addressed during those hearings.

A. Certified media for archival storage of digital data

Local communities and various State agencies must place specific records into long-term archival storage as well as the State Archivist. The Archivist should define approved archival media for digital data and suggest procedures for economical usage.

B. Public access to archived records

Citizens must be assured access to archived machine records as well as conventional paper records.

Three topics deserve attention.

* An economical means should be sought for creating indexes to available machine-readable public records.
* Record format data is necessary for economically practical interpretation of machine-readable public records. Shall a set of preferred record formats be defined, or shall record formats be left to the discretion of record originators? E.g.; graphical data has become increasingly important and common in public records; shall formats compatible with Archives reproducing machines be alone acceptable?

* Some public agencies will have confidential data commingled with unrestricted data in their machine-readable records. Should government agencies deliver sanitized records to the Archivist?

C. Compliance schedule

A number of distinctly different automatic data processing systems are in use by State and local agencies. There will be technical, if not procedural, problems for some existing system users when they propose to comply with records standards promulgated by the Archivist.

It can be impractically costly to demand immediate compliance with new standards. Is it practical to call for compliance upon the next upgrade (a term needing definition) of an agency's ADP system? Because most ADP systems are substantially replaced every five or six years, would it be more practical to call for compliance within seven (8, 9?) years after rules are approved?

D. Recommended standards

Because public records management problems confronting the Archivist closely parallel those facing State and local government agencies, the Archivist could define recommended technical standards for contracts, automatic data processing systems, and management procedures. State and local agencies might welcome low-cost, disinterested technical assistance; service and system vendors might appreciate hearing a well-informed voice describing records management problems.

APPENDIX A: Working Group Attendees

For the Maine Press Association:
Gordon Scott,
Dorisann W. Wagner
Eaton, Peabody
2 Central Plaza
Augusta, ME 04330

For the Attorney General's Office:
Phyllis Gardiner,
Thomas Warren
State House Station 6
Augusta, ME 04333

For Himself:
Reinald S. Nielsen
Box 100N, HCR 74
East Machias, ME 04630

For the State Archivist:
James Henderson
Maine State Archives
State House Station 84
Augusta, ME 04333

For the State Bureau of Information Services:
Arthur Henry, Jr.
Bureau of Information Services
State House Station 145
Augusta, ME 04333

For the Maine Municipal Association:

Diantha Carrigan,
Joseph Wathen
Maine Municipal Association
60 Community Drive
Augusta, ME 04330

Rocko Graziano
Selectman - Readfield
74 Kents Hill Road
Readfield, ME 04355

Richard Blackburn
Assessor - Portland
389 Congress Street
Portland, ME 04101

William LaPan
City of Bangor
73 Harlow Street
Bangor, ME 04401

Brenda Caldwell
Clerk - Gorham
270 Main Street
Gorham, ME 04038-1382

James Thomas
Assessor - Gray
P.O. Box 258
Gray, ME 04039-0258

Joseph Downey
Assessor - Auburn
45 Spring Street
Auburn, ME 04210-5986

Barry Tibbetts
Assessor - Kennebunk
1 Summer Street
Kennebunk, ME 04043-1897

John Giles
City of Portland
389 Congress Street
Portland, ME 04101

(TITLE 1)
(GENERAL PROVISIONS)

(CHAPTER 13)
(PUBLIC RECORDS AND PROCEEDINGS)

SUBCHAPTER I
FREEDOM OF ACCESS

1 § 401. Declaration of public policy; rules of construction

The Legislature finds and declares that public proceedings exist to aid in the conduct of the people's business. It is the intent of the Legislature that their actions be taken openly and that the records of their actions be open to public inspection and their deliberations be conducted openly. It is further the intent of the Legislature that clandestine meetings, conferences or meetings held on private property without proper notice and ample opportunity for attendance by the public not be used to defeat the purposes of this subchapter. b! 1975, c. 758 (rpr). ?b

This subchapter shall be liberally construed and applied to promote its underlying purposes and policies as contained in the declaration of legislative intent. b! 1975, c. 758 (rpr). ?b

1 § 402. Definitions

1. Conditional approval. Approval of an application or granting of a license, certificate or any other type of permit upon conditions not otherwise specifically required by the statute, ordinance or regulation pursuant to which the approval or granting is issued.
b! 1975, c. 758 (new). ?b

1-A. Legislative subcommittee. "Legislative subcommittee" means 3 or more Legislators from a legislative committee appointed for the purpose of conducting legislative business on behalf of the committee.
b! 1991, c. 773, @1 (new). ?b

2. Public proceedings. The term "public proceedings" as used in this subchapter means the transactions of any functions affecting any or all citizens of the State by any of the following:

A. The Legislature of Maine and its committees and subcommittees; b! 1975, c. 758 (new). ?b

B. Any board or commission of any state agency or authority, the Board of Trustees of the University of Maine System and any of its committees and subcommittees, the Board of Trustees of the Maine Maritime Academy and any of its committees and subcommittees, the Board of Trustees of the Maine Technical College System and any of its committees and subcommittees; b! 1989, c. 358, @1 (amd); c. 443, @1 (amd); c. 878, Pt. A, @1 (rpr). ?b

C. Any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision; b! 1991, c. 848, @1 (amd). ?b

D. The full membership meetings of any association, the membership of which is composed exclusively of counties, municipalities, school administrative units or other political or administrative subdivisions; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities; and b! 1991, c. 848, @1 (amd). ?b

E. The board of directors of a nonprofit, nonstock private corporation that provides statewide noncommercial public broadcasting services and any of its committees and subcommittees. b! 1991, c. 848, @1 (new). ?b b! 1991, c. 848, @1 (amd). ?b

3. Public records. The term "public records" means any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business, except:

A. Records that have been designated confidential by statute; b! 1975, c. 758 (new). ?b

B. Records that would be within the scope of a privilege against discovery or use as evidence recognized by the courts of this State in civil or criminal trials if the records or inspection thereof were sought in the course of a court proceeding; b! 1975, c. 758 (new). ?b

C. Legislative papers and reports until signed and publicly distributed in accordance with legislative rules, and records, working papers, drafts and interoffice and intraoffice memoranda used or maintained by any Legislator, legislative agency or legislative employee to prepare proposed Senate or House papers or reports for consideration by the Legislature or any of its committees during the legislative session or sessions in which the papers or reports are prepared or considered or to which the paper or report is carried over; b! 1991, c. 773, @2 (amd). ?b

D. Material prepared for and used specifically and exclusively in preparation for negotiations, including the development of bargaining proposals to be made and the analysis of proposals received, by a public employer in collective bargaining with its employees and their designated representatives; b! 1989, c. 358, @4 (amd). ?b

E. Records, working papers, interoffice and intraoffice memoranda used by or prepared for faculty and administrative committees of the Maine Maritime Academy, the Maine Technical College System and the University of Maine System. The provisions of this paragraph do not apply to the boards of trustees and the committees and subcommittees of those boards, which are referred to in subsection 2, paragraph B; b! 1989, c. 358, @4 (amd); c. 443, @2 (amd); c. 878, Pt. A, @2 (rpr). ?b

F. Records that would be confidential if they were in the possession or custody of an agency or public official of the State or any of its political or administrative subdivisions are confidential if those records are in the possession of an association, the membership of which is composed exclusively of one or more political or administrative subdivisions of the State; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities; b! 1991, c. 448, @1 (amd). ?b

G. Materials related to the development of positions on legislation or materials that are related to insurance or insurance-like protection or services which are in the possession of an association, the membership of which is composed exclusively of one or more political or administrative subdivisions of the State; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities; b! 1991, c. 448, @1 (amd). ?b

H. Medical records and reports of municipal ambulance and rescue units and other emergency medical service units, except that such records and reports must be available upon request to law enforcement officers investigating criminal conduct; and b! 1991, c. 448, @2 (new). ?b

I. Juvenile records and reports of municipal fire departments regarding the investigation and family background of a juvenile fire setter. b! 1991, c. 448, @2 (new). ?b b! 1991, c. 773, @2 (amd). ?b

1 § 402-A. Public records defined
(REPEALED)

1 § 403. Meetings to be open to public

Except as otherwise provided by statute or by section 405, all public proceedings shall be open to the public, any person shall be permitted to attend any public proceeding and any record or minutes of such proceedings that is required by law shall be made promptly and shall be open to public inspection. b! 1975, c. 758 (rpr). ?b

1 § 404. Recorded or live broadcasts authorized

In order to facilitate the public policy so declared by the Legislature of opening the public's business to public scrutiny, all persons shall be entitled to attend public proceedings and to make written, taped or filmed records of the proceedings, or to live broadcast the same, provided the writing, taping, filming or broadcasting does not interfere with the orderly conduct of proceedings. The body or agency holding the public proceedings may make reasonable rules and regulations governing these activities, so long as these rules or regulations do not defeat the purpose of this subchapter. b! 1975, c. 758 (rpr). ?b

1 § 404-A. Decisions
(REPEALED)

1 § 405. Executive sessions

Those bodies or agencies falling within this subchapter may hold executive sessions subject to the following conditions. b! 1975, c. 758 (new). ?b

1. Not to defeat purposes of subchapter. These sessions shall not be used to defeat the purposes of this subchapter as stated in section 401. b! 1975, c. 758 (new). ?b

2. Final approval of certain items prohibited. No ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official actions shall be finally approved at executive sessions. b! 1975, c. 758 (new). ?b

3. Procedure for calling of executive sessions. Executive sessions may be called only by a public, recorded vote of 3/5 of the members, present and voting, of such bodies or agencies. b! 1975, c. 758 (new). ?b

4. Motion contents. A motion to go into executive session shall indicate the precise nature of the business of the executive session. b! 1975, c. 758 (new). ?b

5. Matters not contained in motion prohibited. No other matters may be considered in that particular executive session. b! 1975, c. 758 (new). ?b

6. Permitted deliberation. Deliberations may be conducted in executive sessions on the following matters and no others:

A. Discussion or consideration of the employment, appointment, assignment, duties, promotion, demotion, compensation, evaluation, disciplining, resignation or dismissal of an individual or group of public officials, appointees or employees of the body or agency or the investigation or hearing of charges or complaints against a person or persons subject to the following conditions:

(1) An executive session may be held only if public discussion could be reasonably expected to cause damage to the reputation or the individual's right to privacy would be violated;

(2) Any person charged or investigated shall be permitted to be present at an executive session if he so desires;

(3) Any person charged or investigated may request in writing that the investigation or hearing of charges or complaints against him be conducted in open session. A request, if made to the agency, must be honored; and

(4) Any person bringing charges, complaints or allegations of misconduct against the individual under discussion shall be permitted to be present.

This paragraph does not apply to discussion of a budget or budget proposal; b! 1987, c. 769, Pt. A, @1 (rpr). ?b

B. Discussion or consideration by a school board of suspension or expulsion of a public school student or a student at a private school, the cost of whose education is paid from public funds, provided that:

(1) The student and legal counsel and, if the student be a minor, the student's parents or legal guardians shall be permitted to be present at an executive session if the student, parents or guardians so desire. b! 1979, c. 541, Pt.A, § 3 (amd). ?b

C. Discussion or consideration of the condition, acquisition or the use of real or personal property permanently attached to real property or interests therein or disposition of publicly held property or economic development only if premature disclosures of the information would prejudice the competitive or bargaining position of the body or agency; b! 1987, c. 477, § 3 (amd). ?b

D. Negotiations between the representatives of a public employer and public employees may be open to the public provided both parties agree to conduct negotiations in open sessions. Discussion of labor contracts and proposals and meetings between a public agency and its negotiators may be held in an executive session. b! 1975, c. 758 (new). ?b

E. Consultations between a body or agency and its attorney concerning the legal rights and duties of the body or agency, pending or contemplated litigation, settlement offers and matters where the duties of the public body's counsel to his client pursuant to the code of professional responsibility clearly conflict with this subchapter or where premature general public knowledge would clearly place the State, municipality or other public agency or person at a substantial disadvantage. b! 1975, c. 758 (new). ?b

F. Discussions of information contained in records made, maintained or received by a body or agency when access by the general public to those records is prohibited by statute. b! 1975, c. 758 (new). ?b b! 1987, c. 769, Pt. A, @1 (amd). ?b

1 § 405-A. Recorded or live broadcasts authorized
(REPEALED)

1 § 405-B. Appeals
(REPEALED)

1 § 405-C. Appeals from actions
(REPEALED)

1 § 406. Public notice

Public notice shall be given for all public proceedings as defined in section 402, if these proceedings are a meeting of a body or agency consisting of 3 or more persons. This notice shall be given in ample time to allow public attendance and shall be disseminated in a manner reasonably calculated to notify the general public in the jurisdiction served by the body or agency concerned. In the event of an emergency meeting, local representatives of the media shall be notified of the meeting, whenever practical, the notification to include time and location, by the same or faster means used to notify the members of the agency conducting the public proceeding. b! 1987, c. 477, § 4 (amd). ?b

1 § 407. Decisions

1. Conditional approval or denial. Every agency shall make a written record of every decision involving the conditional approval or denial of an application, license, certificate or any other type of permit. The agency shall set forth in the record the reason or reasons for its decision and make finding of the fact, in writing, sufficient to appraise the applicant and any interested member of the public of the basis for the decision. A written record or a copy thereof shall be kept by the agency and made available to any interested member of the public who may wish to review it. b! 1975, c. 758 (new). ?b

2. **Dismissal or refusal to renew contract.** Every agency shall make a written record of every decision involving the dismissal or the refusal to renew the contract of any public official, employee or appointee. The agency shall, except in case of probationary employees, set forth in the record the reason or reasons for its decision and make findings of fact, in writing, sufficient to appraise the individual concerned and any interested member of the public of the basis for the decision. A written record or a copy thereof shall be kept by the agency and made available to any interested member of the public who may wish to review it. b! 1975, c. 758 (new). ?b

1 § 408. Public records available for public inspection

Except as otherwise provided by statute, every person shall have the right to inspect and copy any public record during the regular business hours of the custodian or location of such record; provided that, whenever inspection cannot be accomplished without translation of mechanical or electronic data compilations into some other form, the person desiring inspection may be required to pay the State in advance the cost of translation and both translation and inspection may be scheduled to occur at such time as will not delay or inconvenience the regular activities of the agency or official having custody of the record sought and provided further that the cost of copying any public record to comply with this section shall be paid by the person requesting the copy. b! 1975, c. 758 (new). ?b

1 § 409. Appeals

1. **Records.** If any body or agency or official, who has custody or control of any public record, shall refuse permission to so inspect or copy or abstract a public record, this denial shall be made by the body or agency or official in writing, stating the reason for the denial, within 5 working days of the request for inspection by any person. Any person aggrieved by denial may appeal therefrom, within 5 working days of the receipt of the written notice of denial, to any Superior Court within the State. If a court, after a trial de novo, determines such denial was not for just and proper cause, it shall enter an order for disclosure. Appeals shall be privileged in respect to their assignment for trial over all other actions except writs of habeas corpus and actions brought by the State against individuals. b! 1987, c. 477, § 5 (amd). ?b

2. **Actions.** If any body or agency approves any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session, this action shall be illegal and the officials responsibile shall be subject to the penalties hereinafter provided. Upon learning of any such action, any person may appeal to any Superior Court in the State. If a court, after a trial de novo, determines this action was taken illegally in an executive session, it shall enter an order providing for the action to be null and void. Appeals shall be privileged in respect to their assignment for trial over all other actions except writs of habeas corpus or actions brought by the State against individuals. b! 1975, c. 758 (new). ?b

3. **Proceedings not exclusive.** The proceedings authorized by this section shall not be exclusive of any other civil remedy provided by law. b! 1975, c. 758 (new). ?b

1 § 410. Violations

For every willful violation of this subchapter, the state government agency or local government entity whose officer or employee committed the violation shall be liable for a civil violation for which a forfeiture of not more than $500 may be adjudged. b! 1987, c. 477, § 6 (rpr). ?b

8325WPPGEA

TO: Freedom of Access Working Group
FROM: Reinald S. Nielsen 12 August 1995
SUBJECT:

Machine-Readable Public Records - Formats, and
An Example of Access to Machine Records

The Rothenberg article (Ensuring the Longevity of Digital Documents), reproduced and distributed by Diantha Carrigan, has a general description of machine record data encoding - formatting. Rothenberg properly emphasizes the "nature of digital data storage as a bit stream. Digital information can be saved on any medium that is able to represent the binary digits ('bits') 0 and 1." His logic wobbles some when he speaks of digital information rather than digital data and mentions "intervening spaces, punctuation or formatting" in connection with a bit stream. However, he is right on when he declares that "..., interpreting a bit stream depends on understanding its implicit structure." That statement is correct whether a particular data file is 50 years old or 5 months old.

Rothenberg deals in generalities. Specifics and particular data conventions underlie my Review of Whiting 1993 Property Assessment Data (see accompanying copy of 6 July 1994 document). While Rothenberg is concerned about the loss of necessary formatting information as data files age, a good part of information necessary for interpreting current files can be inferred by comparing machine and similar paper records and looking for evidence of a standard data coding convention. Of course, for "looking" to be productive, one must be familiar with coding conventions. The American Standard Code for Information Interchange (ASCII) is used in Trio files with fixed length fields and fixed length records; see Table Fields, p.18, in the Review. Yes, there are conventions other than ASCII for coding symbols as well as for variable length fields and variable length records.

When, as Hunnewell did, the file creator refuses to produce formatting information, it is necessary, again, to "look" at the data stream (bytes of ASCII code) and make educated guesses about field lengths. When first I did that to the "principal" file (TSREAS50.TD1), I "found" 211 fields with about 50 unknown. As I worked further with the data file and paper assessment records, I reduced the total number of fields to 203 with 20 unknowns. However, as Table FILES (p.4) confirms, I was unable to find a purpose for many of the 25 files that Hunnewell created. (Notice that ASCII is a formatting convention for a particular set of symbols -letters, numbers, punctuation, etc.); it does not prescribe conventions for a data file as a whole.)

The lesson? Formatting information must be considered an integral part of public records managed with automatic data processors. Current FOAA language (Sec.402.3) is vague on this matter; "electronic data compilations from which information can be obtained" are declared to be public records, but formatting information, if implied at all, lies under the phrase "from which information can be obtained".

Our homework assignment was to find instances where citizens had trouble gaining access to machine-readable public records. I have already described my experiences. The 6 July 1994 Review may be a valuable complement to our assignment; it illustrates insights into local government gained when machine-readable public records are delivered to a citizen.

While the Review emphasizes deficiencies in behavior of Whiting Assessors and Brenda Hunnewell, I would have been pleased to emphasize a good job had that been the case. In my view, citizens and voters in general (increasingly owners of personal computers) will increase their involvement and cooperation with government affairs when they realize that intricacies of school budgets, assessment practices, telephone rate setting, etc. can be understood via their home data processors.

Long-Term Retention of Digital Records:
A Strategy for Maine State Government

DRAFT for ISPB Meeting of 9/14/95

by Jim Henderson for the Subcommittee

CONTEXT

Scope of the Project

The Information Services Policy Board has identified long-term retention of electronic records as a critical issue for Maine state government.

Digital records include electronic databases, imaging systems, e-mail, word processing, and spreadsheets, among others, all of which are integrally related to associated records in other media, such as paper, microform and photographic.

This is a first step to outlining a strategy.

Abstract

Failure to properly address the long-term retention of digital records has meant that citizens are losing access to official State records, that taxpayers are losing data created by sometimes expensive systems; that increased costs and delays burden State government when retrieval of improperly stored records is necessary, among other problems.

A strategy is necessary to insure current records are properly retained, that those eligible for destruction are destroyed immediately, and that those with long-term value are identified and preserved. Archival (permanent) retention will probably involve a mix of storage options: centralized (standard formats managed by the Archives with DDP technical support) and distributed (complex and non-standard formats managed by agency information systems under guidelines established by this strategy).

Several resources already exist to aid in the development of a strategy: the ISPB approved Architecture Principles and Database Design Standards; the Archives' staff research on the problem and its records management expertise; DDP and State agency expertise in systems design and operations; the record of other state's efforts and the extensive research conducted by archivists, records managers, and academics. *The primary missing resource is a focused, supported entity to address this problem within State government.*

A set of tasks and an implementation schedule will focus the efforts of such a group.

THE PROBLEM

Many official State records in digital form may not be accessible in the future to serve administrative, fiscal, legal, policy or research needs. Some are not now accessible.

- State taxpayers are losing access to official records created on electronic media and are risking additional losses in the future. Specifically, computer tapes in the custody of some agencies may not be read by available technology or are not properly documented to reflect their content or appropriate retrieval methods.
- Inability to migrate data and software to new systems results in additional costs and/or loss of access to important information.
- Failure to insure long-term access to critical business records will result in increased costs of, and delays in, retrieving those records for business purposes.
- Failure to insure timely access to certain records may raise "right-to-know" issues for those seeking permitted public access.
- Specifically, taxpayers have invested in important major information systems which require long-term retentions and retrieval, such as

  District Court Docket
  Environmental Monitoring and Compliance Information
  Geographical Information Systems
  Human Services Program and Case Information
  Public Safety and Criminal Record Information
  State Retirement System

- Potential consequences of retrieval problems, other than administrative costs and inefficiencies include: incomplete criminal record history available to law enforcement; a citizen's loss of benefits (retirement, pardon, financial assistance); inability to perform a review or audit of critical financial transactions; restrictions on scientific research which could have included State data, such as cancer registry information, marine or other wildlife habitat.

MISSION

The State will develop a strategy to insure that electronic records are

1) retained for appropriate current business, legal and administrative needs;

2) destroyed, when authorized, after current agency business needs have ended; and

3) for records with continuing value, retained indefinitely in an accessible form after current agency business needs have ended.

The strategy will contain the following elements: 1) a plan for identifying electronic records most in need of retention management; 2) criteria for applying retention periods; 3) a mechanism for applying and maintaining retention requirements, potentially including a continuing education component and a periodic auditing component; 4) a mechanism for providing public access to those non-confidential records of current interest as well as those of continuing (archival) value.

OUTLINE OF A STRATEGY

Identifying Critical Records

Each agency with a major system will identify those long-term records important to its business functions, based on administrative, fiscal, and legal requirements.

For records of continuing value after agency needs have ended, the Archives focuses on policy and program content, seeking evidence of the government's performance and other information with probable value to researchers, as in the following model:

	GOVERNMENTAL LEVEL			
FUNCTION	**Policy**	**Management**	**Execution**	**Housekeeping**
Policy	E	E	E	I
Management	E	E	I	D
Execution	E	I	I	D
Housekeeping	I	D	D	D

"E" indicates probable evidential value; "I", possible informational value; "D", probable destruction.

Retention Criteria

The State Archives, through its Records Management Services Division, currently establishes retention periods for State records, regardless of media. It distinguished three sets of records:

Current Records

These are records used, or likely to be used, in the day-to-day operations of an agency. They are kept within the office environment or in nearby storage. In digital systems, they are usually active records, immediately available.

Non-Current Records

Non-Current records are less likely to be used day-to-day, but must be retained to satisfy certain administrative or legal requirements. These records are sent to the State Records Center (paper or microform) or, for digital records, are maintained off-line with copies in a secure, physically separate, location, such as the State Archives.

Permanent Records

Once the value to the creating agency is ended, the Archives may determine they have continuing value as documentation of State government policies and programs, or for the informational value they may have for research. Human readable permanent records (paper, microform, photographic) and some audio/video records are held by the Archives for preservation and access. Other

machine readable (digital) records will either be held by the Archives if in standard, easily accessible form (e.g., flat ASCII files), or they will be held by those State systems having the capability to maintain and migrate the information to insure continuous access.

The distinction between "current" and "non-current" records is essentially a business decision for each agency, in consultation with Records Management staff. The total retention period ("current" plus "non-current") is also an agency decision, but, beyond the essential administrative or legal requirements, Records Management strongly recommends limited retention because of the continuing liability for storage, retrieval, and the implications of the discovery process in a legal proceeding.

Retention Management

Off-Site Storage

The State Archives continues to offer free, climate controlled, secure storage to State information system media. These include full system backup, current data, and non-current data on tape, cartridge, optical and other media. Access is available during business hours, or in case of a major emergency, at any time provided prior arrangements have been made for emergency access.

Implementation of Information Architecture Principles

The Information Services Policy Board has adopted these principles as "a planning tool which helps develop technically compatible systems by providing a consistent approach to information technology across an organization." Some principles apparently relevant to this problem are the following:

Infrastructure

4. The distribution and interconnection of information technology empowers users.

Data

1. Data owners are responsible for data integrity and distribution.

2. State government information is easily accessible.

4. Information systems are developed recognizing the future disposition of the data.

Migration

6. Management anticipates and plans for the replacement of obsolete application systems.

Organization

3. Management plans for the impact that changes in information technology have on the organization, its employees, and the public.

The Certification Option

An "outcome-based" approach to retention management, which reduces the need for meddling with the internal affairs of an agency and its systems, would be to require certification of systems that they do, or will, meet retention, migration, and access stipulations. Certification may be required in stages: systems design, systems implementation, system acceptance or operation.

Potential Elements of a Certification Program:

Outcome Standards

Retention
- Long-term
- Permanent

Access
- Data review and copy
- Interpretation

Migration
- Systems
- Data

Elements to be Reviewed (Rough - for brainstorming)

Migration Plan for Full System

Standard Formats by Function, e.g.:
- Image
  - TIFF, version X
- Database
  - Data
    - ASCII, DBF
  - Applications
- Spreadsheet
  - WK?
- Electronic Mail

Storage Media
- Tape
- Cartridge
- Disk

Report Generation
- Electronic
  - Imaging Systems
    - Maintain image-index links
  - Database
    - SQL compliant
- Other

Imaging Systems: (For example)

1. The system must be able to produce output to a non-rewritable medium such as Write Once Read Many (WORM), Computer Output to Laser Disk (COLD), or Compact Disk - Read Only Memory (CD-ROM).
2. The system must use a non-proprietary digital image file format (preferably the most generic version of TIFF - Tagged Image File Format - available).
3. The system must use International Telecommunications Union (ITU) Group 3 and Group 4 compression techniques.
4. The system must use a standard Error Detection and Correction (EDAC) system; for example, the Small Computer System Interface (SCSI) command "Write and Verify" must be used when writing data to digital optical disks.
5. The indexing database must provide for efficient retrieval, ease of use, and up-to-date information about the digital images stored on the system. The software employed must be capable of producing ASCII output.
6. The system must have a specific plan for an ongoing process of migrating long-term and permanent records stored on the system from older to newer hardware and software.

Electronic Information Systems: (For example)

1. The software and hardware used must be capable of copying data to one or more standard off-line storage devices, such as standard-sized floppy disks, magnetic tapes, etc.
2. The system must be capable of exporting data to ASCII or other standard file formats, that can be imported by other commonly used software packages.
3. The system must have a specific plan for an ongoing process of migrating long-term and permanent records stored on the system from older to newer hardware and software.

Whether or not the system is used to maintain permanent records, the public's right to request and receive usable electronic copies of public records must be protected through compliance with A2, A3, and A5 above for imaging systems; and by compliance with B1 and B2 above for electronic information systems.

Training for Office Systems

The Archives is currently consulting with a major department to recommend a file-management system for its office system of integrated word processing, spreadsheet, and e-mail applications. It will likely involve a recommended directory structure, file naming convention, and keyword searching mechanism. For those records having long-term value, it will identify them for electronic storage where appropriate. This consultation may provide the basis for an additional certification model for office systems.

Maintenance of Permanent Records

State agency information systems. For many permanent records, especially those in complex systems, the creating agencies should maintain, migrate, and provide access (except as the Archives might manage remote access).

The State Archives. The Archives should not acquire permanent digital records unless they exist in a limited variety of standard formats which allow access to the original information. For those is does acquire, except for small data sets, it may need to contract with the Division of Data Processing to provide physical custody, preservation and access. Access could be either through the Internet or locally through terminals in the Archives.

Compliance Management

Education. The best management will likely emerge from informed, willing participants who know the goals and parameters of the adopted strategy and who recognize their own interest in its success. Vehicles to convey these could include 1) well-written manuals, 2) group workshops, and 3) on-site consultations.

Auditing. Some periodic system for auditing compliance with should be established. This may be possible by remote electronic means, testing the availability of permanent digital records.

Providing Public Access

Since, with few exceptions, State records are public records, they must be available for review and copying. The establishment of standards for retention formats and migration should facilitate the production of requested records in formats usable by the public.

Remote

Increased posting of State records to publicly available networks, such as the Internet, will promote the adoption of standards, ease access for the public, and reduce the number of in-person and telephone information requests with which agencies now must cope.

Postings should, based on an analysis of the demand, provide browsing, document transfer, and full-file transfer (through ftp or similar standard protocol).

On-Site

In-person requests should be provided with browsing and file transfer options. For permanent records, the Archives could manage this function through its research room by terminal links to the systems holding the information. This could relieve agencies from having to respond to research requests, except in special circumstances.

Overall Program Coordination

Institutional Commitment

A "strategy" or "plan" or a set of "standards" is virtually useless without an institutional commitment to continued implementation and revision as circumstances change. In addition to the items already mentioned, other functions must be carried out if long-term digital records are to be truly protected and made accessible. Clearly, State resources must be provided to support this effort.

Continuing Research

Obtain and analyze facts, reports and policy papers regarding the management of electronic records in other states and jurisdictions. Recommend implementation of new systems, procedures or organizational changes. Maintain professional competence in these areas.

Documentation

Develop reports, charts, forms, manuals and other related materials outlining methods, procedures and organizational policies. Some might be described as follows:

A Guide to Managing Electronic Records in Maine State Government to codify and articulate policy and to provide practical assistance in following the policy, including forms, definitions, procedures, contact persons.

A General Retention Schedule for Electronic Records to insure that retention decisions are based on solid reasoning and not on "just-in-case" or "as long as the system will hold it" approaches.

Agency-specific retention schedules for electronic records for the reasons cited above and to continue the de facto "information locator system" which the Records Management Division's scheduling database now provides.

Implementation Schedule

(Wild guesses! Much will depend on resource commitment.)

1995

November

Establish an implementation/coordination structure for the project.

Review material from other jurisdictions with emerging electronic records programs, drawing on resources at the Archives, DDP and elsewhere.

December

Identify "Major Maine State Information Systems"

Schedule and conduct a high level description of these systems to determine the importance of long-term records therein

1996

January

Produce a written analysis of the significance of other experiences for this project along with a recommended approach for this project.

Select a number of "Major Maine State Information Systems" for test of recommended approach and arrange meetings with target system staff, after consultation with their management to seek approval and cooperation.

Complete an inventory and appraisal of the target systems; recommend permanently valuable electronic records for retention and recommend the format in which they are to be retained.

Archives consults closely with the Division of Data Processing (DDP) to develop a procedure to select and transfer permanently valuable test system records, as a prototype for those occasions where the Archives may contract with DDP.

February

Complete work with DDP staff to develop security, retrieval and maintenance procedures for transferred records. Archives access policy and procedures are developed to facilitate public access.

Complete an inventory and appraisal of two additional target systems; recommend the selection and format for the retention of permanently valuable electronic records; oversees the transferal of selected records to DDP.

March

Complete drafts of products noted in the "Documentation" section above.

ISPB reviews drafts of products with comments for revisions.

April

Complete and publish final versions of products.

Training of Archives and State agency staff in the use of the products as tools for implementing the electronic records management policy.

On-Going

Auditing for compliance; research on changing challenges, techniques; training in application of standards, adoption of new techniques, etc.