



Virginia Department of Corrections

Community, Media, and Other Agency Relations

Operating Procedure 025.3

Public Records Retention and Disposition

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REVIEW

The Content Owner will review this operating procedure annually and re-write it no later than three years after the effective date.

The content owner reviewed this operating procedure in July 2023 and determined that no changes are needed.

The content owner reviewed this operating procedure in August 2024 and determined that no changes are needed.

COMPLIANCE

This operating procedure applies to all units operated by the Virginia Department of Corrections (DOC). Practices and procedures must comply with applicable State and Federal laws and regulations, American Correctional Association (ACA) standards, Prison Rape Elimination Act (PREA) standards, and DOC directives and operating procedures.

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DEFINITIONS

Approving Official - The person in a DOC unit who authorizes that records to be destroyed are not subject to any active or potential litigation, FOIA, or enforcement action holds.

Confidential Records - Public records that are restricted from disclosure by statute, court order, or legally adopted rules and regulations are considered confidential; DOC records that are deemed confidential are still considered to be public records even though they are not publicly available.

Electronic Record - A public record that its creation, storage, or access requires the use of an automated system or device; ownership of the hardware, software, or media used to create, store, or access the electronic record has no bearing on a determination of whether such record is a public record.

Non-Record - Extra copies, reference materials, personal correspondence, stock of publications, or any other information that does not document the transaction of DOC business.

Official Record - The retained version of a particular public record; this designation is made with no regard as to whether it is an original, copy, or reformatted version. All organizational units within the DOC must work with the DOC Records Administrator to establish in writing the ownership of and responsibility for the official records.

Organizational Unit Head - The person occupying the highest position in a DOC organizational unit, such as a correctional facility, Regional Office, Probation and Parole Office, Virginia Correctional Enterprises, Academy for Staff Development, Infrastructure and Environmental Management Unit, Agribusiness Unit, and individual Headquarters units, e.g., Human Resources, Offender Management, Internal Audit.

Permanent Record - Any record determined to have unending historical or informational significance to the Commonwealth.

Public Record - Any recorded information created in the service of the public; these records document the transaction of business. The format in which the information is presented, as well as the medium on which the information is contained has no bearing on the determination of whether the record is a public record.

Records Retention and Disposition Schedule - A Library of Virginia-approved timetable stating the required retention period and disposition action of a records series; the administrative, fiscal, historical, and legal value of a public record must be considered in appraising its appropriate retention schedule. The terms Administrative, Fiscal, Historical, and Legal Value will be defined as:

- **Administrative Value** - Records must be deemed of administrative value if they have continuing utility in the operation of an agency.
- **Fiscal Value** - Records must be deemed of fiscal value if they are needed to document and verify financial authorizations, obligations, and transactions.
- **Historical Value** - Records must be deemed of historical value if they contain unique information, regardless of age, that provides understanding of some aspect of the government and promotes the development of an informed and enlightened citizenry.
- **Legal Value** - Records must be deemed of legal value if they document actions taken in the protection and proving of legal or civil rights and obligations of individuals and agencies.

PURPOSE

This operating procedure establishes the general responsibilities for management, retention, and disposition of Department of Corrections (DOC) records as provided by the *Virginia Public Records Act*, Code of Virginia §42.1-76 through §42.1-91.1.

PROCEDURE

I. Department of Corrections Records Management

- A. The DOC is committed to effectively managing its records, regardless of media type, by adhering to best practices and following a systematic and logical plan developed by the organizational units that maintain the records.
- B. The successful implementation and ongoing effectiveness of the records management program is dependent upon the cooperation of each organizational unit to ensure that permanent records are preserved and non-permanent records are destroyed in a timely and orderly manner.
- C. To ensure compliance with the *Virginia Public Records Act*, COV §42.1-76 through §42.1-91.1, which governs the creation, maintenance, and disposition of public records, the goals of the records management system are: (5-ACI-1F-02)
 - 1. Implement Library of Virginia approved records retention and disposition schedules.
 - 2. Develop and implement procedures, guidelines, systems, and business practices that facilitate the creation, backup, preservation, storage, access, approved distribution, and disposition of records.
 - 3. Create a network of personnel throughout the DOC trained to manage all types of records.
 - 4. Train staff on records management practices and procedures.
 - 5. Document and report destruction of scheduled records to the Library of Virginia.
 - 6. Reduce risks associated with unintended disclosure of sensitive information.
 - 7. Protect and preserve essential and historical information about the DOC.

II. DOC Records Administrator

- A. The Director will appoint and identify to the Library of Virginia the individual designated to serve as the DOC Records Administrator.
- B. The DOC will identify the person who will serve as DOC Records Administrator by submitting a Records Officer Designation and Responsibilities (RM-25) to the Library of Virginia.
- C. The DOC Records Administrator is responsible for the development, implementation, and ongoing coordination of the records management program.
- D. Responsibilities of the DOC Records Administrator include:
 - 1. Developing procedures to implement the DOC records management program to meet regulatory requirements in coordination with the Library of Virginia.
 - 2. Serving as liaison between the DOC and the Library of Virginia, Records Analysis Services, and coordinating the records retention and disposition for organizational units.
 - 3. Providing training and auditing on DOC records management procedures for Unit Records Officers and other DOC staff as time allows.
 - 4. Implementing systems to meet program requirements for completeness, legibility, reproducibility, accessibility, distribution, control, security, storage, and disposition of records. (5-ACI-1F-02)
 - 5. Providing Unit Records Officers instruction on how to take a survey of unit records.
 - 6. Ensuring that essential, archival, and permanent records are identified, properly maintained, protected,

and accessible for the length of time cited in the Library of Virginia approved records retention and disposition schedules.

7. Serving as the Records Officer for all DOC Headquarters units.
 8. Maintaining contact and connections with the Unit Records Officers outside of DOC Headquarters.
- E. To ensure continuity of the records management system, at the end of the DOC Records Administrator's term of office, appointment, or employment all records and documentation will be turned over to the successor.

III. Unit Records Officers

- A. Each Organizational Unit Head outside of DOC Headquarters will appoint a Unit Records Officer to manage the retention and disposition of records for the unit by submitting a Records Officer Designation and Responsibilities (RM-25) to the DOC Records Administrator and the Library of Virginia.
- B. Responsibilities of a Unit Records Officer include:
1. Assisting in the design, implementation, and management of the DOC records management program by serving as liaisons between their respective organizational units and the DOC Records Administrator.
 2. Working with the DOC Records Administrator to develop the unit's records management procedures and practices consistent with this operating procedure.
 3. Training staff within the organizational unit in record management awareness and procedures, including the use of appropriate forms.
 4. Identifying confidential records and information and working to protect that information from unauthorized access and use. (5-ACI-1F-02)
 5. Developing and coordinating a destruction plan for records with the DOC Records Administrator using the Certificate of Records Destruction (RM-3).
 6. Advising staff members on where to access the Library of Virginia approved records retention and disposition schedules.
- C. To ensure continuity of the records management system, at the end of the Unit Records Officer's term of office, appointment, or employment all records and documentation will be turned over to the successor.
1. Units will immediately select a new Unit Records Officer so that destruction may continue without interruption.
 2. The Organizational Unit Head is responsible for submitting a Records Officer Designation and Responsibilities (RM-25) to the DOC Records Administrator and the Library of Virginia to document the selection.

IV. Classification of Records

A. Public Records

1. The format in which the information is presented, as well as the medium on which the information is contained, have no bearing on the determination of whether the record is a public record. (COV §42.1-77, *Definitions*)
2. The designation of official record is made with no regard as to whether it is an original, copy, or reformatted version.
3. All organizational units within the DOC must work with the DOC Records Administrator to establish in writing the ownership of and responsibility for the official records.
4. Units will, whenever possible, consider the electronic version of a record to be the official record.
5. Records maintained in VACORIS will be considered the official record.

6. Paper copies of records that have been uploaded to VACORIS or additional paper copies remaining after the official record has been sent to Virginia Correctional Enterprises for scanning may be destroyed immediately. Destroy these copies as non-records.

7. Confidential records will be identified on the Library of Virginia retention and disposition schedules.

B. Public records do not include materials made or acquired and kept solely for reference or exhibition purposes, stocks of publications, or blank forms. These are considered “non-records.” (COV §42.1-77, *Definitions*)

C. Email Records

1. All DOC staff members are required to manage their email records.

2. Staff will use the same records series for the retention and disposition of an email that they would use if it were distributed on paper.

3. Most often emails will be considered a part of a correspondence series on the GS-101 retention and disposition schedule, but if the email is not a correspondence, employees will need to identify the correct series from the content of the email; e.g., an email that is actually a receipt would be retained as a receipt rather than a correspondence.

4. DOC staff members must manage both emails they receive and emails they send to ensure a complete record set. The DOC may not assume that a third party will manage records on its behalf.

5. Attachments to an email may be a different series than the email body.

V. Records Retention and Disposition Schedules

A. All DOC records must be managed in accordance with the most current Library of Virginia approved records retention and disposition schedules.

B. Library of Virginia retention and disposition schedules are divided into two categories.

1. General Schedules define retentions for records that most or all agencies frequently use, such as human resources, finance, information technology, and general services.

2. Specific Schedules define retentions for records that are unique to a certain agency.

3. The DOC is permitted to use any State General Schedule as well as DOC Specific Schedules, but is not permitted to use any Locality General Schedules or Specific Schedules assigned to other state agencies.

C. Unit Records Officers will contact the DOC Records Administrator if they encounter records that they believe are not identified on a retention schedule. If no applicable series is found on an existing retention schedule, the DOC Records Administrator must contact the DOC assigned Records Analyst at the Library of Virginia so that the records may be scheduled.

D. Content, not format, determines which records must be retained. The retention schedules govern retention of electronic records in the same manner as paper records.

VI. Disposition of Public Records

A. There are two options for public records disposition: permanent retention or destruction. The records retention and disposition schedules determine whether a series is permanent or when it should be destroyed.

B. Permanent Records

1. Permanent records held by the DOC are identified on a Library of Virginia approved retention and disposition schedule.

2. The retention schedules will identify whether a permanent record must be maintained by the DOC or may be offered to the Archives at the Library of Virginia.

3. The Organizational Unit Head will be responsible for identifying and reviewing permanent records on the schedules and notifying the DOC Records Administrator of any permanent records not identified on a retention schedule.
4. Any DOC staff member or organizational unit in possession of permanent records that may be offered to the Library of Virginia must have their Unit Records Officer contact the DOC Records Administrator when the records are no longer active.
 - a. The DOC Records Administrator will contact the Library of Virginia to begin the process of transferring the records to the Library of Virginia.
 - b. Transferred records become the property of the Library of Virginia.

C. Non-Permanent Records

1. All DOC records that have not been deemed permanent must eventually be destroyed.
2. The records retention and disposition schedules identify the length of time that a record must be retained prior to destruction.
3. Retention schedules constitute a legal timeline for the destruction of records from which the DOC must not deviate unless a record is relevant to pending or anticipated action such as litigation, claim, audit, DOC disciplinary charge, investigation, Freedom of Information Act (FOIA) request, or enforcement action; see the *Legal Matters, Audits, and Investigations* section of this operating procedure.

VII. Destruction of Public Records

- A. All records destruction by the DOC must be done in accordance with operating procedures and documented on a Certificate of Records Destruction (RM-3); see *Instructions for Completing the Certificate of Records Destruction (RM-3)*. This form is available from the Library of Virginia, Forms Cabinet.
 1. The RM-3 may be filled out by any staff member who has records that have met their retention.
 2. The form creator will manually input the information of the approving official for the records.
 - a. The approving official must have knowledge of any legal holds or pending FOIA requests.
 - b. Once the form creator submits the form, the approving official will receive an email to review and either request revisions or approve the form.
 3. Upon approval of the form by the approving official, an email will be sent to the selected Records Officer, who will also review the form and either request revisions or accept the form. The Records Officer will also select whether the final confirmation of destruction will be sent to themselves or to the form creator.
- B. Once the records have been destroyed, either the form creator or the Records Officer, whomever was selected by the Records Officer, will affirm that the records have been destroyed via the final confirmation email. Once the RM-3 has been signed and the records destroyed, the form is uploaded to the Library of Virginia website and will remain accessible to both the DOC and to the public for 50 years. All DOC records must be destroyed in the manner identified by the appropriate record series once the applicable retention period has expired.
 1. Records must be destroyed in a timely manner, construed to be within one year of the end of the retention for non-confidential records and within six months for confidential records.
 2. No records may be maintained for longer unless they are relevant to current or anticipated litigation, claim, audit, DOC disciplinary charge, investigation, FOIA request, or enforcement action; see COV §42.1-86.1, *Disposition of public records*.
- C. When the official record is destroyed, all additional copies of that record must also be destroyed regardless of why or where that copy is stored.

1. If they are not, any copy left undestroyed automatically becomes the official record and is subject to the same risks.
 2. Do not report the destruction of the copies via the RM-3 form.
- D. Under no circumstances can DOC records be destroyed because of lack of space or funding for storage.
- E. The retention schedule will provide one of two designations for how records must be destroyed.
1. Acceptable methods of destruction for non-confidential records include trash, recycling, or deletion of electronic records.
 2. Acceptable methods of destruction for confidential records include cross-cut shredding (3/8-inch shredder), pulping, incinerating, physical destruction of electronic storage media, “wiping” of electronic records with appropriate software, and degaussing of magnetic material.
- F. The DOC may choose to record more specific information about records being destroyed than the Library of Virginia requires on the RM-3, however, this additional information should never be included on the RM-3.
- G. Non-Record Destruction
1. Non-record material will only be held as long as administratively useful.
 2. Do not use a *Certificate of Records Destruction* (RM-3) to report the destruction of non-records, such as personal items, blank forms, and reference materials to the Library of Virginia. This includes the destruction of paper copies of records where the electronic version has been designated the official record.
 3. If the official record is a confidential record, then copies of the record must also be destroyed using confidential destruction methods.

VIII. Storage, Retrieval, and Disaster Recovery (5-ACI-1F-02)

A. Storage

1. All DOC records must be maintained so that the records are identifiable and accessible for the entirety of their assigned retention period.
2. Physical DOC records must be stored in a climate controlled environment that is:
 - a. Protected from fire by the installation of smoke detectors, an automatic fire suppression system, and fire extinguishers.
 - b. Free of vermin and insects.
 - c. A safe distance from water pipes, exposed electrical wiring, flooding potential, and any other potential hazards.
3. Electronic records must be stored in a format/media that is accessible without undue burden of time or cost and with currently available technology.
4. The DOC will comply with mandatory storage, security, or access restriction requirements such as:
 - a. Strict procedures are enforced for retrieval, use, and re-filing of confidential records.
 - b. Access to confidential records in electronic formats will be limited by assigning appropriate login credentials.
 - c. Secure storage is available upon request at the headquarters warehouse for paper records that are legally required to be stored securely and for which there is no secure electronic version deemed the official record.
5. The headquarters warehouse record storage is strictly for official records only.
 - a. Paper copies of records that have an electronic version will not be accepted at the headquarters warehouse unless there is a legal requirement to retain a paper copy.
 - b. Non-record material will not be accepted under any circumstances.

- c. Records being sent to the headquarters warehouse must be in a standard commercial file storage box and have all required information clearly displayed on the box.
 - i. Required information includes unit name, contact position, the records retention series name, retention schedule number, dates of the records in the box, and the date of destruction.
 - ii. A template form with all required information is available as part of this procedure *Headquarters Warehouse Records Box Transfer*, 025_F3.

B. Retrieval, Data Privacy

1. All organizational units must have procedures in place for the retrieval of records, their use, and re-filing.
2. All records created and maintained by the DOC that contain personal or other confidential information must be kept in accordance with the *Government Data Collection and Dissemination Practices Act*, COV §2.2-3800 et seq.

- C. The DOC will have in place a Records Emergency Action Plan that clearly communicates the procedures for records recovery in the event of a natural disaster, fire, or other catastrophic event affecting the DOC.

IX. Legal Matters, Audits, and Investigations

- A. Any DOC record that is relevant to pending or anticipated action, i.e., litigation, claim, audit, DOC disciplinary charge, investigation, FOIA request, or enforcement action, must be retained until final resolution of the matter.
1. The Unit Records Officer for the unit involved with the ongoing action will notify the DOC Records Administrator and work with staff to identify and retain any records, including electronic records, and other information that could be relevant to the matter.
 2. The relevant unit's normal document destruction procedures must be suspended temporarily for the relevant records.
 3. Holds on records due to an unresolved FOIA request will be lifted one month after the last contact with the requestor. Unit Records Officers will be working closely with the FOIA Officer to determine the status of the FOIA request, and therefore, the eligibility of the records for destruction.
- B. Any DOC staff member who becomes aware that an action, investigation, or legal proceeding has commenced or is anticipated against the agency, the staff member's department or work unit must immediately notify the affected Organizational Unit Head and the DOC Records Administrator, so that all records with potential relevance to the investigation or legal proceeding can be retained as necessary.
- C. After the matter is concluded, records will continue to be retained or destroyed according to the appropriate records series retention and disposition schedules.
- D. DOC records may not be sold, given away, or loaned to any outside entity or person. This does not prohibit approved data sharing, but rather the transfer of ownership of DOC official records.

REFERENCES

COV §2.2-3800 et seq., *Government Data Collection and Dissemination Practices Act*

COV §42.1-76 through §42.1-91.1, *Virginia Public Records Act*

COV §42.1-77, *Definitions*

COV §42.1-86.1, *Disposition of public records*

Records Retention and Disposition Schedules

Department of Corrections Specific Schedules

General Schedules for State Agencies

ATTACHMENTS



None

FORM CITATIONS

Headquarters Warehouse Records Box Transfer 025_F3

Certificate of Records Destruction (RM-3) (Library of Virginia Form)

Records Officer Designation and Responsibilities (RM-25) (Library of Virginia Form)