



City of Peoria • 8401 West Monroe Street • Peoria, Arizona 85345
OFFICE OF THE CITY ATTORNEY

CIVIL
PROSECUTOR
FACSIMILE

623-773-7330
623-773-7335
623-773-7043

OPINION NO. 2002-01

TO: Janice L. Graziano, City Clerk
FROM: Stephen M. Kemp, City Attorney
DATE: October 15, 2002
SUBJECT: Liability for Maintaining Duplicate Copies of Public Records

QUESTION:

1. What is the liability to the City for maintaining duplicate copies of public records in multiple locations?
2. Must all public records be maintained in the department having general jurisdiction over the area of interest?

OPINION:

Municipal Records are addressed in a number of statutes. The authority for a local records management program is provided in A.R.S. §41-1346 which provides:

[41-1346. State and local public records management; violation; classification; definition](#)

- A. The head of each state and local agency shall:
1. Establish and maintain an active, continuing program for the economical and efficient management of the public records of the agency.
 2. Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the rights of the state and of persons directly affected by the agency's activities.
 3. Submit to the director, in accordance with established standards, schedules proposing the length of time each record series warrants retention for administrative, legal or fiscal purposes after it has been received by the agency.

4. Submit a list of public records in the agency's custody that are not needed in the transaction of current business and that are not considered to have sufficient administrative, legal or fiscal value to warrant their inclusion in established disposal schedules.
 5. Submit to the director lists of all essential public records in the custody of the agency.
 6. Cooperate with the director in the conduct of surveys.
 7. Designate an individual within the agency to manage the records management program of the agency. The designated individual:
 - (a) Must be at a level of management sufficient to direct the records management program in an efficient and effective manner.
 - (b) Shall act as coordinator and liaison for the agency with the state library.
 8. Comply with rules, standards and procedures adopted by the director.
- B. The governing body of each county, city, town or other political subdivision shall promote the principles of efficient record management for local public records. Such governing body shall, as far as practicable, follow the program established for the management of state records. The director shall, upon request of the governing body, provide advice and assistance in the establishment of a local public records management program.
- C. A head of a state or local agency who violates this section is guilty of a class 2 misdemeanor.
- D. For the purposes of this section, "records management" means the creation and implementation of systematic controls for records and information activities from the point where they are created or received through final disposition or archival retention, including distribution, use, storage, retrieval, protection and preservation.

A second statute of importance is A.R.S. §39-121.01, which provides for inspection of public records.

Clearly stated in the provisions of A.R.S. §41-1346 is the principle to "establish and maintain an active, continuing program for the economical and efficient management of the public records of the agency." Implicit in the economical and efficient management of public records may be maintaining duplicate copies in situations where there is a valid business need for such use. The City Clerk as the Records Management Agency for the City of Peoria is the one to determine when such a valid business need exists.

Opinion 2002-01
Janice L. Graziano, City Clerk
June 22, 2007
Page 3 of 4

If the City Clerk in her capacity as the Director of the local agency pertaining to public records determines that there is a valid business need for maintaining duplicate public records, I see no basis for any liability to the City resulting from such a decision.

The City Clerk in her capacity as the Director of the local agency pertaining to public records is given wide authority over the location of such records. A.R.S. §41-1346 provides:

2. Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the rights of the state and of persons directly affected by the agency's activities.
3. Submit to the director, in accordance with established standards, schedules proposing the length of time each record series warrants retention for administrative, legal or fiscal purposes after it has been received by the agency.

Clearly, the legislature recognized that the use of public records requires the position overseeing such records to have broad authority to determine appropriate locations. For example, the Commission on Accretion of Law Enforcement Agencies (CALEA) requires police departments to maintain records of disciplines within the department. It would undercut the legislature's grant of broad authority to require that such records be maintained in the Human Resources Department, thus making the police department ineligible for accreditation.

Similarly, Rule 45 of the Rules of the Supreme Court of the State of Arizona require that the City Attorney's Office maintain on behalf of each attorney records of all continuing legal education completed in the preceding two-year period. Certainly, the legislature did not intend for a local government to require such training records to be maintained by the Human Resources Department and thereby place the lawyer in violation of Supreme Court rule.

It is the opinion of this office that the City Clerk as the Director of the local agency records management program may determine where such records may be stored and has broad authority to make such determinations based on the business needs, legal requirements and operational requirements of the City.

If you should have any further questions, please let me know.

Opinion 2002-01
Janice L. Graziano, City Clerk
June 22, 2007
Page 4 of 4