

**Vermont Secretary of State
Office of Vermont State Archives**

SECOND ANNUAL REPORT

on

ARCHIVAL RECORDS MANAGEMENT

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Report of the State Archivist
2004

This is the second annual report of the State Archives as required by 3 V.S.A. §117(3)(c), as amended by Act #3 of 2003. It covers the Archives activities during calendar year 2004.

The past year was remarkably full, from responding to intense interest in Howard Dean's records, to dealing with a series of burst or leaking pipes, to addressing a range of opportunities provided by the 2003-2004 Legislature. These included mandates to preserve legislative records; test the scanning of municipal records; explore standards, training, and funding needed to implement e-government for municipalities; improve the management of court records; and to work with the Legislative Council in a study on public records, privacy, and electronic access.

During the year the staff responded to 5,066 information requests (up from 2,245 requests from 2003). Of these requests 2,071 were by phone and 1,769 by e-mail. Staff continued to build the Archives web site, which received 177,953 visits during the year.

The staff worked hard throughout the year and in May 2004 received a team public service award from Governor Douglas.

The Archives made substantial progress during the year in implementing the broader archival management authorities enacted as part the 2003 law. As a result the Archives is compiling measurable data on recordkeeping challenges and developing responses to better manage the State's archival records. The primary challenge remains the current inadequate archival facility. That and other challenges and responses are addressed in this report.

Respectfully submitted,

Gregory Sanford
State Archivist

PART I OVERVIEW OF THE STATE ARCHIVES

The state archives dates from 1782 when the general assembly directed the secretary of state to preserve “all public Acts, Papers and Records that belong to the State” and to “grant Copies of all Records when thereto requested, taking... reasonable fees.”

Over time the general assembly identified additional records to be deposited with the archives including gubernatorial records (1864), legislative committee minutes (1917), and court records (1975). The primary goal of these acts was to allow citizens and officials to review the actions of government in fulfillment of the accountability requirements of Chapter I, Article 6th of the Vermont Constitution.

Historically the archives was a passive repository, receiving only those records the creating agencies selected, without guidance, as archival. In 2003 (Act No. 3) the general assembly granted the archives authority to work more directly with government agencies in the identification and preservation of archival records.

Archival Records

Archival records are institutional records that have a continuing legal, administrative or historical value. Illustrations based on recent requests include: what happens if there is a vacancy in the lieutenant governorship (legal/historical); how standing committees of the house evolved (administrative); and what was the history of the 1993-94 special house sub-committee on health care reform (historical).

As a rule of thumb, only about 5% of all government records have a continuing value.

Archival Management

The key word in archival management is *management*. To be effective an archives must have authority and resources to actively work with agencies to ensure that archival records are created, identified, appropriately scheduled, and kept accessible and authentic over *time*.

In 2003 the general assembly recognized that a passive archival program does not work and cannot work with electronic records. It amended 3 V.S.A. §117 to clarify the management requirements of an archival program. Among the authorities granted are:

- cooperate with the heads of state agencies or public bodies to establish and maintain a program for the identification, scheduling, and preservation of archival records;
- analyze, develop, establish and coordinate standards, procedures and techniques for the creation, preservation, and access to archival records;
- analyze and identify archival records in state agencies; and
- take custody of archival records with the approval of the originating agency.

Publics Served

The archives is used by a broad spectrum of Vermonters. These include:

- Legislators and legislative staff tracing previous acts and studies of the general assembly.
- The executive branch researching past gubernatorial appointments, executive orders, studies, and other executive actions
- Government officials seeking to better understand changing mandates.
- Lawyers doing legislative history research.
- Reporters seeking evidence of government actions or context to current issues.
- Land surveyors tracing municipal boundaries.
- Citizens reviewing government actions or doing historical or family research.
- Historians, political scientists and other scholars.

Staff

The Archives has four staff members; two professional archivists and two administrative assistants. The administrative assistants also supervise Vermont notaries; provide clerical oversight of the Secretary of State's rulemaking responsibilities under the Administrative Procedures Act; and fulfill the Legislative Clerk duties as set out in 3 V.S.A. §106(4) and (5).

During 2004 two temps were hired to help with the backlog caused by the intense research within the Howard Dean records and a temporary professional archivist, funded through an appropriation to the court administrator, was hired to manage the judicial record project.

PART II 2004 PERFORMANCE INDICATORS

During 2004 the Archives continued analyzing current archival management practice, particularly within the judicial and legislative branches. Those analyses can be found in Part III, Challenges and Responses. A partial list of other performance indicators for 2004 includes:

Information Requests

Permit the public to inspect, examine, and study the archives (3 V.S.A.§117(g)(9))

- The Archives staff responded to 5,066 information requests, largely through telephone (2,071) and e-mail (1,769) contacts.
- During calendar year 2004 there were 177,953 visits to the Archives web page. The top documents visited were the electronic records management and access to public records pages, while the most downloaded document was the *Vermont Notary Guide*.
- Notices of proposed administrative rules became available through the Archives website on October 14, 2004. The administrative rules pages, including forms and guidelines, have received 9,292 views to date (<http://vermont-archives.org/apa/rules.html>.)
- In May 2004 the staff received a team Public Service Award from Governor Jim Douglas for its professionalism and grace, under national media scrutiny, in responding to the extraordinary volume of research in Governor Howard Dean's records (June 2003-February 2004)

Establish Archival Management Programs

Cooperate with agencies to establish archival management programs (§117(g)(3))

- The Vermont Judicial Records Program was initiated in cooperation with the Court Administrator's Office. All superior and probate court staff were interviewed and their records surveyed. Implementation of a comprehensive records management plan is slated to begin February 2005. Pre-1845 records were also entered in the Archives Collection Management database.
- Work on the legislatively-funded project to digitize analog tapes of committee testimony led to broader discussions with Legislative Council on the need for an archival management program for legislative records in general and digital recordings in particular.

Processing and Promotion of Archival Records

Arrange, describe and promote use of archival records (§117(g)(8))

- Arranged and described 41 cubic feet of Legislative Council records, including special study committee records.

- Arranged and described 15 cubic feet of legislative committee records.
- Arranged and described 11 cubic feet of election records.
- Entered over 40,000 index cards to the Archives 18th century records into the Collection Management database. Researchers will be able to search the index by name, town, document type, and date from the Archives' website beginning this spring.
- Updated state officer and election data presented on the Archives' web site.
- With the Vermont Historical Records Advisory Board held Vermont Archives Week in November celebrating Vermont teachers who use historical records in their curriculum. (<http://vermont-archives.org/boards/vhrab/archivesweek.htm>)
- The Archives collaborated with Vermont Landscape project at UVM. To date over 1,700 photographs from the Archives have been added to the project's web site. (<http://www.uvm.edu/perkins/landscape/menu.html>)

Identification and Analysis of Archival Records

Analyze and identify archival records in state agencies ((§117(g)(5))

- The Archives continued to review records held by Buildings and General Services that had been identified as permanent (traditionally few record schedules identify records as archival, using instead the designation of “permanent” or even “microfilm”). Since BGS's holdings cover a range of agencies it is the logical place to start the analysis of archival records. Within the BGS holdings designated as Public Records Acquisitions (PRA), and exclusive of court records, 1,980 cubic feet of paper records, 671 rolls of microfilm, and 51 bound volumes were initially identified as archival. In addition, 379 cubic feet of Legislative Council records held by BGS were appraised as archival.
- Descriptions of these records were entered into the Archives Collection Management database and non-government historical records were de-accessioned to the Vermont Historical Society and Special Collections at the University of Vermont.

Acquisition of Archival Records

Take into custody of archival records ((§117(g)(5))

- Took custody of 2003-2004 legislative committee records and original acts.
- Lack of space limited the Archives' ability to accept records. The Archives spent \$10,000 microfilming records, though the vault remains full.
- On February 16, 2004 (the Presidents' Day holiday) the Archives staff, with the help of volunteers and the Vermont Historical Society, responded to a burst water pipe that

flooded parts of the vault, damaging over 90 boxes and their contents. In May 2004 the staff had to salvage two cubic feet of photographs that were damaged by a leaking heating pipe.

- The Archives disaster response plan was updated and a cooperative emergency response phone list was coordinated with Public Records, the Vermont Historical Society, and the Department of Libraries.

Establish Standards

Analyze, develop and establish standards ((§117(g)(4))

- To assist agencies and municipalities planning digital imaging projects the Archives launched a web-based guide to document imaging. The guide came out of the Archives participation in the pilot scanning project for Vermont municipalities (http://vermont-archives.org/records/electronic/elec_rec.html)

Coordinate with State Institutions

Cooperate with and assist state institutions, etc ((§117(g)(10))

- Archives staff chair the Municipal Land Records Commission and created a website for the Commission (<http://vermont-archives.org/records/vtmlrc/index.htm>).
- The Archives assisted, by invitation, the National Governors' Association (NGA) and the Council of State Historical Records Coordinators (COSHRC) in revising the NGA's guide to managing gubernatorial records.

PART III CHALLENGES AND RESPONSES

During calendar year 2004 the Archives continued to analyze the current state of recordkeeping in general, and archival management in particular, as required by 3 V.S.A. §117. This analysis was augmented by a series of legislatively-mandated studies coming out of the last biennium.¹ In addition the Archives continues to evaluate the experiences associated with Howard Dean's presidential campaign and the substantial research interest in his gubernatorial papers.² Litigation over the management of the Dean records and the use of executive privilege continues.

The 2004 analyses allowed, for the first time, better tools for understanding the challenges confronting archival management and how to respond to them.

Of most direct concern to the Archives are the long-standing problems associated with the current inadequate archival facility. It is impossible to fully implement the new requirements of 3 V.S.A. §117 because of the lack of archival space.

Of equal concern, the current vault's environmental integrity is deteriorating. The most visible evidence of this was the partial flooding of the vault when a water pipe burst at Redstone during the Presidents' Day holiday on February 16, 2004, damaging over 90 boxes of records.

Beyond the physical barriers to establishing an archival program, it is clear that a quiet crisis is developing. Its cause is the historic lack attention to, and resources for, the management of public records.

Though quiet the crisis is real and touches all three branches of government as well as municipalities. And the quiet is being disturbed. Those disturbances are evidenced by growing litigation over access to and control of public records; by the increasing reluctance of some companies to insure land titles in municipalities with poor recordkeeping; by pressures to close traditionally open records in the interests of privacy and security; and, conversely, by concerns that new restrictions on access to records are weakening government accountability. The expanding use of information technologies exacerbates these problems. Examples of problems that emerged in the last biennium can be found in Appendix A.

Recordkeeping problems have existed for decades. They are not the result of individual failings, but rather of the systematic failure to create and sustain a record management program consistent with the State's legal and administrative requirements.

¹ These mandates included \$50,000 within the Budget Adjustment Act (Act# 80, 2004) to convert analog tapes of legislative committee testimony to digital form and a \$50,000 appropriation to the court administrator to begin the management of early court records found as Sec. 3 of Act #63 of 2003. In addition the Archives is involved in establishing five pilot municipal scanning projects authorized by Sec. 9 of Act#121 of 2004 and establishing municipal recordkeeping standards through Sec. 78a of Act #122 of 2004. The Archives also participated in the Legislative Council study of public records, privacy and electronic access authorized by Sec. 5 of Act #155 of 2004.

² Though the bulk of the Dean research occurred in 2003, heavy use continued up to the New Hampshire primary on January 27, 2004.

It is therefore impossible to address all issues simultaneously. The Archives is pursuing a phased approach. Each phase is largely shaped by the legislative directives from 2003-2004 and must resolve problems prospectively as well as retroactively.

For this report five specific challenges and responses are examined:

1. The need for a new archives facility
2. The need for additional professional staff to work with agencies and address electronic record issues
3. The need to manage court records
4. The need to manage legislative records, and
5. The need to re-examine 1 V.S.A. §316 of the Public Records Act

CHALLENGE 1: STATE ARCHIVES FACILITY

The Archives space needs have been continually studied since 1988 without result. Space restraints force the Archives to manage space at the cost of managing records. From 1999-2003 the Archives averaged \$40,000 a year on microfilming in order to free space; in 2004 an additional \$10,000 was spent. Yet the vault remains full.

The legislature's intent in creating a consolidated archival management program cannot be achieved without a new facility. The preliminary analyses of "permanent" records at BGS and of superior and probate courts records identified 4,000 cubic feet of archival records eligible for immediate transfer to the Archives.³ The current facility only has a capacity for 1,600 cubic feet and is full (Vermont has the smallest state archival facility in the country). The Archives lacks the space to accept or process these records.

The current facility cannot be easily adapted to become an electronic record archives. The 2004 Legislative Council report on Public Records, Privacy and Electronic Access correctly notes the need for an archival management program for electronic records as more and more public records are "born digital" or are being converted to digital form (such as the proposal to digitize legislative committee tapes and the current digital recording of testimony). A new facility is needed for electronic records.⁴

The environment of the current vault continues to deteriorate. On February 16, 2004 (a state holiday) a water pipe burst on the second floor of Redstone. Despite the vault's four hour fire rating, the water seeped through the re-enforced concrete ceiling, soaking over 90 boxes of records (primarily from the administrations of Governors Snelling and Kunin). The State Archives staff, with the help of volunteers and the Vermont Historical Society, quickly responded and no records were lost. Luckily the 1777 Vermont Constitution and other valuable records escaped damage.

A second episode occurred in May when a slow leak in a heating pipe soaked two cubic feet of photographs that were being processed. The staff was able to save most of the photographs, though some had to be discarded.

Water from heavy rains and Spring run-offs continues to seep into the processing room, the electrical room next to the vault, and into the vault itself (most recently on January 14, 2005 during a brief thaw). This raises the constant threat of mold developing in the vault and on records, necessitating expensive fumigation and repair.⁵ Examples of water intrusion can be found in Appendix B.

³ While the Archives' mandate is to permanently preserve and keep accessible archival records, BGS's mandate is to "maintain a record center to hold little used departmental records for disposition" (22 V.S.A.§(a)(11)).

⁴ Other states are moving to create archival facilities for electronic records. In 2004 Washington State opened the first state electronic archives facility. The 2004 Legislative Council Report on Public Records, Privacy and Electronic Access calls for an electronic management program; see pages 46-47, for example.

⁵ Since May 2003 there have been 14 such water leaks, not counting the burst pipe or heating pipe leak.

There is insufficient space to accommodate more than three or four researchers at a time or for the staff to process records. The volume of researchers during Howard Dean's quest for the presidential nomination overwhelmed the available research space. Up to 20 researchers at a time were at the Archives, often from competing candidacies and news media. There was no way to assure researcher privacy, while document security became a major problem as the Archives had to expand into, and monitor, two other rooms at Redstone.

While the volume of use was unique to the Dean campaign, the issues of providing adequate researcher space and privacy is not. With only space for a single table, multiple researchers lack room to research through boxes and folders of records. On occasion rival candidates or their representatives, lawyers or reporters are forced to share the researcher space (some leave rather than expose to opponents what records they are examining).

The researcher space is shared by the two to three staff members who are answering the phone, doing data entry, and processing records. While this helps maintain line of sight control of records, it puts further stress on the limited space. There is a processing room in the basement, which doubles as a storage space for bulky supplies and is subject to periodic water run-off.

Response:

The only response to these structural problems is a new facility. The vision is to create a *state government archives and research center* where government officials and the public may review, in one place, archival records documenting the essential functions and activities of government.

To achieve this vision the center should include a secure, environmentally controlled vault capable of meeting the State's archival needs for at least ten years (estimated 20,000 cubic foot capacity); a research area that can accommodate multiple users while protecting their privacy and capable of allowing access to the growing range of record media (electronic records, film/video; recorded testimony); and sufficient space for staff to process records. Act No. 121, Sec. 1(b)(9) of 2004 funded a study of the "consolidated office/archival space" needs for the Secretary of State's Office. That report is to be given to the two Institutions Committees. To prevent this becoming just the latest in the line of unrealized plans it is essential that money be appropriated for site selection and design by the 2005 session.

State Archives Comparisons

In 1996 the Council of State Historical Records Coordinators surveyed all the state archives. Surveys included archival vault capacities. The Vermont State Archives, with a vault capacity of 1,560 cubic feet, is the smallest of all the states.

Since the 1996 survey several states, including Delaware, Mississippi, Utah and Washington, have built new facilities. Of the next three smallest state archives vaults listed in 1996, Arizona (2,502 cubic foot capacity) appropriated \$2 million in 2004 for the design of a new building;

Delaware (7,000 cubic feet) built a new facility with a capacity of 95,000 cubic feet while Utah (9,600 cubic feet) has build a new facility with a 24,000 square foot vault.

Comparison of Archival Vaults
in Small States

Based on the 1996 survey the state archives in states with populations less than a million have the following vault capacities:

| State | Archival Vault Capacity (cubic feet) | 2000 Population |
|--------------|---|-----------------|
| Alaska | 22,000 | 626,932 |
| Delaware | 95,000* | 783,600 |
| Montana | 17,332 | 902,195 |
| North Dakota | 15,000 | 642,200 |
| South Dakota | 20,000 | 754,844 |
| Vermont | 1,560 | 608,827 |
| Wyoming | 34,000 | 493,782 |

* Archival space in new, post – 1996, facility. Figure supplied by Delaware State Archivist.

CHALLENGE 2: ADDITIONAL PERMANENT ARCHIVAL POSITION

A root cause of many of the problems cited in this report is the Archives' inability, with only two archivists, to work with agencies to identify and develop management plans for their archival records. As a result archival records are often not identified, managed, or sent to the Archives. Records that are sent often are too fragmentary to document key functions, include non-archival records, and often need extensive weeding and arrangement.

The value of having an archivist who can work directly with agencies is demonstrated by the court record project, originally funded by Act No. 63, Sec. 3 of 2003 (see #3, below for further details). In 2004 the Archives created a partnership with the court administrator to do the project, including hiring a professional archivist. As a result of having an additional archivist all superior and probate courts were visited; the court clerks were surveyed on their needs; and a database was started that allows, for the first time, a comprehensive view of all court records.

The surveys and interviews revealed that none of the clerks had copies of existing disposition orders for court records; there was no training on recordkeeping; and there was no overall management plan for court records.⁶ Consequently the clerks are reluctant to discard any records, leading to the long term preservation or microfilming of records that did not have a long term value. Survey results can be found in Appendices C and D.

The archivist has identified areas where thousands of dollars of savings can be achieved. Similar projects in other jurisdictions report a 15% to 80% reduction in the volume of court records being stored. These savings can be applied across the other branches of government if an additional archivist is added to the staff to work directly with agencies.

An additional archivist with some electronic record training will also help move toward an electronic record archives. Again, given the volume of records being born digital or being converted to digital form, it is essential to have the resources to develop management plans. This cannot be sustained with the current staffing.⁷

Response:

Add another permanent professional archival position in FY06. The position will help analyze records within their creating agency and help establish active management programs (including training) and will assist in creating guidelines for managing electronic records. Management plans will constantly be evaluated to track savings and sustainability.

⁶ In January 2005 BGS informed the courts that it would not accept any more records until a record management plan was adopted.

⁷ The 2005 Legislative Council report on Public Records notes the absence of, and need for, an electronic records program. See page 19, for example.

CHALLENGE 3: VERMONT JUDICIAL RECORDS PROGRAM.

Under Act No. 63, Sec. 3 of 2003 money was appropriated to the commissioner of buildings and general services for the court administrator to begin processing older court records. In 2004 the Archives began to work with the court administrator on the project and a professional archivist was hired to do the work under the joint supervision of the two programs.

The initial work quickly determined that while retroactive processing of older records was important, it is essential to create a management plan for current court records. The lack of a plan has created barriers to access, led to the long term preservation (including microfilming) of records eligible for destruction, and placed expensive burdens on the courts and the Middlesex record center to store unmanaged, and often inaccessible, records.

Response:

After the on-site interviews and surveys at the superior and probate courts, the project archivist, in consultation with the court administrator, developed a three-phase plan for managing court records.

- In Phase I the archivist will work with the superior and probate clerks and BGS to draft record schedules and disposition orders for court records. Disposition will include, for the first time, identification of archival records and allow for the regular, planned transfer of those records to the Archives.
- In Phase II the archivist will test the models developed in Phase I with one superior and one probate court; train court staff in implementing new schedules; and, with addition of another archivist, begin retrospective processing of court records in preparation of transferring them to the Archives (experience shows that without assistance the backlog of older records will not be done, placing a heavy burden on Archives' staff and space).
- In Phase III work will continue on the retrospective processing; all reference and professional services to archival court records will be consolidated under the Archives; and sampling and other techniques will be used to reduce voluminous files.

Phases I and II can largely be completed under the current appropriation. Phase III will need to be funded for three years until the backlog has been addressed and a sustained management plan is in place for current records.

The Archives and Court Administrator's Office support additional funding of the project through Phase III.

CHALLENGE 4: MANAGEMENT OF LEGISLATIVE RECORDS

Long standing concerns about the deterioration of legislative committee tapes resulted in a \$50,000 appropriation for the Archives to preserve the tapes by converting them to digital form.⁸ The initial analysis found that there were approximately 40,000 hours of post-1985 tapes.⁹

Consultation with audio/digital experts indicated that analog to digital conversion must take place in real time (that is, 40,000 hours) and that the low estimate for the conversion was \$757,760. The Legislative Council envisioned the project as converting the tapes to CDs, raising additional concerns about long term costs of preserving thousands of CDs (in addition to CDs created by the retrospective conversion of tapes, there are currently about 500 CDs created per biennium).

The problems, and costs, with retroactively converting the tapes derive from the failure to manage the records. No master/use copies were created meaning that if a tape deteriorates the information is permanently lost. There was no plan to systematically refresh the tapes (periodic rewinding or copying, for example) or to systematically migrate tapes to new media (for example, when reel to reel technology was replaced by cassettes).

Over the last two biennia the legislature converted its recording system to a digital (CD-based) system. This conversion took place without a sustainable management plan for the CDs, replicating the problems with the tapes.¹⁰ Since hardware and software “generations” tend to occur in five year cycles, the problems with the failure to management the CDs will surface more rapidly than they did with the analog tapes.

Therefore it is essential that the government operations committees, Legislative Council and Archives work together to create a management plan that deals prospectively with legislative records. The plan should embrace all legislative records, not just recordings.

Currently legislative records are scattered among the Legislative Council, the Archives and Buildings and General Services (and to a lesser degree in terms of records, the Department of Libraries). This creates duplication of effort and complicates access (there is no comprehensive index to legislative records and to do a legislative intent a researcher must visit at least three departments to trace a single bill). In other words, legislative records are not the tool they could be for defending legislative intent, drafting bills, reviewing past studies of current topics, or providing public access to the deliberations of the general assembly. As the Legislative Council reported in 2000, “a consolidated, long term record-

⁸ See for example, the 2000 Legislative Council Report on the Administrative Rule-Making Process which devotes several pages to concern over the deteriorating tapes; see pages 15-16 for example.

⁹ Tapes were no longer transcribed after 1985. The 40,000 hours does not include Joint Fiscal Office tapes that also date back three decades and have not been transcribed since the 1970s.

¹⁰ That recordkeeping is not generally considered in developing information technology for the legislature is illustrated by the National Conference of State Legislatures’ 2004 report, “Assessment of the Information Technology System in the General Assembly.” There is no mention of the legal or administrative requirements for recordkeeping in the report.

keeping approach [to legislative records] should be considered by the legislature.”¹¹ Given the inauguration of digital recording, it is important to act on this recommendation now.

Response:

The Archives and Legislative Council consulted with the Vermont Folklife Center (which is converting its analog tapes to digital form) and began to identify the basic elements of a management plan for digital recordings. During the 2005 session the Archives will seek the advice of the government operations committees on how to proceed with the current appropriation. As with the court record project a phased approach is envisioned that will address legislative records prospectively, as well as retrospectively. Following the conclusion of the 2005 session the Legislative Council and Archives should:

- identify what legislative records are created and what legal requirements govern their preservation and use (the Archives has already begun an analysis of Vermont case law on legislative intent).
- create new record schedules. For the first time all archival legislative records should be routinely scheduled for deposit with the Archives.
- create a unified database to all legislative records.
- develop a management plan for the general assembly’s electronic records, including cost benefit analysis of server-based storage of digitally recorded testimony, instead of the current CD-based practices.
- report to the general assembly on the management plan by January 2006.

¹¹ “Legislative Council Report on Administrative Rule-Making,” page 18.

CHALLENGE 5: OFFICIAL FEE SCHEDULE FOR PUBLIC RECORDS

Responses to the actual cost provisions of 1 V.S.A. §316 vary from agency to agency and town to town, with different interpretations offered by the attorney general and secretary of state offices over what are allowable charges for copies of public records.¹² As noted in Appendix A, citizens can confront charges of hundreds or even thousands of dollars when seeking public records request and are told there is no right of appeal. This creates an obvious barrier to the right to know. At the same time some public record requests place significant burdens on staff time.

The key point of confusion is what is meant by “the cost of staff associated with complying with a request for a copy.” Does that include time spent searching for and retrieving the requested records, or only that time actually spent copying the record (and, perhaps, time spent reviewing a record for exempt information)? Search and retrieval can be time consuming for the agency, but at what point do charges diminish a citizen’s right to know. In part this is a management issue since a good recordkeeping system should allow an agency to easily locate records, determine whether it is exempt, etc. In other words, high search and retrieval charges might reward bad recordkeeping.¹³

Response:

The general assembly should review the scope and intent of 1 V.S.A. §316 and, if necessary, clarify what are allowable charges. It should also look at the larger policy issues of how to prevent the costs of providing copies from becoming a barrier to access. The 2005 Legislative Council Report on Public Records, Privacy and Electronic Access provides a useful overview of the issue (see pages 10 and 11, for example).

¹² The Legislative Council’s January 2005 report on “Public Records, Privacy, and Electronic Access in Vermont” also identifies this confusion as a problem. See pages 9-10, for example.

¹³ On January 4, 2005 a citizen was told her public records request could cost up to \$16,400 because the department could not search its electronic files and would have to print out and read over 33,000 documents. The inability to electronically search the records serves neither the public nor the agency. If recordkeeping requirements had been addressed as part of the department’s system design electronic text searches should have been possible.

APPENDIX A; Recordkeeping Problems

Selected Examples of Recordkeeping Problems

Legal Risks and Costs

- There is on-going litigation over Governor Dean's use of executive privilege.
- An attempt by the State to charge Judicial Watch \$180,000 for complying with its suit to gain access to certain Dean gubernatorial records was rejected by the court. In May 2004 Judge Alan Cook wrote that "The State's view of "compliance" seems to include whatever may become involved in a response to an access request, including the cost of the expense of litigating the denial of access. Such an expansive interpretation could cripple cumbersome requests with unnecessarily high expenses. That the legislature could not possibly have intended; the [Public Records] Act is designed to encourage access, not thwart it."¹⁴
- The January 15, 2004 report of the Commission on Standards for Municipal Land Records included the finding that, "Insufficient training and staffing in town clerk's offices has led title insurers to seriously consider NOT insuring properties in a few Vermont towns. Without title insurance, banks will not lend money in those towns and properties will not be bought or sold."¹⁵
- In 2003 several municipalities unsuccessfully challenged a private vendor's request for their property tax assessment databases. The challenges expressed privacy concerns, but also touched on who should benefit from the potential commercial value of information contained in public records.¹⁶

Costs of the Right to Know

- Confusion over what is an allowable charge in complying with a public records request persists. In response to a challenge to a \$220 charge for complying with a public records request, the Attorney General's Office replied that "there is no provision in [the Public Records Act; 1 V.S.A. §316] which permits a requesting party to challenge the charges associated with copying. By its failure to adopt such a provision, the Legislature plainly determined that no such right was necessary."¹⁷
- The Department of Corrections, in a response to a request for specific public records generated in late 2004, estimated that it would cost between \$5,400 and \$16,400 to

¹⁴ "Decision re: Process for Adjudication and the State's Motion for Interlocutory Review," Judicial Watch, Inc v. The State of Vermont, et al, Washington County Superior Court Docket No. 656-12-03 Wncv, May 2004.

¹⁵ The report is at: <http://www.leg.state.vt.us/reports/04LandRecords/LandRecords.htm#REPORT>

¹⁶ QueVT v Town of Waterbury, Washington Superior Court, Docket No. 425-8-03, August 15, 2003; QueVT v Town of Colchester, Washington Superior Court, Docket No. 384-7-03 Wncv, October 28, 2003.

¹⁷ Assistant Attorney General Susan Harritt to Megan Price, December 22, 2004. .

comply. The charges were based, in part, on the inability to easily search 33,600 pages of electronic text. In addition the Department noted that requested e-mails were deleted when their author left their employ.¹⁸

Cost Benefit Issues

- An effort to retroactively preserve, through digitization, over 40,000 of analog tapes of legislative committee testimony encountered potential costs of over \$770,000. The analog tapes were never managed and are deteriorating, putting at risk the general assembly's ability to defend the intent of legislation and the public's ability to review legislative actions.¹⁹ The recently purchased digital recording system for testimony was implemented without a management plan, replicating the problems and potential costs experienced with the analog tapes.
- A review of the management of court records found that none of the probate or superior court clerks possess copies of the disposition orders governing the disposal of court records. Consequently clerks are reluctant to dispose of court records. The State record center currently houses almost 13,536 cubic feet of court records, some of which may be eligible for destruction. The volume of court records continues to grow; 182,000 cases were disposed of during FY2004, all of which became part of the court's inactive records. The estimated annual cost of storing court records is \$585,525.²⁰
- A total of 610 cubic feet of court report notes and tapes are currently kept for 23 years. It costs the State \$1,220 a year to store these records at Middlesex, or a total of \$28,000 over 23 years. Most other states retain these records for ten years or less.
- In the Middlesex record center there are 1,155 cubic feet of court records that were microfilmed. The paper can not be disposed of since the records arrived—and were filmed—out of order. This cost the State \$57,750 for the filming plus \$2,310 a year for storing the paper records. Lack of arrangement makes the records difficult to access.

Confused Mandates to Recordkeepers

- The legislative response to privacy concerns associated with Social Security numbers included four separate mandates, risking confusion among record custodians. These acts called for studies by two different entities, the addition of two sections to the exemptions to the Public Records Act in 1 V.S.A. §317(c), a general directive for government entities to take "all reasonable steps to redact any Social Security numbers" when responding to

¹⁸ Steven Gold, Commissioner, Department of Corrections to Laura Ziegler, January 4, 2005. It is unclear whether the e-mail was deleted in compliance with an approved disposition order as required by 22 V.S.A. §454.

¹⁹ As part of the 2004 supplemental budget \$50,000 was appropriated to the state archives to digitize the backlog of analog tapes.

²⁰ Study authorized by Act No. 63, Sec. 3 of 2003. The cost of storing the records is based on per cubic foot storage costs for office and record center space provided on the Department of Buildings and General services website.

public record requests, and a temporary exemption to the Public Records Act for any electronic records generated through a pilot project on the scanning of municipal records.²¹ The public records study mandated by Act, 158 of 2004 identifies the ad hoc proliferation of exemptions to the Public Records Act as a concern.²²

²¹ See Act No. 155, Act No, 158, Act No. 122, Sec.78c(8), and Act No. 121, Sec. 9(a).

²² “Public Records, Privacy, and Electronic Access in Vermont,” Legislative Council Staff Report, January 2005, pages 9-10. Another example of problems with addressing record issues in an ad hoc manner is provided by the requirement that a pilot scanning project involving five municipalities (Act 121, Sec. 9 of 2004) “be designed to ensure compatibility with any state electronic document storage system that maybe developed in the future.” That project is to be completed in 2005. Act 122 of 2004 established a municipal land records commission that must make recommendations on uniform standards for indexing land records (the prerequisite for the document storage system) by January 2006, a year after the scanning project is completed.

APPENDIX B; Facility Environment Problems at Redstone

Burst Pipe February 16, 2004

On February 16, 2004 (the Presidents' Day holiday) the Archives staff, with the help of volunteers and the Vermont Historical Society, responded to a burst water pipe that flooded parts of the vault, damaging over 90 boxes and their contents.



Figure 1:
Governor Snelling's records soaked in the vault



Figure 2:
More wet boxes of records



Figure 3:
Recovery: Folders were removed from damaged boxes, and indexed for re-filing.



Figure 4:
Recovery: Documents were hung to dry

Leaking Heating Pipe May 2004

In May 2004 the Archives staff discovered that a heating pipe had developed a leak in the library. The water soaked through the carpet and the bottom of two boxes of photographs. The water went undiscovered long enough to cause mold to form on some of the boxes and their contents. Some photos had to be discarded.



**Figure 5:
Hanging photographs to dry**

Seasonal Water Run Off

There has been water in the Archives workshop and the electrical room next to the vault at least 14 times in the last two years. The water run off occurs when the snow melts in the spring and when there are heavy rain storms.



Figure 6:
Regular drainage problems in the workshop.



Figure 7:
Regular drainage problems in the electrical room (next to the Vault).

Appendix C; Judicial Records Program Survey

Interviews with superior and probate clerks revealed the need for sustained training on the management of court records. Without knowledge or understanding of recordkeeping procedures, clerks are reluctant to dispose of any records, placing unnecessary burdens of storage space (see appendix D).

The table below was created through the Judicial Record Program, a collaborative effort of the court administrator’s office and the state archives.

| Category | Prevalence | Key Issue |
|---|------------|--|
| <u>Records Management</u> | | <i>The current practice of “keeping everything” is the root of the courts’ records problem. A concise record retention and disposition schedule will lead to effective records management practices.</i> |
| Has general records management guide | 0 (100%) | |
| Has <i>Records Procedure Manual</i> | 29 (90.6%) | |
| Has copies of all disposition orders | 0 (0%) | |
| Fully adheres to procedures in the Manual | 0 (0%) | |
| Never adheres to procedures in the Manual | 15 (46.8%) | |
| Partially adheres to procedures in the Manual | 17 (53.1%) | |
| Finds Manual clear and easy to understand | 0 (0%) | |
| Would like a revised records procedure manual | 31 (96.9%) | |
| <ul style="list-style-type: none"> - None of the courts are actively destroying any records that the court creates, receives, or manages, which is causing significant records management problems. - Most courts have a copy of their <i>Records Transfer or Destruction Procedure Manual</i>, as issued by Public Records in 1999. However, the <i>Manual</i> does not contain copies of disposition orders. Only a few courts have copies of some disposition orders and none of the courts have copies of all their disposition orders. - All courts, even those without a copy of the <i>Manual</i>, expressed the need for a clear, concise records retention and disposition schedule. They feel that the current manuals and disposition orders do not adequately address the records or the records management needs of the courts: the record series, for example, were either too broad, outdated, or insufficiently described to be useful to the courts. Fiscal, personnel, and other operating records are not even included in the existing <i>Manual</i>. - All courts recognized that there is little need to keep everything that the court creates, received, or manages. Yet, no one feels comfortable disposing of valueless records. Moreover, without copies of their records’ disposition orders, they are unable to legally destroy any court records. | | |

Appendix D; Judicial Records Program Volume and Storage Costs

Vermonters regularly turn to the courts to resolve or clarify disputes and rights. This readiness is reflected in the volume of court records generated each year. Without a management plan the state incurs annual storage costs for all court records, not just those with a continuing value.

The table below was created through the Judicial Record Program, a collaborative effort of the court administrator's office and the state archives.

| | | |
|--|---|----------------------|
| Total Cubic Feet of Court Records in State Records Center in Middlesex: | | 13,536 |
| <i>** Includes 1020 cubic feet of filmed court records that were not disposed due to filming problems or concerns.</i> | | |
| Total Cubic Feet of Records at the State Records Center in Middlesex for: | Superior Courts: | 4,400 |
| | Probate Courts: | 1502 |
| | District Courts | 3962 |
| | Family Courts | 2509 |
| | Supreme Court | 63 |
| | Environmental Court | 40 |
| | Judicial Bureau | 0 |
| Total Estimated Cubic Feet for All Courts Through Approximately 2000: | | 37,955 ²³ |
| Estimated Total Cubic Feet of records stored at Middlesex and the Courthouses: | Superior Courts Through 1996: <i>** Includes case files, notes, etc., but does not include any docket or recording volumes. The estimate also does not include administrative or financial records. Some records reflected in this estimated total may have been filmed and destroyed.</i> | 11,011 |
| | Probate Courts through 1999: <i>** Includes estates, trusts, and guardianships only. Adoptions were not transferred to the Records Center and therefore could not be estimated. Also not included are wills for safekeeping, administrative records, and financial records.</i> | 8,022 |
| | District Courts through 2001: <i>**Includes municipal court records, case files, stenographer notes and tapes, and records that may have been filmed. Does not include administrative or financial records.</i> | 14,889 |
| | Family Court through 2000: | 4,033 |
| Annual Cost for Storage of All Court Records: | | \$644,899 |
| Annual Cost to store 13,536 cubic feet of court records at Middlesex ²⁴ : | | \$27,072 |
| Annual office space records storage costs ²⁵ : | Superior Courts: | \$230,764 |
| | Probate Courts: | \$142,331 |
| | District Courts: | \$238,536 |
| | Family Courts | \$33,268 |

²³ This estimated total includes records that may have been filmed. However, the cubic feet of filmed records are most likely equivalent to the total number of cubic feet of records created since 2000. Therefore, it is safe to assume that there are roughly 38,000 cubic feet of paper court records through FY 2004.

²⁴ Based on BGS' estimate of \$2.00 per cubic foot

²⁵ Based on BGS' estimate of \$21.83 per cubic foot