



INFORMATIONAL LEAFLET

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LEGAL ADMISSIBILITY OF PUBLIC RECORDS

Introduction

Private organizations and government agencies throughout the world use records as a basic business tool. Records serve as an instrument of management, document business transactions, show compliance with statutes and regulations, and provide the recorded history of an organization. Computers raise new questions about the legal obligations and regulations with which an organization must comply. These questions must be answered by agency officials so that the use of new information technologies complies with these needs. The most important feature of a record-keeping system is to support good management; but, without the appropriate records, your organization can be fined or penalized, lose rights, or experience adverse judgements or administrative decisions.

Legal Admissibility of Records

Alabama's rules of court procedure and codified laws establish the criteria records must meet to be admissible in court as evidence. The records should be prepared and maintained in a manner that meets the formal requisites of Rule 44 of the Alabama Rules of Civil Procedure (ARCP) with District Court Modifications and Title 12, Article 21 of the Alabama Code of 1975. The text of these requirements is included at the end of this leaflet.

The following criteria are a practical restatement of these requirements adapted from the law:

- 1. The records are created as part of a regularly conducted activity.** The records are the result of business transactions of the agency in carrying out its work. A regularly conducted activity may include a pattern that produces records on a daily, weekly, monthly, yearly or other cyclical schedule. Also, a regular program of the agency may create records at irregular times.
- 2. The records are accurate.** Systematic quality control and audit procedures, as well as supervision by staff with detailed knowledge of the process used to create the records,

produces accurate records. Quality control procedures are of particular importance in data entry processes.

3. The records are created in a timely manner. Records created during the course of business tend to be regarded as more accurate than records created after the fact.

4. The records are maintained for an appropriate length of time. Records should be retained, regardless of media, for the period required by the agency's approved record disposition authority. For some technologies it may periodically be necessary to convert, regenerate, copy or transfer the information from one medium or technology to another to preserve the information for the full retention period. Regardless of the established retention period or the life expectancy of the media, records must continue to be maintained when litigation, government investigation, or audit is pending.

5. Staff are fully trained in system procedures. Formal training programs for staff on the details of system procedures and processes raise a strong presumption that the procedures were correctly followed. If an agency can show the court that staff knew what procedures they were to follow, it can also show that there is a high likelihood that the procedures were followed.

6. Record-keeping systems are periodically assessed and evaluated. Periodic assessment and evaluation of record-keeping systems provide proof that procedures are being followed and support the system and process documentation.

7. Record-keeping systems and processes are adequately documented. Documentation of the record-keeping process and system provides an enduring verification of the way that records are created and maintained. Without documentation, witnesses must rely solely on memory. Documentation preserves the information about the process or system independent of the individuals involved and can be entered as evidence along with staff testimony for demonstrating the accuracy and reliability of the record-keeping system.

Documenting the Record-keeping Process

Written documentation of record-keeping systems and processes is a key element in attaining a legally-acceptable record-keeping system. The following items form adequate documentation of agency record-keeping processes:

1. Written procedures. Written documentation of all administrative and office procedures and documentation of the content of staff training programs serves as evidence of the processes and systems used to create records.

2. System hardware and software documentation. Documentation of the hardware and software components making up the system creating and storing records is not only vital for maintenance and upgrade purposes but provides documentation that supports written procedures of the record-keeping process.

3. Audit trails. Audit trails document who used the system, when they used it, what they did while using the system, and what were the results. Properly implemented audit trails can automatically detect who had access to the system and whether unauthorized actions occurred while they used it.

4. Agency audits. Audits should be conducted periodically to ensure that the process or system is creating accurate records. Audits should compare the procedures prescribed in the written documentation with the procedures actually followed.

5. Approved records disposition authority and records destruction documentation. An approved disposition authority forms the legal basis for all activities related to records disposition. Documentation of the disposal of records provides proof that the records have been destroyed with proper authorization in the event that these records are requested for a future audit or legal action.

Who Can Help?

A public official should first seek advice regarding the legal admissibility of government records from the agency's legal counsel. The Office of the Attorney General, Opinion and Agencies Division, can also assist in the solution of legal questions regarding the records maintained in an official's office.

In Alabama government, the State Records Commission and Local Government Records Commission are authorized by law to issue guidelines, rules, and regulations governing the disposition of public records. Guidelines and regulations issued by the commissions can assist you in the development of an effective records management program. The Government Records Division of the Department of Archives and History (ADAH) serves as the support staff for the commissions. State and local officials seeking assistance with policies, standards, and procedures related to government records and the development of an effective records management program can contact ADAH staff at (334)242-4452 or records@archives.state.al.us.

Appendix: Alabama's Rules of Evidence

The rules governing the admissibility of records into evidence require that:

- Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence or event, shall be admissible in evidence in proof of said act, a transaction or event if it was made in the regular course of any business and it was the regular course of business to make such memorandum or record at time of such act, transaction, occurrence or event, or within a reasonable time thereafter. (Code of Alabama 1975, Section 12-21-43)
- All other circumstance of the making of such writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight, but they shall not affect its admissibility. (Code of Alabama 1975, Section 12-21-43)

- Any writing or record, ... if it was made in the regular course of any business and it was in the regular course of the business to make such memorandum or records at the time of such act, ...may be photostated, or it may be photographed or microphotographed on plate or film; and such photostat, photographic or microphotographic plate or film or print thereof, ... shall be deemed to be an original record and shall be admissible in evidence in proof of said act, ... in all instances that the original record might have been admissible and shall be presumed to be a true and correct reproduction of the original record it purports to represent. (Code of Alabama 1975, Section 12-21-44)

- Exemplifications or copies of records ... which are kept in any public office in this state shall be proved or admitted as legal evidence in this state by the attestation of the keeper of said records or books. . . .(Code of Alabama 1975, Section 12-21-67)

For more information on this and other records management concerns, state and local government agencies should contact the:

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