

# RECORD RETENTION AND DESTRUCTION

Revised 03-06-02

## I. THE RECORDS MANAGEMENT LAW

The State of Minnesota has enacted a records management law ([Minn. Stat. §§ 138.163 to 138.20](#)). This law directs the creation, maintenance, storage, and destruction of records maintained by government agencies.

Employers often confuse agency requirements under the Minnesota Government Data Practices Act (MGDPA) with those requirements under the Minnesota Records Management Act (MRMA). The Department of Human Services must comply with the statutory requirements of both laws. The MGDPA involves the collection, treatment, and classification of all government data. The MRMA deals with the retention and destruction of government records. An official record under the MRMA may contain several items of data each with different classifications.

A. DEFINITION - Government records are defined as all information or documentary material regardless of physical form or characteristics, storage media, or condition of use. Records may be:

- cards
- correspondence
- disks
- maps
- memoranda
- microfilm
- papers
- photographs
- recordings
- reports
- tapes
- writings

B. EXCLUSION FROM DEFINITION - The definition of records does not include:

- a.) Library and museum material made or acquired and kept solely for reference or exhibit purposes.
- b.) Extra copies of documents kept only for convenience of reference.
- c.) Processed documents, bonds, coupons, or other obligations or evidences of indebtedness which destruction is covered by other laws.
- d.) Data and information which does not become part of an official record.
- e.) Working papers or notes. (Agency staff should be aware that the Records Management Act and the Data Practices Act treat 'working papers' differently. Working papers under the Data Practices Act carry the same classification and access provisions as the official record. Working papers, however, do not need to be included on an agency's records retention schedule and can be destroyed on an ongoing basis.)

C. AGENCIES TO WHICH THE RECORDS MANAGEMENT APPLIES Those agencies which must adhere to the provisions of this act are:

- a.) State, county, city, town, school district, municipal subdivision, or corporation or other public authority or political entity within the state.
- b.) All departments, offices, commissions, boards, or any other agency, however styled or designated of the executive branch of state government.
- c.) State legislature.
- d.) State and local courts.

D. EXCLUDED AGENCIES - Agencies of the statewide welfare system which are not covered by this act are those private agencies under contract to one of the agencies of the welfare system including private mental health centers, unless the contract or a specific statute, says they must comply.

Other excluded agencies are:

- University of Minnesota

- Supreme Court
- State Law Library
- Minnesota Historical Society

E. FORMS - Copies of forms required to comply with this Act are included in the [forms section](#) of this manual.

## II. DESTRUCTION OF RECORDS

A. DESTRUCTION CRITERIA - The law provides that records may be destroyed if they have fulfilled their legal retention requirements, they are no longer needed for reference, and: The holding agency has submitted a records retention schedule which has been approved by the records retention panel. Agencies which have an approved records retention schedule may destroy records according to that schedule without obtaining additional approval. Information about the destruction of records should be maintained permanently on the Records Destruction Report (RM-00065).

The holding agency has submitted a request to destroy specific records on the form that has been approved by the records retention panel.

B. PROCEDURE - The procedure outlined below for the destruction of government agency records is essentially the same as that included in the DHS Administrative Manual. Procedures have been added for the private agencies included in the welfare system.

All agencies within the statewide welfare system shall develop a records management policy and procedure which ensures:

Records are created, maintained, and used in a manner to preserve a full and accurate accounting of the agencies' activities.

Destruction of records no longer useful for care and treatment, licensing, audit, legal, or other requirements.

Data which is complete, accurate, and current and necessary is retained. Data which is incomplete or inaccurate must be corrected. Data which is not current should be updated or destroyed in such a manner as to maintain data security.

The privacy/confidentiality of records is maintained when they are destroyed. Approved methods of destruction include:

- Shredding or tearing it into sizes which are not feasible to be reconstructed;
- Burning;
- Melting method of paper recycling;
- Erasing tapes, etc.

A permanent record must be maintained which indicates in a general way what records have been destroyed.

### C. DISPOSING OF CENTRAL OFFICE RECORDS CONTAINING DATA ON INDIVIDUALS

1. Central Office records listed on the Minnesota Records Retention Schedule (RM-00058-02), are to be disposed of when the retention period has expired. The designee responsible for the record must arrange for security disposal. The designee must complete a Records Destruction Report form and maintain a copy of this report permanently. Copies of this report must be sent to the Department's Record Manager, the Minnesota Department of Administration, and the Minnesota Historical Society.

2. Central Office records not covered by the Minnesota Records Retention Schedule can be disposed of only when approved by the records disposition panel via the use of Form PR-1.

3. Note: The recycle bins on each floor of the DHS Central Office building may be used for security disposal. All paper put into these bins is shredded and then melted. If you do not want to put your data directly into a bin, you may contact the Department's Record Manager for help. Putting not-public data into a waste basket will not guarantee security disposal.

### D. DISPOSING OF STATE INSTITUTION RECORDS CONTAINING DATA ON INDIVIDUALS

1. Records Covered By the Minnesota Records Retention Schedule- Records covered by the retention schedule should be destroyed once the retention period has expired. [Minnesota Rules, part 1205.1500, subpart 5](#) specifically requires the disposition of all data no longer necessary. The designee must complete a Records Destruction Report form and maintain a copy of his

report permanently. Copies of this report must be sent to the Department's Record Manager, the Minnesota Department of Administration, and the Minnesota Historical Society.

2. Records Not Covered By the Minnesota Records Retention Schedule- State institution records not covered by the Minnesota Records Retention Schedule can be disposed of only when approved by the records disposition panel upon their receipt of Form PR-I. All designees must make application for destruction of records no longer necessary.

#### E. RECORDS NOT COVERED BY THE RECORDS RETENTION SCHEDULE

1. County welfare agencies must obtain specific approval to destroy any record not covered by the records retention schedule.

2. Application to destroy records must be made to the records disposition panel (Attorney General, State Auditor for local records, Legislative Auditor for state records, and director of the Minnesota State Historical Society) in accordance with [Minn. Stat. §138.17](#).

3. Form PR-I, Application for Authority to Dispose of Records, is the form to use. Write Minnesota Historical Society, 345 Kellogg Boulevard, St. Paul, Minnesota 55102-1906 for a supply of this form. A copy is also included in the section on forms in this manual.

4. Once permission to destroy has been obtained, the procedure listed above should be followed.

#### G. QUESTIONS

Contact the Records Manager in the Department of Human Services (telephone 651/296-8446) for answers to specific questions about records management and destruction.

### III. COURT ACTION

It is inevitable that sometimes, despite careful adherence to data practices laws and good office procedures, an agency's handling of government data results in conflict and the conflict may then end up in court.

It is always a good idea to consult the agency's attorney if a data practices issues has resulted in a lawsuit or seems to be heading in that direction. This section gives some general information about legal terms and the legal system.

#### A. ACTION TO COMPEL DISCOVERY

A party to a lawsuit who has been denied access to data by a state agency, political subdivision or statewide system because the data is private, confidential, or otherwise not public, may bring action to compel "discovery."

"Discovery" is the legal term for obtaining information.

The judicial officer, arbitrator or administrative law judge presiding over the matter reviews the data in the secrecy of the judicial chambers and decides:

1. Whether the data should be released pursuant to:
  - a.) The rules of evidence, and
  - b.) Criminal, civil, or administrative procedure appropriate to the action.
2. Whether the benefit to the party seeking access outweighs any harm to:
  - a.) The confidentiality interests of the entity maintaining the data;
  - b.) Any person who has provided the data;
  - c.) Any person who is the subject of the data; or
  - d.) Any individual who is identified in the data.
3. Whether notice to the data subject is justified and what type of notice should be given.

The presiding officer may issue any protective orders necessary to assure proper handling of the data by the parties. [Minn. Stat. § 13.03, subd. 6](#)