

Public Records Commission Meeting
Monday, August 5, 2013, at 2:00 P.M., CST
Legislative Plaza, Room 29, Nashville, TN

Commission Members Present:

Tre Hargett, Secretary of the State

David H. Lillard, Jr., Treasurer of the State

Reen Baskin, Deputy Commissioner

Eddie Weeks, Legal Services

Ann Toplovich, Tennessee Historical Society

John Greer, Office of the Comptroller

Cody York, Office of the Secretary of State

In Attendance:

Sherry Mundy, Dept. of Health

Mark White, Dept. of Tourist Development

Bob Alwine, Dept. of Transportation

Wayne Moore, Library and Archives

Cathi Carmack, Library and Archives

Chuck Brown, Dept. of Children's Services

Rosemary Cole, Dept. of Labor and Workforce

Vicky Goodin, Dept. of General Services

Mike Cook, Dept of General Services

Julian Davis, Dept. of Correction

Terry True, Dept. of Transportation

Jack Jackson, Dept. of Transportation

Fran Herring, Dept. of Transportation

Jeff Scarborough, Dept. of Transportation

Jim Waters, Dept. of Transportation

Wayne Burton, Dept. of Transportation

Barry Rawls, Dept. of Transportation

Cathy Benhamed, Dept. of Mental Health

Pennye Neal, Office of the Secretary of State

Alice Drummond, Office of the Secretary of State

Kathy Jenkins, Dept. of Economic and Community Development

Christi Poston, Dept. of Environment and Conservation

Marian Maxwell, Dept. of Health

Angela Hickman, Dept. of Health

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Kevin Callaghan, Office of the Secretary of State, Records Management
Molly Fay Lester, Office of the Secretary of State, Records Management
Janet Lamb, Commission on Aging and Disability
Elizabeth Sneed, Dept. of Human Resources
Mary Cain, State Audit
Debby Beard, TN Housing Development
Kandis Crockarell, Dept. of General Services
Larry Sanborn, Dept. of Transportation

I. Call to Order and Welcome

Tre Hargett, Secretary of the State, opened the meeting of the Public Records Commission (PRC).

II. Approval of the Minutes

Secretary Hargett opened with the first item on the agenda, approval of the minutes from the June 11, 2013, PRC meeting. He stated that the minutes seemed thorough, but he indicated that the minutes needed the following revisions: First, on Page 2, Item 2 – TDOT 10184, line 6, the word “fiscal” should be changed to “physical”; Second, on Page 7, first paragraph, line 8, the word “thru” should be spelled “through”; Third, on Page 7, last paragraph, line 4, the sentence should say “has already been passed”; Fourth, Page 8, Roman Numeral IV, line 7, place a period after the word “database” and delete the remainder of the sentence; in the same section, third line from the bottom, the word “fiscal” should be changed to “physical”; and lastly, Page 9, Roman Numeral VI, last line, delete the words “by Records Management”. The sentence should read “enhanced by the people that submitted them.” Secretary Hargett opened the floor for discussion; there was none. Eddie Weeks made a motion to approve the minutes, and the motion was seconded by John Greer. The minutes were approved.

III. RDA Review

a. Consent RDAs:

Secretary Hargett continued with the second item on the agenda, the RDA Review.

Secretary Hargett acknowledged that there were five (5) RDAs on Consent. He asked Kevin Callaghan if this was the first time that there has been a Consent section. Kevin Callaghan responded affirmatively. Secretary Hargett then requested that Kevin Callaghan discuss how some items are included on Consent and how some items are excluded.

Kevin Callaghan stated that a Consent RDA is one that has been submitted by the agency for revision or, if it is a new RDA, Records Management has reviewed the RDA and has recommended that no changes be made. Further, Mr. Callaghan stated that after Records Management’s review, the State Library and Archives reviews the RDA, and if they do not make change recommendations, then the RDA is sent to the Audit Division of the

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Comptroller's Office to ensure that it meets the Audit requirements. If there are no recommended changes, the RDA goes back to the agency for a signature. In the event that

there are recommended changes, the RDA becomes a discussion RDA. Secretary Hargett opened the floor for discussion, there was none, then he made a motion to approve the Consent RDAs and the motion was seconded by John Greer.

b. Discussion RDA # 10227: Certified Population for ECD

Secretary Hargett inquired whether this item was tab 5 in the PRC notebook, and Kevin Callaghan indicated that it was tab 7. Mr. Callaghan stated the probable reason for the confusion was because the recommendation is titled "Certified Population for the Department of Economic and Community Development (ECD) for #5." Further, Mr. Callaghan stated that everyone was satisfied with the exception of two people. And so, after speaking with the agency, it has been requested that the PRC consider changing the title to "Certified Population Census Certification" to differentiate this item from the previous one. Mr. Callaghan continued to explain that the items are similar but there are some slight differences in the records that are affected. Secretary Hargett inquired whether there was a motion to approve, Reen Baskin made a motion to approve, and Secretary Hargett seconded the motion.

c. Discussion RDA # 3088: TNINVESTCO for Department of ECD

Kevin Callaghan stated that this item is a recommendation to approve the change to the cut off section, to say when all securities are sold at the end of the program. The securities are maintained by an agency for five (5) years and then destroyed. Currently, the cut off as submitted is when securities are sold; they are maintained by the agencies for five (5) years then destroyed. The Audit Division recommended the change and the Department of Economic and Community Development (ECD) agreed that it was an appropriate change. Secretary Hargett opened the floor for discussion. Eddie Weeks inquired whether the PRC was simply adding the word "all" before the word "securities." Kevin Callaghan answered affirmatively, and that [Records Management] made sure that there weren't [securities] sold in 2013 and then in 2018; they wanted to ensure that the program had ended. Ann Toplovich asked whether the documents in the TNINVESTCO program are connected to recent litigation; she recalled a lawsuit going to the Appellate Court in regards to how the investments were selected and one of the issues was the confidential records, and stated that she wanted the committee to be aware.

Eddie Weeks asked Kevin Callaghan, if a litigation hold was placed on any record, whether the hold stops the approval process in its tracks. Kevin Callaghan answered affirmatively. Eddie Weeks continued to ask whose responsibility it is to place a litigation hold on a record. Kevin Callaghan responded that it is the agency's responsibility to place the litigation hold

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on their records. He continued to say that if something is stored at the state record center when they are sent to destruction, a notification is sent to the agency. Further, Kevin

Callaghan said that [Records Management] does not destroy the items until they have received approval from the agency, and if the agency does not approve, then there is an explanation section. Secretary Hargett asked if the Attorney General plays a role in the litigation holds as well. Kevin Callaghan responded that most of the litigation holds are handled by the agency's General Counsel, but that he had heard of numerous times where the Attorney General had made it very clear when a litigation hold was to be implemented.

Treasurer Lillard inquired whether the reference to when the securities were sold refers to the sale of the insurance premium tax credits that fund the program. Secretary Hargett requested that a representative from the Department of Economic and Community Development (ECD) step forward. Kathy Jenkins, Records Officer for ECD, approached the podium and introduced herself. Ms. Jenkins responded that as far as when the securities are sold, it would be when the complete program is over and it would be five (5) years after that. Treasurer Lillard stated that he assumed the securities being referenced were the sale of the insurance premium tax credits, and that is an on-going process that keeps occurring during the time period that the program is active until 2019. Further, Treasurer Lillard stated that the commission is clarifying when all the securities are sold, i.e. in 2019, and then five (5) years thereafter. Secretary Hargett interjected by saying that he felt the issue could be better clarified in the RDA. Treasurer Lillard stated that he wondered about the meaning of the word "securities." Secretary Hargett asked Kevin Callaghan what harm would be done if the Commission rolled this item to the next meeting, and further clarify what is meant by the word "securities." Kevin Callaghan responded that no harm would be done. Kathy Jenkins indicated that ECD would be amenable to the item being held over. Secretary Hargett stated that the item would be rolled to the next meeting and moved to the next item.

d. Discussion RDA # 10184: Final Project Plans for TDOT

Kevin Callaghan began by stating that this item was considered at the last meeting and was moved to this meeting to determine a medium ground between fifty (50) years, which is what Tennessee State Library & Archives (TSLA) had been asking, and zero years which is what TDOT had requested. All the parties met and agreed to thirty (30) year retention and then sent over to TSLA. It will still be kept permanently, but to transfer to TSLA it would be thirty (30) years. Further, Kevin Callaghan stated that other items per the last discussion included the disposition notes being adjusted so that electronic copies have been verified by TDOT and placed in the file room on FileNet. TDOT will provide TSLA with electronic copies of the plans in a format that TSLA is able to convert into microfilm. TSLA will keep the microfilm electronic records for long-term storage, which was one of the key areas that TSLA

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wanted to make sure was clarified. Mr. Callaghan emphasized that this is where the language has been cleaned up within the RDA, and also within the metadata description.

There was a motion to approve the item. Cody York confirmed that the motion was to adopt the item with the changes. The motion was seconded and the item was approved.

e. Discussion RDA # 11026: TDOT Multimodal Federal Grant

Kevin Callaghan stated that this RDA is for [TDOT's] specific grant program. In general, these are ones that are involving very large purchases. The reason for the discussion was that from the Audit standpoint, instead of it being three (3) years retention after all assets are disposed of and the final report is turned in, they believe that the retention should be at least five (5) years. After speaking with all the divisions, they concur with the five (5) years. Further, Mr. Callaghan stated that TDOT indicated that they would like to keep it at three (3) years after the cut-off. Secretary Hargett requested that the TDOT representative approach the podium to address their concerns. Larry Sanborn, TDOT Multi-Mobile Division, stated that [TDOT] would like to keep the consistency between the code of federal regulations of three (3) years to the RDA to avoid any confusion. Also, for the extra two (2) years, there is the federal right to review and [TDOT] would like to keep the capacity work load down.

Secretary Hargett asked Mr. Callaghan why there was a difference between the federal regulation and the RDA. Mr. Callaghan responded that the Comptroller's Audit Department requested more time to review. He explained that normally Records Management agrees with what the TCA OR CFR stands for, but the Audit Division had experienced instances in the past that they had wanted to have the extra time. John Greer, Audit Division, stated that [Audit] has seen instances where they needed the records longer than the three (3) year period that the federal government requires. Further, Mr. Greer stated that [Audit] made the request because they wanted ample time to audit the records should a request arise in the future for [Audit] to investigate matter dealing with this specific RDA. Secretary Hargett called for further discussion and there was none. A motion to approve was made and seconded. The item was approved.

IV. Records Management Update

On the RDA Application, Kevin Callaghan said that the core data has been entered for the agencies and that [Records Management] is working with the agencies to complete the worksheet sections to update the RDAs. He continued by stating Records Management is having great participation by the records officers and, now that the RDAs are in the application, Records Management is working to improve the destruction process. Mr. Callaghan indicated that the June monthly report is in the members' binders, and that he has also sent the information via email. Upon review, Mr. Callaghan requested that the members contact him

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should they have any questions. Mr. Callaghan explained that Records Management did not have the information for the July monthly report, but that it would be submitted as soon as it was available. Further, Mr. Callaghan stated that Records Management continues to work with

Real Estate Asset Management (STREAM) and General Services to facilitate agency moves. Secretary Hargett asked whether Records Management was current on submitted and approved RDAs. Kevin Callaghan responded that Records Management was up to date; at the end of June [Records Management] was partially behind but the RDAs are now being reviewed. Mr. Callaghan explained that the members will notice where two (2) RDAs came in on July 31, 2013, that [Records Management] was not able to include on the July report. Secretary Hargett opened the floor for discussion and there was none.

V. Discussion Item – Electronic Records Group

Secretary Hargett began by stating that this was not an action item, and recalled that John Greer volunteered to lead an Electronic Records Group. Kevin Callaghan recited the list of those who expressed interest in participating in the group. The list included: John Greer, Kevin Callaghan, Molly Faye Lester, Vicky Goodin, Eddie Weeks, and Cody York. Mr. Callaghan stated that they will be reaching out to Mr. Bengel and Ms. Ethridge within the Office of Information Resources (OIR), and that they will be assigning someone to assist the group. Secretary Hargett requested that the group push forward and re-contact OIR because he did not want the issue to linger around. Secretary Hargett opened the floor for further discussion on this item and there was none.

VI. Adjourn

Before adjourning, Secretary Hargett opened the floor for discussion from the audience. Cathy Benhamed, Records Officer for the Department of Mental Health, approached the podium. Ms. Benhamed asked when an annual holding report would be completed. Cody York responded that Ms. Benhamed should be expecting something this month; [Records Management] is completed the holding reports differently this year. He elaborated by saying that instead of sending complicated spreadsheets, they will enhance the current online application. Mr. York stated that the online option will simplify the process significantly by eliminating worry of incomplete sections. Records Management will still be sending spreadsheets for those that use them for tabulation. Further, Mr. York stated that all [Records Management] needed was the Agency Level Data.

Ms. Jenkins stated that there has been a drastic reduction in records due to Project T3. She asked whether the departments will still be required to submit a letter per every ten percent (10%). Mr. York responded that a letter would not be necessary; [Records Management] has the information from T3 and the evaluations that they completed. There will be an option on the online application to indicate whether the agency participated in Project T3. Eddie Weeks stated that the Commission did not make changes to what the department had submitted

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regarding RDA 11026, although there was discussion of it. Mr. Weeks asked Secretary Hargett whose responsibility is it to notify the agency that what they had signed off on has now been changed by the PRC. Secretary Hargett responded that it is the responsibility of Records Management to notify the agencies. He requested that Mr. Callaghan explain the notification

process. Mr. Callaghan stated that the agency will receive a letter, regardless of whether the RDA has changed or stayed the same, and the letter would say that the RDA has been approved or approved with changes. Further, should the RDA be denied, then the letter would state as such. In addition to sending a physical letter, [Records Management] will also send an electronic notification to the records officer immediately within the application. Secretary Hargett asked how quickly the letter was sent out. Mr. Callaghan responded that he would begin working on the letter immediately. Secretary Hargett opened the floor for further discussion and there was none.

There was a motion to adjourn. Eddie Weeks seconded the motion. The meeting was adjourned.