

A. PUBLIC RECORDS STATUTES

As noted in the Introduction and Glossary of Terms, your state likely recognizes a distinction between “public records,” which may include correspondence, office records, personnel records, etc., and “government publications,” which may be compiled as a means to disseminate government information of educational or public interest. This section addresses statutes that concern public records and, in particular, those that focus on record keeping requirements and retention. The compilation of statutes for your state may combine record keeping requirements with public access provisions or freedom of information laws. Those statutes are addressed in Sections B & C.

1. Does your state have “public records statutes,” as referred to in the paragraph above?

- Yes
 No

a. If “Yes,” cite your state’s public records statutes and the administrative regulations that supplement them.

Colo. Rev. Stat. §§24-72-101 to 24-72-402 and 24-80-101 to 24-80-113 (2001).

b. If “No,” skip this whole section.

Additional comments:

2. The public records statutes/regulations apply to which of the following branches?

- Executive
 Legislative
 Judicial
 Administrative (applying to all agencies, no matter what branch of government)
 Other

a. Briefly explain your answer and cite to applicable statutes/regulations.

The public records statutes and regulations apply to the Executive and Legislative branches and their agencies, but not to the Judicial Branch. Colo. Rev. Stat. 24-72-202(6)(a)(I) (2001): “Public records’ means and includes all writings made, maintained, or kept by the state., any agency, institution, a non-profit corporation incorporated pursuant to section 23-5-121(2), C.R.S., or political subdivision of the state. . . .” However, see *Office of the State Court Administrator v. Background Information Services, Inc.*, 994 P.2d 420 (Colo. 1999), which held that court records do not fall within the purview of “public records” under the Public Records Act.

Additional comments:

3. Cite to public records statutes/regulations where “public record” is defined.

Colo. Rev. Stat. §24-72-202(6) (2001).

Additional comments:

4. Do the public records statutes/regulations address electronic records separately vis-à-vis print records?

Yes

No

- a. If "Yes," cite to and briefly discuss statutes/regulations addressing electronic records; how are they treated differently?

Where public records are kept only in miniaturized or digital form, the agency shall adopt a policy regarding the retention, archiving, and destruction of such records, and take such measures as are necessary to ensure public access to the records without unreasonable delay or cost. This may include direct electronic access via online bulletin boards or other means. Colo. Rev. Stat. 24-72-203(1)(b)(I, II) (2002).

Additional comments:

Colo. Rev. Stat. §24-72-202(7) (2001) states: "Writings" includes digitally stored data, including without limitation electronic mail messages, but does not include computer software.

5. Do the public records statutes/regulations address retention of records?

Yes

No

- a. If "Yes," cite to and briefly summarize the retention provisions.

Colo. Rev. Stat. §24-80-103. An officer who has custody of public records shall periodically consult with the department of personnel and the Attorney General to determine if records have legal, administrative, or historical value. If not, then the records should be disposed of.

- b. If "Yes," also cite to and discuss any provisions/regulations that address retention of electronic records; cite to any other source of law supplementing them: attorney general opinions, court decisions, administrative rules or guidelines.

No reference to electronic records.

Additional comments:

6. Do the public records statutes/regulations or other sources of law supplementing them (particularly a declaration of legislative intent or a relevant attorney general opinion) declare the public policy of the state and address the scope of citizens' access to public records or acknowledge the state's responsibility to permanently maintain public records?

Yes

No

- a. If "Yes," cite to and provide relevant language.

Colo. Rev. Stat. §24-72-201 (2001) includes a legislative declaration: “It is the declared public policy of this state that all public records shall be open for inspection.”

Additional comments:

7. Is a public records administrator, a public records commission or other officer/government entity responsible for administering the public records statutes/regulations?

Yes
 No

- a. If “Yes,” cite to applicable statutes/regulations and identify the responsible officer/government entity.

Colo. Rev. Stat. §24-80-102(2) (2001). The Executive Director for the Department of Personnel, as chief administrative officer of the state archives and public records.

- b. If “Yes,” also cite to and discuss any source of law requiring the responsible officer/government entity to permanently maintain government information; cite attorney general opinions, court decisions, and administrative rules or guidelines.

None found.

Additional comments:

8. Has any public records legislation/administrative regulation been proposed calling for “permanent public access” to electronic public records?

Yes
 No

- a. If “Yes,” cite to and briefly discuss the legislation/proposed regulation; what was the outcome?

S.B. 02-119, 63d General Assembly (Colo. 2002), which was not passed during the past legislative session, was a complete overhaul of the Colorado library law. Among the provisions was a proposal to require the state publications depository and distribution center to coordinate permanent public access to state publications with state agencies, depository libraries, and other entities.

- b. If “Yes,” also cite to documents from the legislative or regulatory history.

Additional comments:

9. Has litigation under the public records statutes resulted from the state’s failure to “permanently” maintain a public record?

Yes
 No

- a. If “Yes,” cite to and briefly discuss each case.

Additional comments:

10. Discuss any unique circumstances in your state relevant to “permanent public access” of public records under public records statutes/regulations.

B. FREEDOM OF INFORMATION ACT

A state’s freedom of information act (or law) generally addresses public access to “public records.” As noted under Section A above, the compilation of statutes for your state may combine record keeping requirements and public access provisions.

1. Does your state have a “freedom of information act,” as referred to in the paragraph above?

Yes
 No

- a. If “Yes,” cite your state’s freedom of information act (or law) statutes and the administrative regulations that supplement them.

Colo. Rev. Stat. §§24-70-201 – 206 (2001).

- b. If “No,” skip this whole section.

Additional comments:

The freedom of information act and the public records law is one and the same in Colorado.

2. The freedom of information act statutes/regulations apply to which of the following branches?

Executive
 Legislative
 Judicial
 Administrative (applying to all agencies, no matter what branch of government)
 Other

- a. Briefly explain your answer and cite to applicable statutes/regulations.

The public records statutes and regulations apply to the Executive and Legislative branches and their agencies, but not to the Judicial Branch. Colo. Rev. Stat. 24-72-202(6)(a)(I) (2001): “‘Public records’ means and includes all writings made, maintained, or kept by the state., any agency, institution, a non-profit corporation incorporated pursuant to section 23-5-121(2), C.R.S., or political subdivision of the state. . . .” However, see *Office of the State Court Administrator v. Background Information Services, Inc.*, 994 P.2d 420 (Colo. 1999), which held that court records do not fall within the purview of “public records” under the Public Records Act.

Additional comments:

3. Cite to freedom of information law statutes/regulations where “public record” is defined.

Colo. Rev. Stat. § 24-72-202 (2001).

Additional comments:

4. Do the freedom of information act statutes/regulations address electronic records separately vis-à-vis print records?

Yes

No

a. If “Yes,” discuss whether the freedom of information act statutes/regulations had been amended at any time to cover electronic records; cite to and provide amending language.

b. If “Yes,” also cite to and briefly discuss statutes/regulations addressing electronic records; how are they treated differently?

Additional comments:

5. Do any freedom of information act statutes/regulations assure “permanent public access” of electronic public records?

Yes

No

a. If “Yes,” cite to and discuss any provisions/regulations that address “permanent public access”; cite to any other source of law supplementing them: attorney general opinions, court decisions, administrative rules or guidelines.

Additional comments:

6. Do the freedom of information act statutes/regulations or other sources of law supplementing them (particularly a declaration of legislative intent or a relevant attorney general opinion) declare the public policy of the state and address the scope of citizens’ access to public records or acknowledge the state’s responsibility to permanently maintain public records?

Yes

No

a. If “Yes,” cite to and provide relevant language.

Colo. Rev. Stat. § 24-72-201 (2001) states: “all public records shall be open for inspection by any person at reasonable times.”

Colo. Rev. Stat. §24-80-103 addresses how officers determine whether to preserve or dispose of public documents; there is no mandate to permanently maintain public records.

Additional comments:

7. Has any freedom of information legislation/administrative regulation been proposed calling for “permanent public access” of electronic public records?

Yes
 No

- a. If “Yes,” cite to and briefly discuss the legislation/proposed regulation; what was the outcome?
- b. If “Yes,” also cite to documents from the legislative or regulatory history.

Additional comments:

8. Has litigation under the freedom of information act resulted from the state’s failure to “permanently” maintain a public record?

Yes
 No

- a. If “Yes,” cite to and briefly discuss each case.

Additional comments:

9. Discuss any unique circumstances in your state relevant to “permanent public access” of public records under freedom of information act statutes/regulations.

C. PUBLIC ACCESS LAWS

The term “public access law” is intended to be a catchall for all other statutes that address the permanency and public accessibility of government information. The type of law appropriately falling under this section is most likely to be a statute that governs availability and access of *government publications*. An example of such a statute is the “Free Public Access to the Code of Maryland Regulations Act,” whose title alone explains much about its purpose.

1. Does your state have any “public access laws,” as referred to in the paragraph above?

Yes
 No

- a. If “Yes,” cite each of your state’s public access law statutes and the administrative regulations that supplement them.
- b. If “No,” skip this whole section.

None other than those already cited.

Additional comments:

2. For each public access law, specify the branches to which it applies.

- Executive
- Legislative
- Judicial
- Administrative (applying to all agencies, no matter what branch of government)
- Other

a. Briefly explain your answer and cite to applicable statutes/regulations.

Additional comments:

3. For each public access law, cite to and discuss provisions/regulations addressing the particular form of government information addressed by the law.

Additional comments:

Colo./ Rev. Stat. §24-80-102 (2001). The Department of Personnel shall be responsible for all public records. The state historical society shall be responsible for items which are defined as not public records under 24-80-101 (e.g., library materials, non-government documents of an historical nature, private papers, and extra copies of publications).

4. For each public access law, do the applicable statutes/regulations address electronic information separately vis-à-vis print information?

- Yes
- No

a. If "Yes," cite to and briefly discuss statutes/regulations addressing electronic information; how is it treated differently?

Additional comments:

5. For each public access law, do the applicable statutes/regulations specifically address permanency of the information?

- Yes
- No

a. If "Yes," for each public access law, cite to and briefly discuss the permanency provisions.

Additional comments:

6. For each public access law, do the applicable statutes/regulations specifically address accessibility of information?

- Yes
- No

a. If "Yes," cite to and briefly discuss the accessibility provisions.

Colo. Rev. Stat. §24-80-108 (2001) states that the Executive Director of the Department of Personnel shall have access to all non-confidential public records.

Colo. Rev. Stat. § 24-72-203(1)(a) (2001) states: “All public records shall be open for inspection by any person at reasonable times ... but the official custodian of any public records may make such rules with reference to the inspection of such records as are reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or the custodian’s office.”

Additional comments:

7. For each public access law, do the applicable statutes/regulations or any other source of law supplementing them (particularly a declaration of legislative intent or a relevant attorney general opinion) declare the public policy of the state and address the scope of citizens’ access to government publications or acknowledge the state’s responsibility to permanently maintain government publications?

Yes

No

- a. If “Yes,” cite to and provide relevant language.

Additional comments:

Colo. Rev. Stat. §24-90-204 (2001) requires every state agency to deposit at least four copies of each of its state publications with the state publications depository and distribution center. There is no explicit requirement that the center permanently maintain these publications.

8. Has any public access legislation/administrative regulation been proposed calling for “permanent public access” of electronic publications?

Yes

No

- a. If “Yes,” cite to and briefly discuss the legislation/proposed regulation; what was the outcome?

S.B. 119, which was not passed during the past legislative session, was a complete overhaul of the Colorado library law. Among the provisions was a proposal to require the state publications depository and distribution center to coordinate permanent public access to state publications with state agencies, depository libraries, and other entities.

- b. If “Yes,” also cite to documents from the legislative or regulatory history.

Additional comments:

9. Has litigation under any public access law resulted from the state’s failure to “permanently” maintain a government publication?

Yes

No

- a. If "Yes," cite to and briefly discuss each case.

Additional comments:

10. Discuss any unique circumstances in your state relevant to "permanent public access" of government publications under public access laws.

D. STATE OFFICE FOR TECHNOLOGY AND CHIEF INFORMATION OFFICER

1. Does your state have an office for technology (or department of information technology, department of information service, or equivalent) and/or a chief information officer (or equivalent)?

Yes

No

- a. If "Yes," provide the complete official name for the office and/or officer; cite to the statute giving that information.

Colo. Rev. Stat. §24-37.5-103 (2001) establishes the Office of Innovation and Technology, headed by the Chief Technology Officer.

- b. If "No," skip this whole section.

Additional comments:

2. Cite the "enabling" statute that created and defines the powers/responsibilities of the office/officer; when was the statute first enacted?

Colo. Rev. Stat. § 24-37.5-104; effective July 1, 1999.

Additional comments:

3. Does the office/officer have power to promulgate administrative regulations?

Yes

No

- a. If "Yes," cite the body of administrative regulations promulgated by the office/officer.

Colo. Rev. Stat. § 24-37.5-202 (2001): The office includes a commission on information management, which has the power to set minimum standards for technology procurement by state agencies, by promulgating regulations under the State Administrative Procedures Act.

1 Colo. Code Regs. §§106-1 – 106-2 (1997).

Additional comments:

4. The office/officer has jurisdiction over which branches?

- Executive
- Legislative
- Judicial
- Administrative (applying to all agencies, no matter what branch of government)
- Other

a. Briefly explain your answer and cite to applicable statutes/regulations.

Specifically stated in Colo. Rev. Stat. §24-37.5-102(5)(2000).

Additional comments:

5. Are the powers/responsibilities of the office/officer defined differently for electronic government information vis-à-vis print government information?

- Yes
- No

a. If “Yes,” cite to and briefly discuss applicable statutes/regulations addressing electronic government information; how is it treated differently?

Colo. Rev. Stat. §24-37.5-101 (2001): The office’s jurisdiction is limited to electronic resources.

Additional comments:

6. Do applicable statutes/regulations for the office/officer set forth powers/responsibilities relating to “permanent public access” of government information?

- Yes
- No

a. If “Yes,” cite to and discuss any provisions/regulations that address those powers/responsibilities; cite to any other source of law supplementing them: attorney general opinions, court decisions, administrative rules or guidelines.

Additional comments:

7. Does any relevant source of law acknowledge in any way the state’s responsibility to permanently maintain government information?

- Yes
- No

a. If “Yes,” briefly discuss that recognition; cite to and provide relevant language.

Additional comments:

8. Whether or not a supporting source of law can be identified, does the office/officer acknowledge responsibility to permanently maintain government information?

Yes
 No

- a. If "Yes," briefly discuss when and how that responsibility was acknowledged; cite to any supporting source of law.

Additional comments:

9. Has the office/officer undertaken any special initiatives or projects involving "permanent public access" of government information?

Yes
 No

- a. If "Yes," briefly describe those special initiatives or projects; discuss their effectiveness and actual accomplishments.

Additional comments:

10. Has any litigation involving the office/officer resulted from the state's failure to "permanently" maintain government information?

Yes
 No

- a. If "Yes," cite to and briefly discuss each case.

Additional comments:

11. Discuss any unique circumstances in your state relevant to the office for technology and/or chief information officer.

E. STATE TECHNOLOGY PLANS

1. Does your state have a current official information technology plan (or equivalent)?

Yes
 No

- a. If "Yes," describe what government entity was responsible for creating the plan; cite to the source of its authority.
- b. If "Yes," also provide complete bibliographic information about the plan; when was it published?
- c. If "No," skip this whole section.

Additional comments:

According to Colo. Rev. Stat. §24-37.5-106(a) (2001), The chief technology officer of the state is responsible for directing and approving a comprehensive, state-wide plan for the acquisition, management, and use of communication and information resources and data processing. “In developing and updating such plans, the chief technology officer shall consider the advice and recommendations of the commission on information management.” The plan can be found on the website of the Governor’s Office of Innovation and Technology.

2. The technology plan covers which branches?

- Executive
- Legislative
- Judicial
- Administrative (applying to all agencies, no matter what branch of government)
- Other

a. Briefly explain your answer and cite to applicable statutes/regulations.

Colo. Rev. Stat. §24-37.5-201(4) (2001) states: Subject to availability, the executive, judicial, and legislative departments shall make available to the commission such data, facilities, and personnel as are necessary for the performance of the commission’s duties.

Additional comments:

3. Does the current plan include a section on permanency and public accessibility of electronic government information?

- Yes
- No

a. If “Yes,” cite to and provide relevant language of the plan.

Additional comments:

4. Discuss any unique circumstances in your state relevant to technology planning or the current information technology plan.

F. STATE PRINTING OFFICE AND STATE PRINTER

1. Does your state have an official printing office (or equivalent) and/or an official printer (or equivalent)?

- Yes
- No

a. If “Yes,” provide the complete official name for the printing office and/or official printer; cite to the statute giving that information.

Colo. Rev. Stat. §24-70-202 (2001): Public printing is supervised by the Executive Director of the Department of Personnel.

Colo. Rev. Stat. §24-70-205 (2001): Public printing is done by private contractors through bidding process.

b. If "No," skip this whole section.

Additional comments:

2. Cite the "enabling" statute that created and defines the powers/responsibilities of the printing office/official printer.

Colo. Rev. Stat. §24-70-202 (2001).

Additional comments:

3. Does the printing office/official printer have power to promulgate administrative regulations?

Yes
 No

a. If "Yes," cite the body of administrative regulations promulgated by the printing office/official printer.

The Executive Director of the Department of Personnel may promulgate regulations. The statutes re: public printing don't mention the promulgation of regulations.

Additional comments:

4. The printing office/official printer has jurisdiction over which branches?

Executive
 Legislative
 Judicial
 Administrative (applying to all agencies, no matter what branch of government)
 Other

a. Briefly explain your answer and cite to applicable statutes/regulations.

Colo. Rev. Stat. §24-90-204 (2001): Every state agency shall, upon publication, deposit at least four copies of each of its state publications ... with the center.

But see Colo. Rev. Stat. §24-70-215 (2001): The judicial branch does not have to submit a requisition to the executive director of the department of personnel for printing, binding, or publishing decisions of the Supreme Court of the Court of Appeal.

Additional comments:

5. Briefly discuss the functions of the printing office/official printer. Then:

The Division of Central Services is supposed to handle all government printing needs that are generated within the Denver metro area; waivers are available if the DCS is unable to meet the printing needs of the agency, or if the order comes from outside the Denver area. The DCS is supervised by the Executive Director of the Department of Personnel.

- a. Describe your state's use of in-house agency publishing and/or commercial publishing of government information.

See above.

- b. What percentage of official state government documents are printed by the printing office/official printer?

35%

- c. To what extent is the printing office/official printer involved in the electronic dissemination of government information?

DCS includes an imaging division, which allows state agencies to easily convert print documents to digital format. This should make creation and dissemination of electronic information easier.

Additional comments:

6. Are the powers/responsibilities of the printing office/official printer defined differently for electronic government information vis-à-vis print government information?

Yes

No

- a. If "Yes," cite to and briefly discuss applicable statutes/regulations addressing electronic government information; how is it treated differently?

Additional comments:

7. Do applicable statutes/regulations for the printing office/official printer set forth powers/responsibilities relating to "permanent public access" of government information?

Yes

No

- a. If "Yes," cite to and discuss any provisions/regulations that address those powers/responsibilities; cite to any other source of law supplementing them: attorney general opinions, court decisions, administrative rules or guidelines.

Additional comments:

8. Does any relevant source of law acknowledge in any way the state's responsibility to permanently maintain government information?

Yes
 No

- a. If “Yes,” briefly discuss that recognition; cite to and provide relevant language.

Colo. Rev. Stat. §24-70-203.5 (2001) requires that “any public printing for purpose of a permanent record authorized by the general assembly shall be printed on acid-free, alkaline-based, or permanent type paper ...”

Additional comments:

Colo. Rev. Stat. §24-80-106 requires custodians of public records to protect and preserve them from deterioration. Requirements that various specific governmental bodies keep permanent records are scattered throughout the statutes.

9. Whether or not a supporting source of law can be identified, does the printing office/official printer acknowledge responsibility to permanently maintain government information?

Yes
 No

- a. If “Yes,” briefly discuss when and how that responsibility was acknowledged; cite to any supporting source of law.

Additional comments:

10. Has the printing office/official printer undertaken any special initiatives or projects involving “permanent public access” of government information?

Yes
 No

- a. If “Yes,” briefly describe those special initiatives or projects; discuss their effectiveness and actual accomplishments.

Additional comments:

11. Has any litigation involving the printing office/official printer resulted from the state’s failure to “permanently” maintain government information?

Yes
 No

- a. If “Yes,” cite to and briefly discuss each case.

Additional comments:

12. Discuss any unique circumstances in your state relevant to the official printing office and/or official printer.

G. STATE ARCHIVES AND STATE ARCHIVIST

This section addresses your state's official archives and state archivist. If these responsibilities are by law under the auspices of your state library and state librarian, please move on to Section H.

1. Does your state have an official archives (or equivalent) and/or an official archivist (or equivalent)?

Yes
 No

- a. If "Yes," provide the complete official name for the archives and/or archivist; cite the statute giving that information.

Colo. Rev. Stat. § 24-80-102 (2001): State archives; the Executive Director of the Department of Personnel is the chief administrative officer over state archives and public records.

- b. If "No," skip this whole section.

Additional comments:

2. Cite the "enabling" statute that created and defines the powers/responsibilities of the archives/archivist.

Colo. Rev. Stat. §§24-80-101 – 113 (2001).

Additional comments:

3. Does the archive/archivist have power to promulgate administrative regulations?

Yes
 No

- a. If "Yes," cite the body of administrative regulations promulgated by the archive/archivist.

Colo. Rev. Stat. §24-80-102(10) (2001) states, "The executive director shall establish by rule and regulation such fees as are necessary to pay for the direct and indirect costs of responding to requests for information from non-state agencies ...". No regulations have been promulgated, dealing with fees or any other aspect of public records.

Additional comments:

4. The archive/archivist has defined responsibilities for which branches?

Executive
 Legislative
 Judicial
 Administrative (applying to all agencies, no matter what branch of government)
 Other

- a. Briefly explain your answer and cite to applicable statutes/regulations.

Colo. Rev. Stat. §24-80-101(1) (2001) defines “records” as any books, papers, etc. made or received by any governmental agency.

Additional comments:

5. Briefly discuss the functions of the archive/archivist.

The archivist (Department of Personnel) is the official custodian and trustee for the state of all public records of whatever kind that are transferred to it under the statute (Colo. Rev. Stat. §24-80-102 (2001)). These records include any materials, regardless of physical form, made or received by a government agency, that is appropriate for preservation as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the government, or because of the value of the official governmental data contained therein. Colo. Rev. Stat. §24-80-101 (2001).

Additional comments:

6. Are the powers/responsibilities of the archive/archivist defined differently for electronic government information vis-à-vis print government information?

Yes
 No

- a. If “Yes,” cite to and briefly discuss applicable statutes/regulations addressing electronic government information; how is it treated differently?

Additional comments:

7. Do applicable statutes/regulations for the archive/archivist set forth powers/responsibilities relating to “permanent public access” of government information?

Yes
 No

- a. If “Yes,” cite to and discuss any provisions /regulations that address those powers/responsibilities; cite to any other source of law supplementing them: attorney general opinions, court decisions, administrative rules or guidelines.

Additional comments:

8. Does any relevant source of law acknowledge in any way the state’s responsibility to permanently maintain government information?

Yes
 No

- a. If “Yes,” briefly discuss that recognition; cite to and provide relevant language.

Colo. Rev. Stat. §24-80-106 (2001): “Protection of records – every custodian of public records shall carefully protect and preserve them from deterioration, mutilation, loss, or destruction and, whenever advisable, shall cause them to be properly repaired and renovated. All paper, ink, and other materials used in public offices for the purpose of permanent records shall be of durable quality.”

Additional comments:

9. Whether or not a supporting source of law can be identified, does the archive/archivist acknowledge responsibility to permanently maintain government information?

Yes
 No

- a. If “Yes,” briefly discuss when and how that responsibility was acknowledged; cite to any supporting source of law.

Interview with Terry Ketelson, Colorado State Archivist. (June 25, 2002).

Additional comments:

10. Has the archive/archivist undertaken any special initiatives or projects involving “permanent public access” of government information?

Yes
 No

- a. If “Yes,” briefly describe those special initiatives or projects; discuss their effectiveness and actual accomplishments.

The State Archives takes a quarterly “snapshot” of all state government web pages that are linked to the State’s homepage.

Additional comments:

The State Archives appears to be very interested in pursuing permanent public access to electronic resources. The problem, as always, is finding the resources to pursue a comprehensive program.

11. Has any litigation involving the archive/archivist resulted from the state’s failure to “permanently” maintain government information?

Yes
 No

- a. If “Yes,” briefly discuss the circumstances of each case and its outcome, and provide citations to any court decisions.

Additional comments:

12. Discuss any unique circumstances in your state relevant to the official archive and/or official archivist.

H. STATE LIBRARY AND STATE LIBRARIAN

This section addresses your state's official library and state librarian. There is no separate section that addresses the official law library and state law librarian, if any. If your state has an official library *and* an official law library (and/or official librarian *and* official law librarian), it may be appropriate to address those government entities and/or persons separately.

1. Does your state have an official library (or equivalent) and/or an official librarian (or equivalent)?

Yes
 No

- a. If "Yes," provide the complete official name for the library and/or librarian; cite to the statute giving that information.

Colo. Rev. Stat. §24-90-104 establishes the state library. The commissioner of education is ex officio state librarian. The commissioner shall appoint an assistant commissioner – library services.

- b. If "No," skip this whole section.

Additional comments:

2. Cite the "enabling" statute that created and defines the powers/responsibilities of the library/librarian.

Colo. Rev. Stat. §24-90-104 (2001).

Additional comments:

3. Does the library/librarian have power to promulgate administrative regulations?

Yes
 No

- a. If "Yes," cite the body of administrative regulations promulgated by the library/librarian.

1 Colo. Code Regs. §§106-1 – 106-2 (1997).

Additional comments:

4. The library/librarian has defined responsibilities for which branches?

Executive
 Legislative
 Judicial

- Administrative (applying to all agencies, no matter what branch of government)
 Other

a. Briefly explain your answer and cite to applicable statutes/regulations.

The State Librarian has responsibility for the State Publications Depository and Distribution Center. (Colo. Rev. Stat. §24-90-201 (2001)). All state agencies, regardless of branch, are required to send their publications to the depository. Colo. Rev. Stat. §§24-90-202(3) and 204 (2001).

Additional comments:

5. Briefly discuss the functions of the library/librarian.

The state librarian is responsible for the administration of the state library, including providing library services to state officials and institutions and the disabled, and to ensure equal access to information for all Coloradoans. The state librarian is also charged with conduct or contract for research projects necessary to the development of long-range planning for effective library programs in the state. Colo. Rev. Stat. §24-90-105 (2001).

Additional comments:

6. Are the powers/responsibilities of the library/librarian defined differently for electronic government information vis-à-vis print government information?

- Yes
 No

a. If "Yes," cite to and briefly discuss applicable statutes/regulations addressing electronic government information; how is it treated differently?

Additional comments:

7. Do applicable statutes/regulations for the library/librarian set forth powers/responsibilities relating to "permanent public access" of government information?

- Yes
 No

a. If "Yes," cite to and discuss any provisions/regulations that address those powers/responsibilities ; cite to any other source of law supplementing them: attorney general opinions, court decisions, administrative rules or guidelines.

Additional comments:

8. Does any relevant source of law acknowledge in any way the state's responsibility to permanently maintain government information?

- Yes
 No

- a. If “Yes,” briefly discuss that recognition; cite to and provide relevant language.

Colo. Rev. Stat. §24-80-106 (2001): “Protection of records – every custodian of public records shall carefully protect and preserve them from deterioration, mutilation, loss, or destruction and, whenever advisable, shall cause them to be properly repaired and renovated. All paper, ink, and other materials used in public offices for the purpose of permanent records shall be of durable quality.”

Additional comments:

9. Whether or not a supporting source of law can be identified, does the library/librarian acknowledge responsibility to permanently maintain government information?

Yes
 No

- a. If “Yes,” briefly discuss when and how that responsibility was acknowledged; cite to any supporting source of law.

Interview with Jim Schubert, State Depository Library program director (June 25, 2002).

Additional comments:

10. Has the library/librarian undertaken any special initiatives or projects involving “permanent public access” of government information?

Yes
 No

- a. If “Yes,” briefly describe those special initiatives or projects; discuss their effectiveness and actual accomplishments.

The depository library (which is a department in the State Library) has requested state agencies to send the library URLs for new electronic publications. This is a voluntary effort – an attempt to pass legislation making submissions of electronic records mandatory was defeated in the last legislative session. My contact at the depository program estimates that they receive URLs for a bare majority of all of the electronic documents produced by the state agencies. The depository program then creates a catalog record for the document -- including a link to the URL -- but the actual document remains housed on the originating agency’s server. This means, of course, that there is no guarantee that the document will be preserved. In addition to relying on the agencies, the depository staff scans agency websites for pertinent documents. When the depository staff identifies an electronic document from such “trolling,” the process is the same: they create a catalog record with the URL, but they do not actually import and preserve the document on their own server.

Additional comments:

11. Has any litigation involving the library/librarian resulted from the state's failure to "permanently" maintain government information?

- Yes
- No

a. If "Yes," cite to and briefly discuss each case.

Additional comments:

12. Discuss any unique circumstances in your state relevant to the state library and/or state librarian.

I. STATE DEPOSITORY LIBRARY LAWS

States often have a depository library program patterned after the federal model for disseminating federal government publications.

1. Does your state have a "depository library program," as referred to in the paragraph above?

- Yes
- No

a. If "Yes," cite your state's depository library law statutes and the administrative regulations that supplement them.

Colo. Rev. Stat. §§24-90-201 -- 208 (2001).

b. If "No," skip this whole section.

Additional comments:

2. Do the depository library statutes/regulations address electronic government information separately vis-à-vis print government information?

- Yes
- No

a. If "Yes," cite to and briefly discuss statutes/regulations addressing electronic government information; how is it treated differently?

c. If "No," explain whether or not the statutes/regulations have been construed to cover electronic government information?

No.

Additional comments:

3. Do any depository library statutes/regulations assure "permanent public access" of electronic government information?

Yes
 No

- a. If “Yes,” cite to and discuss any provisions/regulations that address “permanent public access”; cite to any other source of law supplementing them: attorney general opinions, court decisions, administrative rules or guidelines.

Additional comments:

4. Do the depository library statutes/regulations or any other source of law supplementing them (particularly a declaration of legislative intent or a relevant attorney general opinion) declare the public policy of the state and address the scope of citizens’ access to government information or acknowledge the state’s responsibility to permanently maintain public records?

Yes
 No

- a. If “Yes,” cite to and provide relevant language.

In several places in the statutes, a legislative declaration supports citizens’ access to information, though none of these declarations specifically address government documents or permanent public access.

Colo. Rev. Stat. §24-90-102 (2001): “[I]t is the policy of this state, as part of its provisions for public education, to promote the establishment and development of all types of publicly-supported free library service throughout the state to ensure equal access to information without regard to age, physical or mental health, place of residence, or economic status, to aid in the establishment and improvement of library programs ...”.

Colo. Rev. Stat. §24-90-203 (2001): “The purposes of the [state publications depository and distribution] center are to collect, distribute, and make available to the public state publications. ... No rule or regulation shall deny public access during normal working hours to the state publications enumerated in this part 2.”

Colo. Rev. Stat. §24-80-106 (2001): “Protection of records – every custodian of public records shall carefully protect and preserve them from deterioration, mutilation, loss, or destruction and, whenever advisable, shall cause them to be properly repaired and renovated. All paper, ink, and other materials used in public offices for the purpose of permanent records shall be of durable quality.”

Colo. Rev. Stat. §24-90-301 (2001): The general assembly hereby declares that access to information is of utmost importance to the people of the state of Colorado; that people with better access to information have enhanced opportunities to improve their own lives, their children’s lives, and the contributions they make to their communities and the state; and that access to computer information should be equal throughout the state, regardless of place of residence or economic status.” (Concerns the Colorado Computer Information Network, a cooperative project of library systems throughout the state; deals primarily with library catalogs.)

Additional comments:

5. Have depository libraries as a whole undertaken any special initiatives or projects involving “permanent public access” of government information?

Yes
 No

- a. If “Yes,” briefly describe those special initiatives or projects; discuss their effectiveness and actual accomplishments.

The depository library (which is a department in the State Library) has requested state agencies to send the library URLs for new electronic publications. This is a voluntary effort – an attempt to pass legislation making submissions of electronic records mandatory was defeated in the last legislative session. My contact at the depository program estimates that they receive URLs for a bare majority of all of the electronic documents produced by the state agencies. The depository program then creates a catalog record for the document -- including a link to the URL -- but the actual document remains housed on the originating agency’s server. This means, of course, that there is no guarantee that the document will be preserved. In addition to relying on the agencies, the depository staff scans agency websites for pertinent documents. When the depository staff identifies an electronic document from such “trolling,” the process is the same: they create a catalog record with the URL, but they do not actually import and preserve the document on their own server.

Additional comments:

6. Please determine the absolute number or percentage of titles:

n/a Formerly distributed in print, now distributed exclusively in electronic format.
n/a Never before distributed, now distributed in electronic format.

Additional comments:

There are definitely many documents that are now exclusively “born digital.” In addition, some documents which were formerly distributed in print are now part of a print-on-demand system, where there is no initial print run but are produced on an as-needed basis.

7. Discuss the depository library program’s effectiveness and actual accomplishments in disseminating, preserving and providing access of electronic government information?

The depository program is making a good faith effort to preserve electronic records, as discussed above. However, without a mandate from the legislature, most state agencies do not place high priority on the preservation of electronic records.

Additional comments:

J. COOPERATIVE ARRANGEMENTS

One can imagine any number of cooperative arrangements to assure “permanent public access.” A well-known example is the partnership between the Texas Electronic Depository program (involving the Texas State Library and Archives Commission) and the University of North Texas Libraries (see description for program C304 at Computers in Libraries 2002 on the Information Today website). A hypothetical example of a less formalized cooperative arrangement is where a state’s highest court relies on the state bar association to publish the court’s decisions.

1. To secure PPA, has any state agency or other government entity (judicial, legislative or executive) partnered with any not for profit, educational, or for profit organization outside of government?

Yes
 No

- a. If “Yes,” describe each partnership, noting whether it is funded by a grant or through a government appropriation; give a brief history and summary of accomplishments.

Additional comments:

2. Does the state rely on any cooperative activities that are not actually formalized?

Yes
 No

- a. If “Yes,” describe each relationship and cooperative activity; give a brief history and a summary of accomplishments.

Additional comments:

3. Does any state agency or other government entity secure “permanent public access” through any other type of cooperative arrangement?

Yes
 No

- a. Describe each cooperative arrangement; give a brief history and a summary of accomplishments.

Additional comments:

K. FACTORS TO BE CONSIDERED IN FUTURE ADVOCACY OR REFORM EFFORTS

1. If “permanent public access” is neglected in your state, carefully examine existing public records statutes, freedom of information statutes, public access laws, etc., and respond to the following:

- a. If possible, cite to and discuss one or two specific places in statutes or other sources of law where the state legislature or a responsible agency might naturally insert basic reform language.

The most logical place for a new provision concerning permanent public access to electronic documents is the open records law. Colo. Rev. Stat. §§24-72-201 – 24-72-206 (2002). The

government is already organized so that the most important agencies for our purposes, the State Archives, the Office of Innovation and Technology, and the State Printing Office, are all under the same department, the Department of Personnel and Administration. This should make it easier to coordinate efforts among the various entities.

- b. If specific places to insert reform language are not obvious, very briefly discuss what state agency or other government entity might naturally be made responsible for “permanent public access.”

Additional comments:

2. Discuss known failed efforts in your state to achieve “permanent public access”; how might new efforts succeed?

A bill was introduced into the General Assembly last session (S.B. 02-119) that included a section addressing permanent public access. Although the bill ultimately failed, that was attributable to other provisions rather than the PPA initiative.

Additional comments:

L. DIRECTORY

This section asks you to collect directory-type information for important state officials involved in the dissemination of government information.

Provide official contact information for:

1. State Chief Information Officer (or equivalent)

Chief Information Technology Officer:

Troy A. Eid
Executive Director
Department of Personnel and Administration
Colorado State Bank Building
Suite 1030
1600 Broadway
Denver, CO 80203
Telephone: (303) 866-6566
Fax: (303) 866-6569
E-mail: troy.eid@state.co.us

Chief Information Officer:

Richard D. Malinowski
Division of Information Technologies
690 Kipling Street
Lakewood, CO 80215
Telephone: (303) 239-4313
Fax: (303)239-4383
E-mail: rick.malinowski@state.co.us

2. State Printer

Richard D. Malinowski
Director
Division of Central Services
225 E. 16th Ave., Suite 800
Denver, CO 80203
(303) 866-3970

3. State Archivist

Terry Ketelson
State Archivist
Colorado State Archives
Room 1B-20
1313 Sherman Street
Denver, CO 80203
Telephone: 303-866-2072
Fax: (303) 866-2257
E-mail: terry.ketelson@state.co.us

4. State Librarian and/or State Law Librarian

Nancy Bolt
Assistant Commissioner, Libraries
Room 309
201 East Colfax Avenue
Denver, CO 80203
Telephone: (303) 866-6733
Fax: 303.866.6940
E-Mail: nancybolt@earthlink.net

Maureen Crocker
Librarian for State Publications
Room 309
201 East Colfax Avenue
Denver, CO 80203
Telephone: (303) 866-6728
Fax: 303.866.6940
E-Mail: crocker_m@cde.state.co.us

5. State Attorney General (on freedom of information act issues, etc.)

Ken Salazar

Attorney General
7th Floor
1525 Sherman Street
Denver, CO 80203
Telephone: (303) 866-4500
Fax: (303) 866-5691
E-mail: attorney.general@state.co.us

M. IMPORTANT STATE RESOURCES

Provide URLs or other finding information for:

1. Official state home page

<<http://www.colorado.gov>>

2. State agency portal

<http://www.state.co.us/gov_dir/agencies.html>

- a. Does the portal have a searching capability similar to FirstGov?

Yes.

3. Legislative website

<http://www.state.co.us/gov_dir/stateleg.html>

- a. Does the website cover the current year only?

No; goes back to 1997.

- b. Are services free or fee-based?

Free.

4. Judicial websites

<<http://www.courts.state.co.us>>

5. Regulatory agency websites

<http://www.state.co.us/gov_dir/agencies.html>

6. Freedom of Information Service Hotline

- a. Does the state have an ombudsman for freedom of information act issues?

No. Each agency has an official custodian of their public records.

b. Is the state attorney general's office the public's contact for freedom of information act issues?

No. A person requesting public documents is directed to contact the official custodian of the agency involved. If the agency denies the request, the requester's next avenue of recourse is to file a civil action in district court. Colorado Open Records Act: Nineteen Frequently Asked Questions, Colo. A.G. Formal Opinion No. 01-1 (July 5, 2001).