Administrative Procedure - Protocols for Record Preservation and Development of Retention Schedules

Legal Citations

Each legal requirement in this procedure is followed by a citation to the controlling rule and/or statute. For additional clarification regarding a requirement, the cited law should be reviewed.

Actor	Action
All Staff Members and Board Members	Maintain all records, as defined and required in the Ill. Local Records Act (LRA). No public record shall be destroyed except as allowed by the LRA. "*Public record* means any book, paper, map, photograph, born-digital electronic material, digitized electronic material, electronic material with a combination of digitized and born-digital material, or other official documentary material, regardless of physical form or characteristics, made, produced, executed or received by any agency or officer pursuant to law or in connection with the transaction of public business and preserved or appropriate for preservation by such agency or officer, or any successor thereof, as evidence of the organization, function, policies, decisions, procedures, or other activities thereof, or because of the informational data contained therein." 50 ILCS 205/3, amended by P.A. 104-438. Do not destroy any District record, no matter its form, if it is subject to a *litigation hold*. F.R.C.P. 37(e). In federal lawsuits there is an automatic discovery of virtually all types of electronically created or stored data that might be relevant. Attorneys will generally notify their clients at the beginning of a legal proceeding to not destroy any electronic records that might be relevant. The receipt of a *litigation hold* or preservation letter from the Attorney for the District requires all potentially relevant electronic information to be identified, located, and preserved. This includes all email, e-documents, the tapes and servers of discarded systems, and backup data stored elsewhere. Whenever disposing of materials containing *personal information*, render the *personal information* unreadable, unusable, and undecipherable. 815 ILCS 530/40 and 44 Ill. Admin. Code §4000.40(b). The Personal Information Protection Act (815 ILCS 530/) contains mandates for disposing of materials containing personal information (*personal information* is defined in 815 ILCS 530/5 as either of the following: (1) an individual's first name or first initial and last name combined with any of the following data elements, when either the name or data elements are not encrypted/redacted or are encrypted/redacted but the keys to unencrypt/unredact or otherwise read the name or data elements have been acquired without authorization through a security breach: social security number, driver's license number or State identification card number, financial account information, medical information, health insurance information, or unique biometric data; or (2)

	user name or email address, combined with a password or security question and answer that would permit access to an online account, when any of these data elements are not encrypted/redacted or are encrypted/redacted but the keys to unencrypt/unredact or otherwise read the data elements have been acquired without authorization through a security breach). The Ill. Attorney General is authorized to impose a fine and bring court action for noncompliance. 815 ILCS 530/40. Whenever disposing of materials containing social security numbers that do not otherwise qualify as personal information under 815 ILCS 530/40, follow Administrative Procedure 4.15-AP1, *Protecting the Privacy of Social Security Numbers*. The Superintendent, Director of Human Resources, and their respective designees must follow Administrative Procedure 5.30-AP4, *Fingerprint-Based Criminal History Record Information Security*, when disposing of criminal history record information (CHRI).
Superintendent or designee	Assign the following activities to the Records Custodian and Head of Information Technology (IT): **1. Develop and maintain a protocol for preserving and categorizing District records;** **2. Develop and maintain a record retention and destruction schedule; and** **3. Develop protocols to implement a litigation hold.**
Records Custodian and Head of IT	**1. Develop and maintain a protocol for preserving and categorizing District records.** Develop and maintain a list of all District records organized in categories and sub-categories, e.g., records relating to business, students, personnel, Board meetings, etc. Align this list with the list of District records required by the Freedom of Information Act. 5 ILCS 140/5. Paper records may be easier to locate than electronic records. Electronic records will potentially exist in all of the available clouds, servers, tapes, hard drives, computers, and similar types of electronic devices (e.g., laptops, tablets, smart phones, voicemail, etc.). Prepare a description of how District records stored by means of electronic data processing may be obtained in a form understandable to persons lacking computer knowledge. 5 ILCS 140/5; 44 Ill. Admin. Code §4000.70, *Digital Reproduction*; and 44 Ill. Admin. Code §4000.80, *Management of Electronic Records*. Such a description may include contact information for a person who can aid in obtaining records stored electronically. Provide for keeping only *records* and destroying non-records. Avoid filing non-record material with records. Determine what is a non-record, e.g., identical copies of documents maintained in the same file; extra copies of

printed or processed materials (official copies of which are retained by the office); blank forms; *junk mail*; and personal communications. 50 ILCS 205/3, amended by P.A. 104-438.

The goal is to control excessive accumulation of material. Non-record material may be destroyed at any time. 50 ILCS 205/9.

Absent a litigation hold, email must be retained only when it contains:- (1) evidence of the District's organization, function, policies, procedures, or activities, or (2) informational data appropriate for preservation. ~~——~~50 ILCS 205/3. Email that is conversational, personal, or contains brainstorming may generally be deleted.

A consistent email retention process for use across the District ensures that the necessary emails are being retained and emails that are not required to be preserved are purged on a regular basis.

Determine whether each sub-category of documents should be reproduced by photography (44 Ill. Admin. Code §4000.60), microphotographic and electronic microimaging processes (44 Ill. Admin. Code §4000.50), or digitized electronic format (44 Ill. Admin. Code §4000.70).

Any public record may be reproduced in a microfilm or digitized electronic format and the analog/paper version destroyed, provided: (a) the records are reproduced on "a durable medium that accurately and legibly reproduces the original record in all details," and "that does not permit additions, deletions, or changes to the original document images," and "if electronic, that are retained in a trustworthy manner so that the records…are accessible and usable for subsequent reference at all times when the information must be retained," (b) the reproduction is retained for the prescribed retention period, and (c) the Local Records Commission is notified when the original record is disposed of and also when the reproduced record is disposed of. ~~Local Records Act.~~ 50 ILCS 205/7.

Use the Ill. Secretary of State's publication *Reliable Storage Media for Electronic Records – A Guide for Government* Agencies~~Guidelines for Using Electronic Records~~ (www.ilsos.gov/departments/achives/records-management.html)~~(www.cyberdriveillinois.com/departments/archives/records_management/electrecs.html)~~ and 44 Ill. Admin. Code §§4000.APPENDIX A *Sustainable File Formats for Electronic Records - A Guide for Government Agencies* (www.ilga.gov/commission/jcar/admincode/044/04404000ZZ9996aR.html) and 4000.APPENDIX B *Reliable Storage Media for Electronic Records - A Guide for Government Agencies* (www.ilga.gov/commission/jcar/admincode/044/04404000ZZ9996BR.html).

Identify and index the location of each category and sub-category of District records. Organize electronic record and data storage.

The goal is to ensure that all documents, including electronically created ones, are retained for the required timeframes and are easy to retrieve and produce if necessary.

2. Develop and maintain a record retention and destruction schedule for submission to the Superintendent and eventually to the Local Records Commission.

Prepare a list of public records that: (1) are not needed for current business, and (2) do not have sufficient administrative, legal, or fiscal value to warrant their further preservation. Stated differently, identify records that have no administrative, legal, or fiscal value, as this is the criteria the commission uses to determine whether or not to authorize the records' destruction.

Records that have no administrative, legal, or fiscal value may be destroyed according to provisions in the LRA. 50 ILCS 205/10.

Prepare a schedule for record destruction by identifying the length of time a record category or series warrants retention after it has been received or produced by the District.

The ultimate goal is to obtain permission to destroy unnecessary public records. The Local Records Commission must approve the destruction of any public record. 50 ILCS 205/7~~,~~; 44 Ill. Admin. Code Part 4000 (Local Records Commission for agencies comprising counties of less than 3,000,000 inhabitants). See the Archives Department on the Secretary of State's website: www.ilsos.gov/departments/archives/records-management.html and use the Ill. Secretary of State publication *Managing Your Records and the Local Records Act: A Quick Guide for Disposing of Local Records*. ~~www.ilsos.gov/departments/archives/home.html~~

44 Ill. Admin. Code ~~Part~~ §4000.30 details the procedures for compiling and submitting lists and schedules of records for disposal.

The School Code and other statutes (e.g., statutes of limitations) contain mandatory retention timelines. The Attorney for the District should be consulted.

The e-discovery rules provide a safe harbor for parties during a lawsuit that cannot provide information because it was destroyed as a result of routine practices. F.R.C.P. 37(e).

3. Develop protocols to implement a litigation hold.

Understand what a litigation hold is.

A *litigation hold* refers to the notification made by the Attorney for the District telling the District to preserve all information that may be relevant to current or anticipated litigation. While it may occur anytime in the legal process, it will usually occur during discovery, the pretrial phase of a lawsuit designed to compel the exchange of information between parties. A litigation hold triggers the need to immediately suspend destruction of electronic and other records relevant to the current or potential claim. F.R.C.P. 37(e).

Specify how to implement a litigation hold, i.e.:

	Who can trigger a litigation hold? How is a litigation hold communicated? Who should gather the records? What records are subject to a litigation hold and who determines this? In what format should records be gathered? Where should records be gathered? Identify how to implement a litigation hold for all IT systems, including backup tapes, to ensure they are not deleted or overwritten as part of the normal tape rotation process. Prepare a map of potentially relevant data and otherwise assist the Attorney for the District in locating all potentially relevant information.
Superintendent or designee	Submit new or revised record retention and destruction lists and schedules to the Local Records Commission for approval. Disseminate the record retention schedule, along with instructions, to all affected staff members and Board members. Immediately inform the Records Custodian and Head of IT whenever a record must be preserved because: ~~-~~(1) it may be relevant to present or future litigation, or (2) the Attorney for the District has notified the District to preserve a record, including electronic information (litigation hold). Authorize and/or order the destruction of District records after ensuring that the following steps have been performed: 1. The Local Records Commission approved a schedule for continuing authority to destroy District records after the expiration of the applicable period. 2. Any record is retained and removed from the disposal list if it is or may be evidence in litigation, or is otherwise subject to a *litigation hold.* 3. Thirty days prior to disposal or destruction of any records, regardless of physical format or characteristics, submit a Local Records Disposal Certificate to the Commission and dispose only after a copy of that certificate has been reviewed and approved by the Chairman and returned to the District. The original copy of that Local Records Disposal Certificate is kept in the files of the Commission, and the duplicate copy approved and returned by the Chairman must be retained by the District. 44 Ill. Admin. Code~~-~~ §§4000.40(c). 4. In the case of records with scheduled retention of less than one year, a single Local Records Disposal Certificate for more than one disposal event within a given year may be used. Local Records Disposal Certificates submitted with this intent must include a schedule of

	proposed records disposal in addition to the normally required information. The District must wait to dispose of records until receipt of approval from the Commission, as required in number 3, above. ~~-~~44 Ill. Admin. Code §§4000.40(d). 5. For records that have been damaged by water, fire, smoke, insects or vermin, mold or some other natural disaster that poses a health or safety risk to employees, the District may apply to the Commission for permission to dispose of those records ahead of their scheduled disposal date. The request must include a Local Records Disposal Certificate accompanied by the District's explanation of why the records need early disposal. The Commission may grant the request only after physically reviewing the damaged records. 44 Ill. Admin. Code §§4000.40(e).

Links to Web-based Record Management Resources:

Downstate Local Records Commission Meetings

Rules of the Downstate Local Records Commission (44 Ill. Admin. Code Part 4000)

Local Records Act (50 ILCS 205/)

Local Records Disposal Certificate

Managing Social Media & the State and Local Records Acts: A Quick Guide for Social Media Policy and Management (Ill. Secretary of State)

LEGAL REF.: Federal Rules of Civil Procedure, Rules 16, 26 and 37.
5 ILCS 140/, Freedom of Information Act.
50 ILCS 205/, Local Records Act.
105 ILCS 10/, Ill. School Student Records Act.
815 ILCS 530/, Personal Information Protection Act.
820 ILCS 40/~~.~~, Ill. Personnel Record Review Act.
44 Ill. Admin. Code Part 4000, Local Records Commission.