

**State of Tennessee**  
**Public Records Commission**  
**MINUTES**

September 7, 2017 at 9:00 AM  
Legislative Plaza, Room LP-16, Nashville, TN

**Public Records Commission Members:**

Chairman – Tre Hargett, Secretary of State - *present*  
Secretary – Robert E. Oglesby, Commissioner of the Department of General Services  
Justin P. Wilson, Comptroller of the Treasury  
David H. Lillard, Jr., State Treasurer  
Chief Justice Jeffrey S. Bivins, Tennessee Supreme Court  
Herbert H. Slatery III, Attorney General  
Karen Garrett, Director of Legal Services and Counsel to the Lieutenant Governor  
Doug Himes, Director of Legal Services and Counsel to the Speaker of the House  
Ann Toplovich, Executive Director of the Tennessee Historical Society  
Eddie Weeks, Legislative Librarian of Legal Services - *present*  
Rick DuBray, Representative of the State Treasurer - *present*  
Janet Kleinfelter, Representative of the Attorney General - *present*  
Trent Andrews, Representative of the Comptroller of the Treasury - *present*  
Rachel Harmon, Representative of the Tennessee Supreme Court - *present*  
Ted Hayden, Representative of the Department of General Services - *present*

**Welcome**

The Public Records Commission met this day at 9:00 A.M. in Legislative Plaza, Room LP-16, Nashville, Tennessee, with the noted Public Records Commission members present. Secretary of State and Chairman of the Commission, Tre Hargett, called the meeting to order at approximately 9:00 A.M. He detected a quorum and requested action on the following matters as presented.

**Approval of Minutes from March 28, 2017**

1. Chairman Hargett asked if there were any changes to the March 28, 2017 minutes.
  - a. Mr. Weeks noted that on page 5, item e, the word “to” needs to be added before the word “grow.”
  - b. Also in item e, Mr. Weeks requested clarification of whether the official name is “State Record Center” or “State Records Center.” It is decided that the official name is “State Records Center.”
  - c. Chairman Hargett entertained a motion to approve the minutes with suggested changes. The motion was properly moved and properly seconded; the March 28, 2017 minutes were approved.

**Consent Agenda**

2. Chairman Hargett asked if there was any discussion of the consent agenda.
  - a. Mr. Weeks drew the attention of the Commission to ask that item 149 Statewide RDA 16 be moved from the consent agenda to the regular agenda. Chairman Hargett moved item 149 to 3b of the regular agenda.
  - b. Mr. Weeks discussed items 116, 120, 124, and 129. He noted that these RDAs are granting agencies the responsibility of maintaining electronic records permanently.
  - c. Director of Records Management, Kevin Callaghan, discussed the agency responsibility

- of keeping electronic records permanently in an Electronic Management System.
- d. Chairman Hargett called upon a representative from Strategic Technology Solutions to discuss the questions raised by Mr. Weeks.
  - e. Executive Director of Enterprise Shared Solutions, Mr. Ronald Groves presented himself as representative for Strategic Technology Solutions. Mr. Groves discussed the migration of Tennessee Emergency Management Agency and noted that their IT departments and phone systems will become part of Strategic Technology Solutions' systems. Mr. Groves emphasized that Strategic Technology Solutions' systems have disaster recovery and unlimited retention.
  - f. Chairman Hargett asked if there were any questions or comments for Mr. Groves. Hearing none, he moved to adopt the consent agenda. The motion was properly moved and properly seconded; the motion was approved.

### **RDAs for Discussion**

- 3. Chairman Hargett stated that there were two RDAs for discussion and asked Mr. Callaghan to describe the items.
  - a. Mr. Callaghan explained that RDA 11232 is the Board of Law Examiners Exam Essay Answers, which includes the essay answers and the blue book of each examinee to the bar exam.
    - i. The Administrative Office of the Courts requested that the record series be kept two years and destroy. The Comptroller's office recommended that the record series be kept five years and destroy, and that audit requirements be listed as state.
    - ii. Mr. Callaghan recommended a retention of two years and destroy, with the audit requirements changed to state.
  - b. Alicia Grice, Legislative Auditor with the Comptroller of the Treasury, came forward to explain the position of the Comptroller's office.
  - c. Chairman Hargett asked if there were any questions regarding Ms. Grice's statement. He acknowledged Ms. Janet Kleinfelter.
  - d. Ms. Kleinfelter asked if the Comptroller's office intends to look at the examinations as part of an audit and, if so, for what purpose.
  - e. Ms. Grice responded that an audit of the examination books is possible. If done, it would be done as a review of the internal controls that the Board of Law Examiners has over these records.
  - f. Ms. Kleinfelter questioned why the Comptroller's office would need to look at the documents and not the process that the Board of Law Examiners has put in place.
  - g. Ms. Grice answered that the intention of the Comptroller's office is not to re-grade, but to ensure that there were essay responses and will not be viewing the content.
  - h. Ms. Kleinfelter stated that the Comptroller's office will be re-checking the responses and going behind the Board of Law Examiners to check to ensure the tests were graded properly.
  - i. Ms. Grice stated that the work of all state agencies is reviewed similarly.
  - j. Chairman Hargett asked if there were any further questions. He then acknowledged Rachel Harmon with the Administrative Office of the Courts.
  - k. Ms. Harmon, the designee of the Chief Justice, cited the Constitution of the State of Tennessee, Article II, Section I, as stating the powers of the government shall be divided into three distinct departments: legislative, executive, and judicial. Article VI, Section 1 states judicial power of the state is faceted under the Supreme Court. Ms. Harmon then cited the Tennessee Code Annotated, Section 16-3-406, which states after Supreme Court Rules become effective, all laws in conflict with the Rules shall be of no further force or fact. Ms. Harmon cited Tennessee Supreme Court Rules, Rule 7, Section 12.11, which states examination papers and grades shall be treated as confidential and are not open to

members of the public without authorization of the Supreme Court. The Board of Law Examiners is authorized to only release confidential information to licensing, disciplinary, and law enforcement agencies.

- i. Ms. Harmon stated that any other agencies, including the Comptroller's office, would be required to petition the court and get an order to view these records.
  - ii. Ms. Harmon referenced a letter from the Chief Justice which states that the court has approved a two-year retention for the exam blue books. Ms. Harmon requested that the commission approve the two-year retention policy as approved by the Chief Justice.
- l. Chairman Hargett entertained a motion that was properly moved and properly seconded, with opposition from Trent Andrews, designee of the Comptroller's office. Without any further discussion, the Records Disposition Authorization is approved as recommended by the Chief Justice.
- m. Chairman Hargett moved on to the next discussion, item 149 on the Consent Agenda.
- n. Mr. Callaghan stated that the next item up for discussion is RDA Statewide 16, Temporary Records. RDA Statewide 16 was moved from the regular agenda to the discussion agenda. He explained the definition of Temporary Records as stated in the Tennessee Code Annotated.
  - i. Mr. Callaghan explained that the request is that Temporary Records be cut off and destroyed when no longer of administrative value. He advised that as it is currently written, records may be kept by an agency for an indefinite amount of time because they are temporary.
  - ii. Mr. Callaghan requested that the cutoff be changed to state that files are cut off immediately and disposition notes be changed to state files are cut off immediately.
- o. Chairman Hargett asked if there was any discussion and acknowledged Ms. Kleinfelter.
- p. Ms. Kleinfelter stated that she felt the recommended changes were a great addition to the disposition notes as clarification of the time period. She recommended, in addition to the suggested changes, that instead of stating "if it needs to be retained longer than one year, it's not a temporary record but should fall under another Records Disposition Authorization," the "should" in the disposition should be taken out and changed to say "it falls under another Records Disposition Authorization if record is kept longer than one year."
- q. Mr. Callaghan agreed with Ms. Kleinfelter's suggestion. He stated that disposition will be changed to include the suggestion.
- r. Chairman Hargett entertained a motion to adopt the newly suggested language in RDA Statewide 16. Without any further discussion, the motion was approved.

#### **Records Management Reports**

4. Chairman Hargett asked Mr. Callaghan to present the Records Management Update.
  - a. Reports
    - i. Mr. Callaghan reported that Records Management continues to meet weekly with Library & Archives and the Comptroller's office to review Records Disposition Authorizations that are submitted. Since 2013, Records Management has created, revised, or retired 1,584 Records Disposition Authorizations out of 1,850. This includes just under 1,700 that Records Management started with and the new Records Disposition Authorizations that have been created since.
    - ii. Mr. Callaghan advised that Records Management is getting close to completing the

- revision process for all existing Records Disposition Authorizations. He advised that Records Management will be slowing down as agencies work to complete revisions and creation of more difficult Records Disposition Authorizations.
- iii. Mr. Callaghan advised that Records Management conducted ten training classes and are continuing to conduct agency training classes as well. Records Management continues to keep agency records officers up to date on professional changes. Records Management also plans to conduct more trainings with Strategic Technology Solutions.
  - iv. This year, Records Management has held over three hundred agency meetings. They have also conducted twenty-five classes, agency trainings, and workshops.
  - v. Records Management is conducting agency assessments in the Nashville area and regional offices. Records Management has conducted twenty-six agency assessments and has traveled to regional offices in Chattanooga, Jackson, and Knoxville. Later in October, Records Management will be traveling to Memphis to conduct an assessment.
  - vi. Mr. Callaghan explained that the purpose of the assessment is to see how the agencies are handling physical records and measure the volume by Records Disposition Authorization. This helps the agencies provide an accurate Records Holding Report.
  - vii. Most of the Records Holding Reports for this year have been received.
- b. Electronic Records Survey
- i. Mr. Callaghan advised that the electronic records survey was requested at the last PRC meeting by the Commission.
  - ii. Agencies are aware of the benefits and legal requirements of electronic record retention.
  - iii. Mr. Callaghan advised that the electronic records survey showed the need for consultation and planning before implementing digital conversion processes and projects.
  - iv. Mr. Callaghan advised that he is working with Strategic Technology Solutions and agencies to improve the digital conversion process. Strategic Technology Solutions and Records Management are in the planning stage to work closely together for the next year.
  - v. Chairman Hargett asked if there were any questions for Mr. Callaghan. Chairman Hargett acknowledged Eddie Weeks.
  - vi. Mr. Weeks asked how much turnover there is of records officers in the agencies.
  - vii. Mr. Callaghan answered that turnover has slowed down in the last year. In the last three years, there has been a complete turnover of records officers twice due to normal retirement and a retirement buyout. Requirements for records officers require extra work – not every agency had a person in place to meet the requirements.
  - viii. There were seven turnovers in the records officer position this year, out of fifty records officers. In addition, state universities moved from being under the Board of Regents which added six new records officers.
  - ix. Records Management is working with the Communications division of the Secretary of State's office to develop different ideas on how make it easier for new employees to learn Records Management basics. A video has been created that covers Records Management basics, and it should be out soon.
  - x. Chairman Hargett asked if Mr. Weeks had any further questions.
  - xi. Mr. Weeks wanted to discuss question 21 which asks, "Has your agency consulted with Strategic Technology Solutions for the most efficient storage system for the long term records?" Mr. Weeks also noted that this includes permanent records. Twenty-four agencies responded "no."

- xii. Mr. Callaghan stated one-third of the agencies are communicating with Strategic Technology Solutions. Records Management has been advising agencies in trainings and in meetings to speak with Strategic Technology Solutions regarding long-term record storage.
- xiii. Chairman Hargett requested that Records Management inform Strategic Technology Solutions when assessments are being done at the agencies. He asked if Records Management can set up phone calls with Strategic Technology Solutions to be completed during assessments and spend 15-30 minutes on the phone so they can be more involved in the process. He suggested that Mr. Callaghan include facilitating communication with the agencies and Strategic Technology Solutions as part of a strategic plan over the next twelve, twenty-four, and thirty-six months.
- xiv. Chairman Hargett asked if there was any further discussion. Hearing none, he thanked Mr. Callaghan and moved on to the next item on the agenda.

### **Rules Revision**

5. Mr. Thaddeus Watkins, General Counsel of the Department of General Services, and Meryl McVicker, Assistant General Counsel of the Department of General Services, came forward to discuss the update to the rules of the Public Records Commission.
  - a. Mr. Watkins advised that the update to the rules was a project undertaken with Mr. Callaghan to improve and replace the basic rules of the Public Records Commission which were 25 years old.
  - b. Mr. Watkins discussed a summary of the changes and went through items in the Revision of the rules of the Public Records Commission.
  - c. Mr. Watkins discussed a particular change that was made to the definition of what an “agency” is as it is written in the existing rule and statute, Tennessee Code Annotated, Section 10-7-301, which states, “agency means as any department, division, board, bureau, commission, or other separate unit of government created by law or pursuant to law, including the legislative branch and the judicial branch; provided, however, that for purposes of this part only, ‘agency’ does not include the legislative branch.”
  - d. Mr. Watkins advised that he removed the last clause; however, he and Ms. McVicker are going to add the clause back to the rules.
  - e. Mr. Watkins stated that he consulted Mr. Weeks on the clause and asked Mr. Weeks to comment.
  - f. Mr. Weeks stated at the time the phrase “excluding the legislative branch” was added, it was intended to apply to the Legislature itself and strictly to the records of the General Assembly. He did not know why “legislative branch” was included instead of General Assembly.
  - g. Mr. Watkins advised that the phrase will be added back into the rules definition. He stated that the Commission can make a statement that from this point on, the phrase will be interpreted as General Assembly and not the constitutional department.
  - h. Ms. Kleinfelter advised that the issue has been investigated before and has recognized the language as not applying to the legislative branch for purposes of Section 10-7-301. Since it is in the statute, it must be included.
  - i. Mr. Watkins advised that this is not considered a material change and no notice has been filed, so the phrase will be added back in along with a clause that will include the definition for “agency” as listed in the proposed new rules.
  - j. Mr. Watkins continued to discuss the remaining changes to the rules. He stated that the rules embrace procedures implemented by the Public Records Commission. He stated that perhaps the Public Records Commission will allow a rulemaking hearing during the next

Public Records Commission meeting.

- k. Mr. Callaghan thanked Mr. Watkins and Ms. McVicker for their assistance in revising the rules.
- l. Chairman Hargett advised the Commission that if they had comments in the future, they should inform Mr. Watkins and Ms. McVicker so that adjustments can be made.
- m. Mr. Watkins offered to serve as moderator during the rulemaking hearing.
- n. Mr. Callaghan advised that the next Public Records Commission meeting will be in March or April.

**Closing Remarks**

- 6. Chairman Hargett asked if there was any further business or comments from the public.
- 7. Hearing none, Chairman Hargett entertained a motion to adjourn. The motion was properly moved, and properly seconded. The Commission was adjourned.