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## Public Records Policy 05: *Disposition of Public Records*

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**Date Issued:** November 28, 2011

**Supersedes:** *General Letter #5: Destruction of Public Records* (revised 07/25/1995), *Disposition of Local Government Records* (1999), and *Disposition of Education Records* (1999).

### I. Scope and Authority

#### Scope

This policy provides guidance for the disposition of public records, including destruction or transfer. It applies to all employees of state agencies within the executive department, towns, cities, boroughs, districts, and other political subdivisions of the state.

#### Authority

The Office of the Public Records Administrator is authorized to approve disposition of public records, under the authority granted by §11-8, §11-8a, §11-8b, and §7-109 of the *General Statutes of Connecticut* (CGS).

#### Definitions

“Agency” means a state agency, municipality, or political subdivision falling under the authority of the records management program administered by the Connecticut State Library as referred to in CGS §11-8.

“Public record” means any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method. [Source: CGS §1-200(5).]

“Official record copy” means the original or official copy of a record that is retained for legal, operational, or historical purposes. For example, if records are kept in both electronic and hard copy format, the agency must identify the official record copy. [Source: ARMA International. *Glossary of Records and Information Management Terms*, 3<sup>rd</sup> ed. Lenexa, KS: ARMA International, 2007.]

“Non-record” means any item that is not usually included within the scope of official records. Examples of non-records are extra (duplicate) copies kept only for convenience, reference materials, and blank forms. [Source: ARMA, *Glossary*.]

### II. Policies

#### Agency Responsibility

Agencies are responsible for providing all employees with a copy of this policy, obtaining a signed acknowledgment of receipt from each employee, and keeping the signed acknowledgment on file.

### **Retention of Records**

Records must be retained for the established retention periods as listed on published records retention schedules, available at <http://www.ctstatelibrary.org/organizational-unit/public-records>. Retention requirements apply only to the official record copy.

### **Disposition of Records**

Disposition of records refers to either **destruction** of records or **transfer** of records to the custody of another entity. Records may not be destroyed or transferred until the Office of the Public Records Administrator has returned a signed *Records Disposition Authorization* form to the requester. If a record does **not** appear on a records retention schedule, it does **not** mean that an agency may dispose of the record without permission from this office. Please contact this office for guidance.

### **Legal Framework**

Pursuant to CGS §11-8b and §7-109, records shall not be removed, destroyed, mutilated, transferred or otherwise damaged or disposed of, in whole or in part, except as provided by law or under the rules established by the Office of the Public Records Administrator. Pursuant to CGS §1-240 and §53-153, unauthorized removal or destruction of records is a misdemeanor or felony offense and is punishable by fine or imprisonment. In addition, the destruction of records is an illegal subject of collective bargaining pursuant to *Lieberman v. Board of Labor Relations* [216 Conn. 25 (1990)]. Therefore, a union agreement that involves the destruction of public records prior to the retention period established by this office would conflict with the relevant provisions of the *General Statutes of Connecticut*.

### **Destruction Holds**

No record may be destroyed if there are pending or active litigation; investigations; audits; Freedom of Information Act (FOIA) requests; or other cases, claims, or actions. If there is a destruction hold placed on a record, the retention period does not change, but is suspended until the action is resolved and the hold is lifted. Once the hold is lifted, the record may be destroyed after the Office of the Public Records Administrator has returned a signed *Records Disposition Authorization* form to the requester.

### **Removal of Personal Data**

Pursuant to CGS §4-193(e), an agency shall maintain information about a person which is relevant and necessary to accomplish the lawful purposes of the agency. To obtain permission to destroy or remove records classified as "irrelevant" and "unnecessary" under these provisions, agencies may submit a *Request for Removal of Public Records Personal Data Files* (Form RC-076 or Form RC-077).

## **III. Procedures**

### **A. Destruction of Records**

#### **Approval Process**

Once records have met the retention period, agencies should submit the appropriate *Records Disposition Authorization* form to this office at least thirty days prior to the proposed date of destruction. The Public Records Administrator and the State Archivist will review the form to ensure the records have fulfilled the retention requirements and that no record of enduring historical value will be destroyed. This office will return the form to the agency indicating approval or denial. This form serves as evidence of authorized legal destruction if the records are audited, investigated, or subpoenaed as evidence.

#### **Method of Destruction**

The records may be destroyed after receipt of the signed disposition form. This office recommends a method that ensures the total destruction of the record. The format of the record dictates the method by which it should be destroyed:

- Hard copy formats, such as paper, microfilm, microfiche, and x-rays, should be shredded with a cross cut shredder and recycled.
- Electronic media, such as floppy disks, Compact Disks, VHS tapes, audiocassettes, hard drives, and rewritable disks, should be degaussed, overwritten, or erased. Agencies should be aware of special conditions associated with confidential or sensitive electronic records as erasure does not always ensure data destruction. Physical destruction of the media may be the only secure way to destroy data permanently.

At the time of disposal, the agency should record the actual date of destruction on the *Records Disposition Authorization* form and attach any supporting documentation, such as a Certificate of Destruction. Please note that if the organization contracts with a commercial vendor, the vendor should provide a Certificate of Destruction attesting to the actual destruction of the records. Retain these records for the retention period for Records Disposition Authorization records.

## **B. Transfer of Records**

### **Approval Process**

Agencies should submit the appropriate *Records Disposition Authorization* form to this office at least thirty days prior to the proposed date of transfer. The Public Records Administrator and the State Archivist will review the form to ensure the records are eligible for transfer and that the new custodian is approved for transfer. This office will return the form to the agency indicating approval or denial. This form serves as evidence of authorized transfer of legal custody of records if the records are audited, investigated, or subpoenaed as evidence.

### **Transfer to Archival Repository**

For records that have a retention period of “permanent/archival,” the agency should transfer the records to the Connecticut State Archives or another approved archival repository. All agencies should use the appropriate *Records Disposition Authorization* form, as well as the State Archives’ *Memorandum of Transfer* or an equivalent form from an archival repository. For transfer to the State Archives, refer to *Transfer of Records to the State Archives* and *Collection Policy for the State Archives*, available at <http://www.ctstatelibrary.org/organizational-unit/state-archives>.

### **Transfer to Another Entity**

Many agencies have faced or will face consolidation, relocation, or reorganization. Agencies must consider how records will be handled and plan accordingly. Pursuant to CGS §11-8b, “Public records shall be delivered by outgoing officials and employees to their successors and shall not be otherwise removed, transferred, or destroyed unlawfully.”

State agencies should refer to *Public Records Policy 06: Retention of Records for Agency Closures, Mergers, and Consolidations*. Pursuant to CGS §4-38d(f), “Unless otherwise expressly provided by law, the head of a department, institution or agency, the functions, powers or duties of which are so assigned or transferred, shall deliver to the department, institution, agency or authority to which such assignment or transfer is made all contracts, books, maps, plans, papers, records and property pertaining to or used in connection with the functions, powers or duties so assigned or transferred.”

Records should be organized for transfer to the successor agency or program. Agencies should utilize the *Records Disposition Authorization* form to request transfer of records to another entity (e.g., from one agency to another). Agencies may choose to establish a written agreement, such as a Memorandum of Understanding, and should include a copy of any agreement when submitting the *Records Disposition Authorization* form.

### C. Disposition of Education Records

Educational institutions must comply with additional records maintenance requirements of applicable Federal laws, such as the Family Educational Rights and Privacy Act (FERPA) and the Individuals with Disabilities Education Act (IDEA). Educational institutions are defined as “federally funded educational agencies or institutions.” Education records are defined as “records that are (1) directly related to a student and (2) maintained by an educational agency or institution or by a party acting for the agency or institution” [20 USC §1232(g) and 34 CFR §99].

Retention requirements for education records are listed on the *Municipal Records Retention Schedule M8: Education Records* and the *State of Connecticut Records Retention Schedule S5: Higher Education Records*. The State of Connecticut considers records to be no longer needed to provide educational services to a child when the retention requirement is fulfilled. **If a student moves from one educational institution to another, the agency should maintain a copy of the student’s education record and send the original to the receiving school district (the record follows the student).** Both educational institutions should retain their copy of the student’s education record for the retention period.

#### Special Education Records

Pursuant to 34 CFR §300.573(a), “The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child” and (b) “The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.” The agency shall only destroy these records after they have met the retention period. Before executing a directive to destroy records, the agency should inform parents / adult students, in record destruction notices, that the parent or student may need these records in the future for Social Security benefits or other purposes.

#### APSEP and RESC Education Records

Records of students placed by local or regional boards of education or other state agencies in regional education service centers (RESCs) or approved private special education programs (APSEPs) are education records (including, but not limited to, medical records). In accordance with Section E of the *Principles, Procedures and Standards for the Approval of Private Special Education Program* (06/1998), “when a copy of a student’s education record is maintained by the facility, the facility must inform the parents/guardians that a copy of their student’s records is maintained within the agency and must provide the parents/guardians access to the copy. The private facility must also inform the local education agency that they are maintaining a copy of the student’s record.” In addition, “when children placed by a local school district or other public agency are discharged from a private facility, that facility shall ensure that all records are forwarded to that public agency.”

Please note that RESC-operated magnet schools, unlike APSEPs, maintain the responsibility to collect and retain student records as any other local education agency. The magnet school is responsible for maintaining

the records, destroying such records with approval of the Office of the Public Records Administrator, and for transferring records to another school in which the child enrolls.

If you have any questions regarding this policy, please contact this office at (860) 757-6540.

**Approved by**



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LeAnn R. Power, CRM  
Public Records Administrator

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November 28, 2011

Date