

Cooperative Boards

Administrative Procedure - Protocols for Record Preservation and Development of Retention Schedules

Legal Citations

Each legal requirement in this procedure is followed by a citation to the controlling rule and/or statute. Citations in parenthesis indicate the location of a named law. For additional clarification regarding a requirement, the cited law should be reviewed.

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All Staff Members and Board Members	<p>Maintain all records, as defined and required in the Illinois Local Records Act (LRA). No public record shall be destroyed except as allowed by the LRA.</p> <p><i>“Public record means any book, paper, map, photograph, digitized electronic material, or other official documentary material, regardless of physical form or characteristics, made, produced, executed or received by any agency or officer pursuant to law or in connection with the transaction of public business and preserved or appropriate for preservation by such agency or officer, or any successor thereof, as evidence of the organization, function, policies, decisions, procedures, or other activities thereof, or because of the informational data contained therein.”</i> 50 ILCS 205/3.</p> <p>Do not destroy any Cooperative record, no matter its form, if it is subject to a litigation hold.</p> <p>In federal lawsuits there is an automatic discovery of virtually all types of electronically created or stored data that might be relevant. Attorneys will generally notify their clients at the beginning of a legal proceeding to not destroy any electronic records that might be relevant. The receipt of a <i>litigation hold</i> or preservation letter from the Board’s attorney requires all potentially relevant electronic information to be identified, located, and preserved. This includes all email, e-documents, the tapes and servers of discarded systems, and backup data stored elsewhere.</p> <p>Whenever disposing of materials containing <i>personal information</i>, render the <i>personal information</i> unreadable, unusable, and undecipherable.</p> <p>The Personal Information Protection Act (815 ILCS 530/) contains mandates for disposing of materials containing personal information (defined as an individual’s name combined with social security number, driver’s license number or State identification card number, or financial account information, including without limitation, credit or debit card numbers). The Attorney General is authorized to impose a fine for noncompliance. 815 ILCS 530/40 and 44 Ill.Admin.Code §4000.40(b).</p>
Executive Director	<p>Has assigned the following activities to the Records Custodian and Head of Information Technology (IT):</p> <ol style="list-style-type: none"> 1. Develop and maintain a protocol for preserving and categorizing Cooperative records;

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	<p>2. Develop and maintain a record retention and destruction schedule; and</p> <p>3. Develop protocols to implement a litigation hold.</p>
<p>Records Custodian and Head of IT</p>	<p>1. Develop and maintain a protocol for preserving and categorizing Cooperative records.</p> <p>Develop and maintain a list of all Cooperative records organized in categories and sub-categories, e.g., records relating to business, students, personnel, board meetings, etc. Align this list with the list Cooperative records required by the Freedom of Information Act. 5 ILCS 140/5.</p> <p>Paper records may be easier to locate than electronic records. Electronic records will potentially exist in all of the available clouds, servers, tapes, hard drives, computers, and similar types of electronic devices (e.g., laptops, tablets, smart phones, voicemail, etc.).</p> <p>Prepare a description of how Cooperative records stored by means of electronic data processing may be obtained in a form understandable to persons lacking computer knowledge. 5 ILCS 140/5 and <i>Digital Reproduction</i>, 44 Ill.Admin.Code 4000.70 and <i>Management of Electronic Records</i>, 44 Ill.Admin.Code §4000.80.</p> <p>Such a description may include contact information for a person who can aid in obtaining records stored electronically.</p> <p>Provide for keeping only <i>records</i> and destroying non-records. Avoid filing non-record material with records. Determine what is a non-record, e.g., identical copies of documents maintained in the same file; extra copies of printed or processed materials (official copies of which are retained by the office); blank forms; and personal communications.</p> <p>The goal is to control excessive accumulation of material. Non-record material may be destroyed at any time. 50 ILCS 205/9.</p> <p>Absent a litigation hold, all email will be retained. (1) evidence of the Cooperative’s organization, function, policies, procedures, or activities, or (2) informational data appropriate for preservation. 50 ILCS 205/3. Email that is conversational, personal, or contains brainstorming may generally be deleted.</p> <p>A consistent email retention policy for use across the Cooperative ensures that the necessary emails are being retained and emails that are not required to be preserved are purged on a regular basis.</p> <p>Determine whether each sub-category of documents should be reproduced by photography (44 Ill.Admin.Code §4000.60), microphotographic and electronic microimaging processes (44 Ill.Admin.Code §4000.50), or digitized electronic format (44 Ill.Admin.Code §4000.70).</p> <p>Any public record may be reproduced in a microfilm or digitized electronic format and the analog/paper version destroyed, provided: (a) the records are reproduced on “a durable medium that accurately and legibly reproduces the original record in all details,” and “that does not permit additions, deletions, or changes to the original document images;” and (b) the Local Records Commission is notified when the</p>

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	<p>original record is disposed of and also when the reproduced record is disposed of. Local Records Act, 50 ILCS 205/7.</p> <p>Use this web link to the Illinois Secretary State’s publication, Guidelines for Using Electronic Records and 44 Ill.Admin.Code §§4000.APPENDIX A <i>Sustainable File Formats for Electronic Records - A Guide for Government Agencies</i> (www.ilga.gov/commission/jcar/admincode/044/04404000ZZ9996aR.html) and 4000.APPENDIX B <i>Reliable Storage Media for Electronic Records - A Guide for Government Agencies</i> (www.ilga.gov/commission/jcar/admincode/044/04404000ZZ9996BR.html).</p> <p>Identify and index the location of each category and sub-category of Cooperative records. Organize electronic record and data storage.</p> <p>The goal is to ensure that all documents, including electronically created ones, are retained for the required timeframes and are easy to retrieve and produce if necessary.</p> <p>2. Maintain a record retention and destruction schedule for submission to the Executive Director and eventually to the Local Records Commission.</p> <p>Maintain a list of public records that: (1) are not needed for current business, and (2) do not have sufficient administrative, legal, or fiscal value to warrant their further preservation. Stated differently, identify records that have no administrative, legal, or fiscal value.</p> <p>Records that have no administrative, legal, or fiscal value may be destroyed according to provisions in the Local Records Act. 50 ILCS 205/1 <i>et seq.</i></p> <p>Maintain a schedule for record destruction by identifying the length of time a record category or series warrants retention after it has been received or produced by the Cooperative.</p> <p>The ultimate goal is to obtain permission to destroy unnecessary public records. The Local Records Commission must approve the destruction of any public record. 50 ILCS 205/7, 44 Ill.Admin.Code Part 4000 (Local Records Commission for agencies comprising counties of less than 3,000,000 inhabitants); 44 Ill.Admin.Code Part 4500 (Local Records Commission of Cook County). See the Archives Department on the Secretary of State’s website: www.cyberdriveillinois.com/departments/archives/databases/home.html.</p> <p>44 Ill.Admin.Code Part 4000.30 details the procedures for compiling and submitting lists and schedules of records for disposal. <u>The School Code</u> and other statutes (e.g., statutes of limitations) contain mandatory retention timelines. The Cooperative’s attorney should be consulted.</p> <p>The e-discovery rules provide a safe harbor for parties during a lawsuit that cannot provide information because it was destroyed as a result of routine practices. F.R.C.P. 37(e).</p>

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	<p>3. Maintain protocols to implement a litigation hold.</p> <p>Understand what a <i>litigation hold</i> is.</p> <p>A litigation hold refers to the notification made by the Cooperative’s attorney telling the Cooperative to preserve all information that may be relevant to current or anticipated litigation. While it may occur anytime in the legal process, it will usually occur during discovery, the pretrial phase of a lawsuit designed to compel the exchange of information between parties. A litigation hold triggers the need to immediately suspend destruction of electronic and other records relevant to the current or potential claim. F.R.C.P. 37(e).</p> <p>A litigation hold will be implemented as follows:</p> <ul style="list-style-type: none"> • The Executive Director will trigger a litigation hold. • The litigation hold will be communicated through mail and/or email. • The Executive Director or designee will gather the records. • The Executive Director will determine what records are subject to a litigation hold. • The Executive Director will determine in what format the records should be gathered when the hold is determined. • The Executive Director will determine where records should be gathered at the time of the litigation hold. <p>Identify how to implement a litigation hold for all IT systems, including backup tapes, to ensure they are not deleted or overwritten as part of the normal tape rotation process.</p> <p>Prepare a map of potentially relevant data and otherwise assist the Cooperative’s attorney in locating all potentially relevant information.</p>
Executive Director	<p>Submit new or revised record retention and destruction lists and schedules to the Local Records Commission for approval.</p> <p>Disseminate the record retention and destruction schedule, along with instructions, to all affected staff members and Board members.</p> <p>Immediately inform the Records Custodian and Head of IT whenever a record must be preserved because: (1) it may be relevant to present or future litigation, or (2) the Cooperative attorney has notified the Cooperative to preserve a record, including electronic information (<i>litigation hold</i>).</p> <p>Authorize and/or order the destruction of Cooperative records after ensuring that the following steps have been performed:</p> <ol style="list-style-type: none"> 1. The Local Records Commission approved a schedule for continuing authority to destroy Cooperative records after the expiration of the applicable period. 2. Any record is retained and removed from the disposal list if it is or may be evidence in litigation, or is otherwise subject to a <i>litigation hold</i>. 3. Thirty days prior to disposal or destruction of any records, regardless

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	<p>of physical format or characteristics, submit a Local Records Disposal Certificate to the Commission and dispose only after a copy of that certificate has been reviewed and approved by the Chairman and returned to the Cooperative. The original copy of that Local Records Disposal Certificate is kept in the files of the Commission, and the duplicate copy approved and returned by the Chairman must be retained by the Cooperative. Section 4000.40(c) of the rules of the Downstate Local Records Commission and Section 4500.40(c) of the rules of the Cook County Local Records Commission.</p> <p>4. In the case of records with scheduled retention of less than one year, a single Local Records Disposal Certificate for more than one disposal event within a given year may be used. Local Records Disposal Certificates submitted with this intent must include a schedule of proposed records disposal in addition to the normally required information. The Cooperative must wait to dispose of records until receipt of approval from the Commission, as required in number 3, above. Section 4000.40(d) of the rules of the Downstate Local Records Commission and Section 4500.40(d) of the rules of the Cook County Local Records Commission.</p> <p>5. For records that have been damaged by water, fire, smoke, insects or vermin, mold or some other natural disaster that poses a health or safety risk to employees, the Cooperative may apply to the Commission for permission to dispose of those records ahead of their scheduled disposal date. The request must include a Local Records Disposal Certificate accompanied by the Cooperative's explanation of why the records need early disposal. The Commission may grant the request only after physically reviewing the damaged records. Section 4000.40(e) of the rules of the Downstate Local Records Commission and Section 4500.40(e) of the rules of the Cook County Local Records Commission.</p>
<p>Links to Web-based Record Management Resources:</p> <p>Cook County Local Records Commission Meetings</p> <p>Cook County Local Records Commission Rules (44 Ill Admin Code Title PART 4500)</p> <p>Downstate Local Records Commission Meetings</p> <p>Rules of the Downstate Local Records Commission (44 Ill Admin Code Title PART 4000)</p> <p>Filmed Records Certification Act (50 ILCS 210)</p> <p>Filmed Records Destruction Act (50 ILCS 215)</p> <p>Illinois School Student Records Act (105 ILCS 10)</p> <p>Local Records Act (50 ILCS ACT 205)</p> <p>Local Records Disposal Certificate</p>	

LEGAL REF.: Federal Rules of Civil Procedure, Rules 16 and 26.
5 ILCS 140/1 et seq., Freedom of Information Act.
50 ILCS 205/1 et seq., Local Records Act.
105 ILCS 10/1 et seq., IL School Student Records Act.
820 ILCS 40/1 et seq., IL Personnel Record Review Act.
44 Ill.Admin.Code Part 4000, Local Records Commission.
44 Ill.Admin.Code Part 4500, Cook County Local Records Commission.

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