

Records Retention—Local Government Public Records

Introduction

Local governments are responsible for ensuring that the public records they create and receive while conducting public business are retained and destroyed in accordance with Michigan law.

A **public record** is defined as: information “prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created” (MCL 15.231-15.246).

Legal Requirements

The Michigan Penal Code (MCL 750.491) establishes misdemeanor penalties for disposing of records without the authorization of an approved Retention and Disposal Schedule. Section 5 of the Michigan Historical Commission Act (MCL 399.811(2)) provides that all records required to be kept by local public officials in the discharge of their duties, records required to be filed in local public offices, and records which represent memorials of transactions of local public officials are the property of the state.

Michigan law requires that:

- all records be listed on an approved Retention and Disposal Schedule; and
- all Retention and Disposal Schedules must be formally approved by the Records Management Services [in the Department of Technology, Management and Budget], the Archives of Michigan, and the State Administrative Board.

Retention and Disposal Schedules

Retention and Disposal Schedules determine how long records must be kept, when they may be destroyed, and when certain records can be sent to the Archives of Michigan for permanent preservation. Retention periods listed on approved Retention and Disposal Schedules have the force of law.

There are two types of schedules that local government agencies may use:

- A “general schedule” covers records that are common to local government (cities, villages, and townships) and include departments such as Clerk, Treasurer, Mayor/Manager, Attorney, and Parks and Recreation.
- Any record that is not listed in a general schedule must be listed on an “agency-specific schedule.” These schedules cover records that are unique to a local government agency or unit. Agency-specific schedules always supersede general schedules. Agency-specific schedules only address the records of the agency named on the schedule, and may not be used by another agency.

Approved City and Village Schedule (Schedule #8) & Approved Township Schedule (Schedule #10)

There is a general schedule for cities and villages that has been approved by the Records Management Services, the Archives of Michigan, and the State Administrative Board, and a separate general schedule for townships. Schedule #8 contains records typically found in city and village offices, and Schedule #10 covers records that are typically found in township offices. Both have been comprehensively updated by the state’s Record Management Services. Schedule #8 is available as an electronic book on the Michigan Municipal League website at mml.org.

Based on materials provided by the State of Michigan Records Management Services.

VILLAGE OF CONSTANTINE

RESOLUTION NO. 06-16

**APPROVING A GENERAL RECORDS RETENTION AND DISPOSAL SCHEDULE
FOR ALL OFFICES OF THE VILLAGE OF CONSTANTINE**

WHEREAS, the Village of Constantine creates and maintains various records in its day-to-day operation and is required by statute (Michigan Compiled Laws, section 399.5 and 750.491) to retain those records in accordance with an approved retention schedule, and,

WHEREAS, the retention of records beyond the period required by statutory law poses operational and feasibility difficulty in terms of creating adequate storage space, and devising a system that simplifies locating specific records within that space, and,

WHEREAS, the Village of Constantine is an active member of the Michigan Municipal League, and

WHEREAS, the Michigan Municipal League provides a Retention and Disposal Schedule that has received approval from the Michigan State Administrative Board,

THEREFORE BE IT RESOLVED, by the Constantine Village Council that:

- 1) The Village adopts, as policy, **General Records Retention and Disposal Schedule #8**, included in the Records Management handbook (revised March, 1998) prepared by the Michigan Municipal League.

- 2) This policy will be revised in conformance with revisions made to this schedule by the Michigan Municipal League.

THE MICHIGAN PENAL CODE (EXCERPT)
Act 328 of 1931

750.491 Public records; removal, mutilation or destruction; penalty.

Sec. 491. All official books, papers or records created by or received in any office or agency of the state of Michigan or its political subdivisions, are declared to be public property, belonging to the people of the state of Michigan. All books, papers or records shall be disposed of only as provided in section 13c of Act No. 51 of the Public Acts of the First Extra Session of 1948, as added, being section 18.13c of the Compiled Laws of 1948, section 5 of Act No. 271 of the Public Acts of 1913, as amended, being section 399.5 of the Compiled Laws of 1948 and sections 2137 and 2138 of Act No. 236 of the Public Acts of 1961, being sections 600.2137 and 600.2138 of the Compiled Laws of 1948.

Any person who shall wilfully carry away, mutilate or destroy any of such books, papers, records or any part of the same, and any person who shall retain and continue to hold the possession of any books, papers or records, or parts thereof, belonging to the aforesaid offices and shall refuse to deliver up such books, papers, records, or parts thereof to the proper officer having charge of the office to which such books, papers, or records belong, upon demand being made by such officer or, in cases of a defunct office, the Michigan historical commission, shall be guilty of a misdemeanor, punishable by imprisonment in the state prison not more than 2 years or by a fine of not more than \$1,000.00.

History: 1931, Act 328, Eff. Sept. 18, 1931;—CL 1948, 750.491;—Am. 1952, Act 119, Eff. Sept. 18, 1952;—Am. 1964, Act 147, Eff. Aug. 28, 1964.

Compiler's note: For transfer of powers and duties of department of history, arts, and libraries regarding state archives program to department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

Former law: See section 1 of Act 6 of 1851, being CL 1857, § 5906; CL 1871, § 7751; How., § 9347; CL 1897, § 11361; CL 1915, § 15079; CL 1929, § 17018; and Act 208 of 1875.

State of Michigan
Records Management Services

Frequently Asked Questions About General Schedules

Q: What is a public record?

A: The Michigan Freedom of Information Act (FOIA) ([MCL 15.231-15.246](#)) defines public records as recorded information “prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created.”

Q: Are all records considered to be “official” records?

A: No. General Schedule #1 addresses the retention of “nonrecord” materials. These documents are broadly defined as drafts, duplicates, convenience copies, publications and other materials that do not document agency activities. These materials can be disposed of when they have served their intended purpose. Government agencies need to identify the “office of record” when multiple offices possess copies of the same record. The “office of record” is responsible for following the retention period that is specified, duplicates do not need to be retained. A more comprehensive definition can be found in the approved schedule (available online at http://www.michigan.gov/documents/hal_mhc_rms_GS1_local_110758_7.pdf).

Q: Are the retention periods that are listed on general schedules minimum amounts of time that a record should be kept?

A: Yes. General schedules authorize, but do not require, public officials to dispose of records after the expiration of the assigned retention period. Local situations may require retention beyond the periods listed, and nothing prevents a government agency from retaining records longer than the specified period of time. If records are kept for less than the amount of time listed, the agency can be penalized for unlawful destruction of records. In addition, if records are kept too long, they can waste valuable storage space, and they can become a liability to the agency if it receives a FOIA request, or if it becomes involved in litigation.

Q: Does my government agency have to follow a general schedule?

A: Records cannot be lawfully destroyed without the authorization of an approved Retention and Disposal Schedule. The purpose of a general schedule is to ensure that all government agencies are following consistent retention practices, and to

prevent individual agencies from having to develop an agency-specific schedule. However, if your government agency does not want to follow an approved general schedule, it would need to get an agency-specific schedule approved. [Note: agency-specific schedules always supersede a general schedule.] Internal policies do not have the force of law that an approved Retention and Disposal Schedule has.

Q: What is an agency-specific schedule?

A: Agency-specific schedules are Retention and Disposal Schedules that only apply to the agency listed on the document. They are intended to cover records that are unique to that specific agency. Records that are listed on an approved general schedule should not be listed on an agency-specific schedule, unless the agency has a unique situation that justifies a different retention period than the one everyone else is following. The instructions and forms for agency-specific schedules are available online at <http://www.michigan.gov/recordsmanagement/>.

Q: What should my government agency do if we create a record that is not listed on the general schedule?

A: The general schedule covers records that are common to most government agencies. However, general schedules do not claim to be inclusive of every record that all agencies create. Records that are not listed on general schedules cannot be destroyed without the authorization of an approved agency-specific schedule.

Q: What should my government agency do if we do not create a record that is listed on the general schedule?

A: Nothing. General schedules do not mandate that any of the records listed on the schedule be created. However, if they are created in the normal course of business, the schedule establishes a retention period for them.

Q: What do the codes in the Total Retention column mean?

A: The **retention codes** that appear on the schedule are used to establish how long records are retained by the creating agency before they are destroyed. Retention codes determine how destruction dates will be automatically calculated by Versatile (Versatile is the records management software that is used by Records Management Services to manage the retention of records), and the date upon which the calculation will be based. Definitions of these codes can be found in the Records Management Manual that is available online at <http://www.michigan.gov/recordsmanagement/>.

Q: What do the numbers in the Total Retention column represent?

A: In addition to the retention code, a period of time, years and/or months, can be used in the calculation of the retention period. Years are expressed as whole numbers, and months are expressed as fractions. For example, the fraction "0/6" would represent 6 months. The retention code plus the period of time results in a mathematical formula that is used to determine a disposal date.

Q: Do the general schedules only cover paper records, or do they cover databases and other electronic records too?

A: Records can exist in a wide variety of formats, including paper, maps, photographs, digital images, e-mail messages, databases, etc. The retention periods listed on the general schedules do not specify the format that the record may exist in, because each government agency that adopts the schedule may choose to retain its records using different recording media. Government agencies are responsible for ensuring that their records, regardless of format, are properly retained and remain accessible during this entire retention period. Various laws (including the Records Reproduction Act) identify acceptable formats for retaining public records; agencies are responsible for understanding and complying with these laws.

Q: Do the general schedules cover e-mail?

A: Yes. Many of the record series that are listed on the general schedules may originate as e-mail. Those e-mail messages need to be retained for the period of time specified by the schedule. For more information about e-mail retention, please check out the online guide at <http://www.michigan.gov/recordsmanagement/>.

Q: Can records be microfilmed or digitally imaged?

A: Yes. The Records Reproduction Act (MCL 24.401-24.406) regulates the reproduction of public records by Michigan government agencies at all levels. This law requires the Records Management Services to promulgate technical standards to ensure the continued accessibility and usability of records that are microfilmed or digitized throughout their retention period. The standards are also intended to help state and local governments ensure the integrity and authenticity of their records. The Records Management Services administers competitively bid master contracts for microfilming and imaging services. State agencies and local governments are eligible to use these contracts to receive these services. More information is available online at <http://www.michigan.gov/recordsmanagement/>.

Q: How can I determine which records that are listed on the general schedules contain confidential information that should not be released to the public?

A: Select records series that are listed on the general schedules may be exempt from public disclosure, in accordance with the provisions of state and federal laws. Please consult with your attorney if you need additional information.

Q: Is there an appropriate way to destroy records that contain confidential information?

A: Yes. Some public records contain sensitive or confidential information. These records should not be placed in a regular trash or recycle bin when they are destroyed. It is important that government agencies ensure that these records are destroyed in a manner that prevents the inappropriate release of the information. The State of Michigan administers a master contract with a vendor that complies with the state's requirements for confidential destruction of records. Government agencies that are interested in using this contract should contact the vendor: Rapid Shred, Attention: Scott Dennis, 616-735-2900. Confidential electronic records should be destroyed in accordance with the U.S. Department of Defense "Standard Industrial Security Program Operating Manual" (DoD 5220.22-M).

Q: Who is responsible for ensuring that Retention and Disposal Schedules are followed?

A: The Michigan Penal Code (MCL 750.491) establishes misdemeanor penalties for disposing of records without the authorization of an approved Retention and Disposal Schedule. Government agency directors are responsible for ensuring that relevant staff are aware of the provisions in the schedule and follow them. The Records Management Services does not audit agencies and assess penalties. However, courts may penalize agencies for failing to follow an approved Retention and Disposal Schedule.

Q: What should I do if I have suggestions for revising a general schedule?

A: Contact the Records Management Services at (517) 335-9132.