



Date: August 1, 2006

To: HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

From: Gerrie Schipske, Councilwoman, Fifth District *Gerrie Schipske*

Subject: Retention of Public Records of Officials Leaving Office

DISCUSSION:

Whenever elected officials and/or public employees create information related to public business, they are creating a public record. Public records are the heart of government operations. These records:

- Are created for the citizens,
- Are the property of the citizens,
- Are protected in the interest of citizens,
- Are an historical record of how the government served the needs of the citizens, and
- Are historical, legal, administrative or fiscal records.

The California Public Records Act (PRA) (Government Code, Section 6250 et seq.) which is modeled after the federal Freedom of Information Act and details what government information is, and is not, available to the public. In general, all records are open to the public except 28 specific exemption categories listed in PRA, Section 6254. The PRA applies to all records, in whatever form, maintained by either state or local public agencies.

The State Records Management Act (Government Code, Section 14740-14774) requires the Director of the Department of General Services (DGS) to establish and administer the state's records management program. The program applies "... to the creation, utilization, maintenance, retention, preservation, and disposal of state records."

Legislation and directives establishing the state Records Management Program do not apply to local government, county and/or city government agencies do not have a standardized program of accountability for their treatment of public records. Nor does local government have standard retention periods for various record categories other than certain record types identified in government codes that mandate specific local programs.

To alleviate this situation the 1999 legislature added Section 12236 to the Government Code, which states in Section 12236 (a) "The Secretary of State shall establish the Local Government Records Program to be administered by the State Archives to establish guidelines for local government retention and to provide archival support to local agencies in this state."

These guidelines are an initial attempt to provide some standards and structure to the local government records management effort. Other attempts at standardization include the California City Clerks Association's 1998 list of common local government records and recommended retention periods. The goal of the State Archives in compliance with GC 12236 is to consolidate information resources and provide local government with a single source for archival and records management support and guidance. (*Source: SECRETARY OF STATE LOCAL GOVERNMENT RECORDS MANAGEMENT GUIDELINES SECRETARY OF STATE BILL JONES ARCHIVES AND MUSEUM DIVISION RECORDS MANAGEMENT AUGUST 2001*)

City of Long Beach Charter: Article XXIII Miscellaneous, Section 2300 "Retention of Records" states: Notwithstanding any express or implied records retention provisions of this Charter to the contrary, officers and employees of the City are not required to keep, maintain or preserve any City records or writings of any kind or character in excess of the period prescribed by the general law of the State of California.

The City of Long Beach's Municipal Code: Title 1 "Record Retention" states: 1.28.010 Schedules: Record retention schedules may be prepared by the city manager for any department under his direction and control and by the elective officers for their respective departments and submitted to the city council for approval. The retention schedules for each department shall designate and describe each separate type, class or series of city records within said department and shall provide: (a) the length of time that each type, class or series of records must be maintained; (b) when any of the records may be transferred from the department to the city record center; (c) when duplicate records may be destroyed pursuant to section 1.28.030; and (d) when requests may be submitted to the city attorney for consent and to the city council for approval of destruction of original or record copies of city records. (Prior code § 2760).

1.28.020 Destruction--Approval required: Original or record copies of city records which are not required by law to be permanently maintained shall not be destroyed until a request for the destruction of each original or record copy or class or series of such records has received the prior written consent of the city attorney and the prior approval of the city council in accordance with the provisions of the California Government Code relating to the destruction of public records. Such consent and approval of a request for destruction of a type, class or series of records shall not constitute continuing authority for subsequent destruction of the same type, class or series of records, but the consent and approval required by this section shall be obtained prior to each such subsequent destruction. (Prior code § 2761).

1.28.030 Destruction--Duplicate records: The elective department heads, the city manager or a department head who has been given written authorization by the city manager, may destroy or cause the destruction of any duplicate city record, which is less than five (5) years old, if the elective officer, city manager or duly authorized department head has determined to his satisfaction that the duplicate record does not constitute the official record copy, and that the duplicate record is no longer required for use in the conduct of city business, and that the duplicate copy has been kept for the time specified by the department's record retention schedule as approved by the city council. (Prior code § 2762).

California Government Code:

Section 34090 et seq. of the Government Code of the State of California provides the parameters whereby any City record which has served its purpose and is no longer required may be destroyed. This schedule allows for the removal of numerous records for cost-effective and efficient operation of the government of the City of Long Beach, and compliance with the guidelines of this code helps to protect the City by demonstrating documented, procedural means of disposing of any City record which has served its purpose and is no longer needed for administrative, fiscal, historical or legal purposes.

Public Records Should Survive the Transition of Officials:

Elected officials, including the Mayor and City Council, City Attorney, City Prosecutor, and City Auditor receive, generate and/or maintain correspondence/subject files during their terms in office. These files contain documents incoming and outgoing letters, memoranda, faxes, notes and their attachments, in any physical format including, but not limited to, paper and electronic format.

For the sake of continuity of local government, all documents prepared, received, or maintained by the Office of the Mayor and by any elected city official should be considered the property of the City of Long Beach. The originals of these public records that pertain or are within the subject matter jurisdiction of their duties should be maintained by the City of Long Beach, consistent with a written retention policy approved by the City Council and the City Attorney. Such public records should not be destroyed nor removed from the office of the outgoing officials.

The impact of the removal and/or destruction of the public records of elected officials who are vacating office include:

1. Increased costs associated with the hiring of additional staff by incoming elected officials in order to research and replicate data and

information necessary to provide continuity in representation and/or fulfillment of legal responsibilities to citizens;

2. The loss of representational continuity;
3. The loss of historical record related to the specific elected office; and
4. The inability of citizens to access all public records.

POLICY QUESTION:

Shall the City Council require that public records survive the transition of elected officials?

RECOMMENDED ACTION:

It is respectfully requested that a report be given to the City Council from both the City Clerk and the City Attorney within 30 days regarding the feasibility of:

1. Adoption of the California Secretary of State's Local Government Record Management Guidelines for all elected officials and City departments.
2. Amending the Municipal Code to require that public records survive the transition of elected officials and to provide specific penalties for failure to comply.

SUPPORTING DOCUMENTS:

1. California Secretary of State's Local Government Record Management Guidelines (1999)
2. California City Clerk's Association Local Government Records Retention Guidelines (1999)