

Public Records Commission Meeting

Tuesday, December 11, 2012 at 3:00 PM Central Daylight Time

Legislative Plaza, Room 29, Nashville, TN

Commission Members Present:

Tre Hargett, Secretary of State

Eddie Weeks, Legal Services

Reen Baskin, Deputy Commissioner, Department of General Services

John Greer, Office of the Comptroller of the Treasury

Janice Cunningham, Office of the Treasury

Ann Toplovich, TN Historical Society

Cody York, Office of the Secretary of State

In Attendance:

Stacey Hooper, Department of General Services

Garrett Guillory, Department of Revenue

Elizabeth Sneed, Department of Human Resources

Talley Olson, Bureau of TennCare

David Weeks, Bureau of TennCare

Tom Chester, Department of General Services

Kandis Crockarell, Department of General Services

Jennifer Murphy, Grisham Smith & Partners, Department of General Services Consultant

Kevin McDowell, Jones Lang LaSalle, Department of General Services Consultant

Patricia Mitchell, Office of the Secretary of State

Kevin Callaghan, Office of the Secretary of State

Cathi Carmack, TN Library and Archives

Greg Yates, TN Library and Archives

Wayne Hough, Department of Revenue

Wayne Moore, TN Library and Archives

Marian Maxwell, Department of Health

Nicole Armstrong, Department of Human Services

Vicky Goodin, Department of General Services

Tammy Golden, Department of General Services

Mike Cook, Department of General Services

Pennye Neal, Office of the Secretary of State

Alice Drummond, Office of the Secretary of State

Brigitte Tubbs-Jones, Department of Human Resources
Austin Payne, Department of Environment and Conservation
Christi Poston, Department of Environment and Conservation
Jamie Etheridge, Department of Finance and Administration, OIR
Sherri Sharp, Bureau of TennCare

I. Call to Order and Welcome

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

II. Approval of Minutes

Secretary Hargett opened with the first item of business: The approval of the minutes for the November 16, 2012, PRC Meeting. Secretary Hargett deferred the approval of the minutes to the next meeting. Secretary Hargett stated that there may be gaps in the information due to members not using the microphones. There were no objections to the deferral. Ann Toplovich requested that her department be noted as “Tennessee Historical Society” and not “Tennessee Historical Commission”.

III. Records Management Division Update

Secretary Hargett recognized Kevin Callaghan, Director of Records Management. Mr. Callaghan stated that the Records Holding Report was completed in November and submitted to the PRC. The members were given a packet which included the grand summary.

Mr. Callaghan stated that deliveries were being made, and that Records Management was working with Richards and Richards to improve technology and efficiency. Records Management has been processing RDA requests, and working with key agencies that need immediate assistance sending RDAs to Richards and Richards or destroying the records. Per the discussion of the previous PRC Meeting, Records Management has followed-up on Secretary Hargett’s instructions to help first tier agencies involved with Project T3 and any other agencies in need.

Secretary Hargett acknowledged the time invested by the Department of General Services and the Department of Finance and Administration to complete the transfer of Records Management from General Services to the Office of the Secretary of State.

There was no discussion on this item. Secretary Hargett moved to the next item on the agenda.

IV. RDA Application Presentation

The application was presented by Kevin Callaghan. The members were presented with an outline which included key points of the process. Mr. Callaghan stated that RDAs are critical tools in how agencies manage their records, and that it is required by Tennessee code as well as the PRC’s rules. There are currently large numbers of RDAs that are pending from various

agencies, and Records Management is currently dealing with physical moves of office space and the transition from paper to electronic records. The main initiative is to quickly respond to the needs of the clients, as they revise or create RDAs. Records Management has faced the challenge of simplifying the RDA process, making it easier on the records officers to complete their worksheets and to route the RDAs to the PRC for approval. Mr. Callaghan stated that Records Management needs a solution that will meet the requirements of the code as well as the PRC's rules.

Mr. Callaghan proposed a web-based application which will allow the submission. The RDA is comprised of core data that defines the record, what the record is, when does the time begin and end, and what happens to the record. The application was constructed to answer the core questions and to track the data that supports those core items. Other information, such as where the record is stored, may change quickly and does not affect the nature of how long to keep the record and what the record is. The application will not remove the Records Management Division from the process; instead, hoping to increase communication and involvement of the Records Management Division.

Records Management is using a web-based application for multiple reasons: 1) Allows state employees access from any location. Records Officers will be assigned an appropriate log-in and password; and 2) Allows for more transparency. The public may view what the records are and how long records should be kept.

When logging-in, records officers will be able to see several items. An active RDA was entered into the application to provide a demonstration of the worksheet. Mr. Callaghan operated the application by scrolling through pages and clicking on various links, and he discussed the purpose of the sections. Changes to the core items are what begin the revision process; whether a revision or a deletion, any changes require PRC approval. The worksheet helps build the retention periods and define how records are being kept. Because of the move, the process may have to change rather quickly. The application tracks what is currently on paper and electronic worksheets; it combines the two into one set that may be entered. Mr. Callaghan stated that if agencies are keeping electronic records, the agencies need to maintain those records according to the OIR standards and the electronic records policy. The Contact Information section is subject to change. Revisions or deletions will not be available to the public.

The process will change but the Records Management Division wants to maintain involvement. Records Management will have the agencies meet with an analyst or a records manager to go through the process. Records Management is willing to confer with the agencies, and to assist them in completing the worksheets to ensure that they understand the process. Once the worksheets are submitted, Records Management will be adhering to the PRC rules and the Tennessee code which state that only the PRC may deny a RDA submission. It is not the place of Records Management to return the RDAs to the agencies should a revision be necessary. The

information is “locked-in” upon submission and then the records officer will review the comments. After the records officer’s review, the information is forwarded to the records director who will then send the information to Library and Archives (TSLA). PRC members will be able to view the RDAs at any time, and upon unanimous consent, the RDA will be sent to a consent agenda. A motion shall be made to alter the worksheet, and the PRC will vote to approve, approve with changes, or deny. This will ensure everything is on record.

Cody York requested that Kevin Callaghan click on “RDA Admin” to show the information which would be available for PRC members to review. The page indicates the time-stamp for each item and when the item was reviewed. Mr. York referred to Secretary Hargett and how Secretary Hargett felt metrics were important to judge successes and failures.

Secretary Hargett stated that the other agencies need to have the capability to track their own work. He also stated that the paper system is difficult to track and that the application will help systems flow more smoothly in an electronic age.

Secretary Hargett opened the floor for discussion. Deputy Commissioner Reen Baskin wanted to clarify that the agencies’ representatives would be the ones to enter the information into the application. Kevin Callaghan confirmed. Deputy Commissioner Reen Baskin stated that the application looked user-friendly and inquired about training. Mr. Callaghan agreed that training would be necessary, but Records Management would need a status report from the agencies; approximately 370 RDAs have been returned year-to-date. Mr. Callaghan proposed to meet with the records officers from the other agencies, demonstrate how the application works, and go through the existing items to ensure understanding. Further training may be necessary as the process moves forward.

Janice Cunningham asked about the timing on the process. Mr. Callaghan thanked Robert Green in Publications and the Office of the Secretary of State for organizing the process. Mr. Callaghan estimated another week to complete the process development and then the existing data must be edited to correct errors. Mr. Callaghan estimated that it would be a month before Records Management would be able to begin training the agencies. He also stated that it will take time to proceed through the agencies and that their progress may be judged by metrics. Ms. Cunningham asked how the process will be introduced to the agencies, whether by calendar, schedule, or newsletter. Mr. Callaghan stated that items will be posted on the website, that Records Management would notify the agencies via phone, and that a letter will be mailed to client agencies; will probably start with the agencies experiencing immediate needs due to Project T3.

Secretary Hargett stated that if the message about the application is not communicated, and if people are not trained properly, then it does not matter how good the application looks, the application will not work. Secretary Hargett also expressed two thoughts: 1) A letter should be sent out to all the records officers; and 2) Records Management should be following up via

phone call to all the records officers. Records Management should also be following up with the training, either individually or in small groups, to allow people to understand and see how the program works. Also, Records Management needs to observe the people entering the RDAs into the system to ensure their understanding. Deputy Commissioner Reen Baskin seconded Secretary Hargett's opinions. Reen Baskin encouraged the "sit-down" with each agency to ensure consistency for training.

Cody York asked how many agencies and organizations that have RDAs. Kevin Callaghan clarified that Mr. York referred to agencies currently in queue to be developed; Kevin responded that 24 are in queue. Cody York stated that there is a small universe of customers; dedicating a lot of energy to an agency a day, and incorporating a lot of training and over-communication will save time on the back end. Secretary Hargett called for a motion to begin accepting/developing the process. Deputy Commissioner Reen Baskin made a motion to accept the process. Janice Cunningham seconded the motion. Motion was approved. Secretary Hargett moved to the next item.

V. Recommendation to Suspend Operations of Records Management Division

Each member received an email or multiple emails regarding Kevin Callaghan's recommendation to suspend operations of Records Management for thirty (30) days. Secretary Hargett requested that Mr. Callaghan briefly remind the members about the email, and stated that people were encouraged to not hit "Reply to All" for fear of violating the Open Means Act; this item was not discussed in private and shall now be discussed publicly.

Mr. Callaghan referred to Secretary Hargett's request at the previous PRC Meeting to make a recommendation. Mr. Callaghan recommended that operations be suspended for thirty (30) days in order to complete the transfer of Records Management from the Department of General Services to the Office of the Secretary of State. Records Management shall still conduct normal warehouse operations, but focus should be on the agencies that are in the first tier of the T3 initiative and process development. Pennye Neal has been assigned to assist several agencies that requested help due to their impending move; whether it is assistance getting items to Richards and Richards or items that need revision.

Secretary Hargett requested an explanation of what Records Management would not be doing during the suspension. Kevin Callaghan responded that Records Management would like to suspend: 1) New RDA submission; 2) Records assessments and development meetings; and 3) Training on basic records management or records holding.

Secretary Hargett opened the floor for discussion. Deputy Commissioner Reen Baskin referred to a previous discussion regarding the importance of Records Management having its own set of policies. December 1, 2012, had been the original deadline. Reen Baskin asked if Records Management would be constructing the policies and procedures during the suspension, or if Mr. Callaghan could provide a timeframe.

Kevin Callaghan recommended that the policies also be placed on hold until January. Reen Baskin confirmed that Records Management would be deferring the policies instead of making them a focus during the suspension.

Eddie Weeks, Legal Services, stated that the last time that there was a suspension, there were angry records officers addressing the commission with their concerns. Mr. Weeks asked if Records Management could guarantee that the current suspension will only be thirty (30) days, and if Records Management will notify the records officers when they may begin making submissions. Kevin Callaghan confirmed that the suspension will not exceed thirty (30) days and that the records officers will be notified as soon as possible.

Janice Cunningham inquired about the form of communication that Records Management would use to notify the records officers. Kevin Callaghan stated that he has a list of records officers; each officer will receive an email and a phone call. He also stated that should the contact information for a records officer be inaccurate, he will make reasonable attempts to locate the correct information. Secretary Hargett stated that he would also like each agency to receive a physical letter and that January 10, 2013, at close of business, would be the end of the thirty days. Secretary Hargett moved as recommended for the Records Management Division. The motion is seconded and approved. Secretary Hargett reiterated that thirty days means thirty days.

Janice Cunningham asked whether additional days should be allotted to Records Management to send the notifications and then start the thirty day limitation. Kevin Callaghan responded that the thirty days would begin today, December 11th. Secretary Hargett moved to the next item.

VI. T3 Project Update

Deputy Commissioner Reen Baskin called on Kevin McDowell to discuss the T3 Project update. Secretary Hargett instructed Mr. McDowell to state his name and title when he approaches the podium. Kevin McDowell introduced himself, Senior Vice President of Jones Lang LaSalle (JLL), Program Director for Project T3, working with the Department of General Services.

Project T3 began several months ago; during the development stage, agencies were asked about their space needs. The Department of General Services, who housed Records Management at that time, conducted records assessments for the agencies associated with Project T3. Kevin McDowell introduced Jen Murphy, Grisham Smith and Partners, in the event that there were questions for the design firm.

The space allocation for records was based on the records assessments completed by Records Management at that time. The space plans have been reviewed with each agency during the plan review and approval process; currently implementing the design plan created by Grisham

Smith and Partners in order to ensure that each agency has the adequate space for the records identified as a part of Records Management for the installation.

T3 is about to experience the first move into the first final completed space in January. Each agency, as they are moving from hotel space or from their current location over the next nine months, have been encouraged throughout the planning process to understand the records assessment, understand what the implications are for files that either need to be transported to Richards and Richards or disposed of prior to the occupancy date.

Secretary Hargett asked if the first move will be the Department of Environment and Conservation (TDEC). Kevin McDowell responded that the Department of Finance and Administration will be the first move. Secretary Hargett addressed TDEC's concerns about the space they needed for records and asks if there was a representative from TDEC that would approach the podium to address the concerns. Christi Poston, Records Officer for TDEC, stated that TDEC is continuing to evaluate the records that had met their retention first, to identify the records that need revision, and trying to look at old RDAs in order to destroy approximately 600 cubic feet of paper records. TDEC is also trying to locate landmark records and to actively scan documents at Printing and Media Services.

Secretary Hargett referred to the 600 cubic feet as being a large undertaking. He asked Ms. Poston if TDEC was given a target of how many files they were expected to get rid of. Ms. Poston responded that they were given a target of approximately 10,000 cubic feet. Secretary Hargett stated that the law does not refer to an amount of cubic feet, but instead refers to a specific amount of files. Secretary Hargett asked Kevin McDowell if JLL had recommended the target of 10,000 cubic feet. Kevin McDowell responded the recommendation did not come from JLL or Grisham Smith and Partners; the recommendation was made by the Department of General Services, Records Management Division, by evaluating the files of each agency and issuing a records assessment and a recommendation, based on their understanding of the RDA, that should be reduced.

Secretary Hargett called Kevin Callaghan to the podium to verify that the directive was issued prior to Mr. Callaghan's employment and prior to the transfer of Records Management to the Office of the Secretary of State. Kevin Callaghan affirmed, and stated that the assessments currently under discussion were conducted between February and August of 2012. Secretary Hargett acknowledged that the Department of General Services is attempting to ensure that only the necessary amount of space is being used, but that the code does not direct regarding space; the code directs agencies in keeping the records they are supposed to keep, and destroying the records that they are supposed to destroy.

Cody York referred to a series of questions asked by Ann Toplovich at the previous meeting regarding the same topic. He identified a report which was titled, "Records Inventory Summary and Recommended Reductions" and was generated on April 13, 2012. The report identified the 10,871.5 cubic feet, which was identified as the forty-six percent (46%) reduction. Cody York stated that he has copies of the report for distribution.

Ann Toplovich stated that Records Management's recommendation was to get rid of 10,000 cubic feet, and thus far they have only gotten rid of 6,000 cubic feet. Ms. Toplovich expressed an assumption that the new space allocation did not include the 10,000 cubic feet, and asked what would happen during a move when there was not enough space for several thousand cubic feet of records. She expressed concern that a very quick disposition would take place when those records could not be moved; records such as correspondence and other supporting documents in files. Kevin Callaghan responded that the assessment should identify which records are to be destroyed, kept, or sent to Richards and Richards, but he was unsure of the composition of the assessments as they were conducted prior to his employment.

Deputy Commissioner Reen Baskin pointed out that a former employee, Elizabeth Crawford, was still listed on the report, and asked if Pennye Neal, who was present at the time of the assessments, could provide insight into the amount determination. Pennye Neal discussed the records assessments and confirms that they were completed between February and the present date for the first tier of Project T3. When the assessments were completed, Records Management looked at all records, whether a non-record or an actual record with an established retention schedule. Records Management then decided, by the RDA, which records should be destroyed, sent to Richards and Richards, or scanned and then destroyed. Ms. Neal explained that an inventory sheet was included on the back of the assessment to indicate what could be kept, destroyed, or sent to Richards and Richards.

Deputy Commissioner Reen Baskin asked Jen Murphy, consulting space planner with Project T3, from Grisham Smith and Partners, if there is "wobble room". Jen Murphy affirmed and stated that agencies were informed at the beginning and throughout the process to start reducing their records; it's important because a) there will not be adequate storage in the hotel space and b) to avoid moving records that should not be stored. Ms. Murphy stated that she understood the majority of current space storage to be for items such as Christmas trees and records from former employees that did not clean their work area, not a lot of actual records; these areas are included in the forty-six percent (46%) reduction. Ms. Murphy reaffirmed that there was "wobble room" and indicated that the agencies were not initially told to prevent them from retaining records that they did not need to retain.

Secretary Hargett stated that a memorandum would not be sent out regarding Christmas tree, ornaments, or cards; every records officer in the State will not interpret the memo to mean that they are to reduce the amount of non-records, they will be thinking about their actual records they are required to keep. He stated that it is a constant struggle against items that do not serve a business purpose and we want to get rid of them, but he does not want to pressure agencies into moving or destroying an item. Secretary Hargett also stated that, in the T3 Project, what we are trying to achieve is a savings from a smaller footprint for state government; are we incorporating the additional costs that we are going to incur, it should be a net savings, into the budget when more storage at Richards and Richards is being discussed?

Deputy Commissioner Reen Baskin stated that she knew it had been calculated, but she was unsure of whether it was calculated under Project T3 or the DGS budget. Secretary Hargett stated that he was unsure if it was factored in, with agencies being told to reduce by forty-six percent (46%), and it was uncertain if the (46%) was accurate. Secretary Hargett said that he hoped that agencies understood that the (46%) was a target and not a mandate.

Deputy Commissioner Thomas Chester stated that he was looking at it from a “bean counter’s perspective”; would much rather pay Richards and Richards two dollars per box versus fourteen dollars per cubic foot for three filing cabinets. Richards and Richards will offer a savings, but the difference between the two dollars a box and what the agency is paying in rent will vary depending on their location. Secretary Hargett stated that he did not want the Department of General Services to forget that it is not a gross savings, it is a net savings.

Eddie Weeks, Legal Services, asked for clarification on page two of two of the form which said “reduce my agency’s total records by a minimum of the recommended forty-six percent”, and Mr. Weeks stated that it did not seem like a weak recommendation.

Ann Toplovich noted that the cover page of the report indicated that the department was only given seventeen days to respond to the recommendation; Monday, April 30, 2012, for a report dated April 13th. Ms. Toplovich inquired whether the seventeen days was enough time for the department to respond to the recommendation.

Jen Murphy stated that she could not remember specific agencies, but that a couple of the agencies did respond that they could not comply with the recommended percentage. The agencies marked up their recommended reduction percentage, and then their commissioners signed off on the recommendation. Secretary Hargett asked if Jen Murphy had copies of the signed recommendations from the agencies, and Jen Murphy responded that she did not.

Pennye Neal approached the podium and stated that they did have copies of the forms which were signed by the commissioners and were returned. However, if agencies had questions regarding the assessments, Records Management met with those agencies again to reassess, and then corrected the report. Secretary Hargett requested that copies of the signed forms be sent to his office.

Secretary Hargett opened the floor for discussion. Cody York had two concerns: 1) The report did not state “If you think that you cannot do this, contact us”; and 2) The RDAs are broken down beyond the second page, they are broken down into a specific type of record, some of the RDAs say destroy or retain on sight. Mr. York indicated the last page of the report, Page 13, third paragraph from the top, the records series description is “Administrative Files Working, Reference NB”; the cubic feet is 1162, the recommendation said “require further analysis”, the recommended reduction is 581 cubic feet, and the notes say an estimated fifty-percent (50%) reduction of active files. Mr. York stated that the (50%) reduction appeared mutually exclusive and needed to be addressed.

Secretary Hargett asked if anyone in the room could provide an explanation of how the (46%) was calculated, and then asked Kevin McDowell and Jen Murphy if they could explain. Jen Murphy said that she could not, Kevin McDowell requested that it be noted that the percentage is different per agency. Secretary Hargett requested clarification on how the percentage was different, and he stated “the form is the form”. Mr. McDowell stated that different percentages were derived for each agency, and he clarified that Secretary Hargett was looking at the form for TDEC; the (46%) is just for TDEC.

Secretary Hargett asked Pennyne Neal whether Records Management worked with each agency to determine an appropriate percentage for that agency. Ms. Neal affirmed, and stated that Elizabeth Crawford and Benita Rosario completed the TDEC assessments and made recommendations within Nashville. Ms. Neal stated that she handled the TDEC assessments and recommendations that were outside of Nashville, as well as the assessments for other agencies across the state.

Secretary Hargett referred to page 13 of the report to revisit Cody York’s concern regarding the recommended reduction of 581 cubic feet; Administrative Files Working Reference estimating fifty-percent (50%) destruction of active files. Secretary Hargett asked how the (50%) was calculated. Pennyne Neal reiterated that Elizabeth Crawford calculated the percentage, and that she, Ms. Neal, was unsure of how Ms. Crawford derived the numbers. Ms. Neal stated that if the members were to look at one of her reports then she would be able to better explain the process; after completing her analysis, she would look at the agency’s retention schedule for their records, and determine what the recommendation was at that point. Ms. Neal would compare the RDA to the records that Records Management had already reviewed.

Cody York asked if the employees assigned to the TDEC assessment were no longer employed with the state. Ms. Neal responded that Mr. York’s question was incorrect, and clarified that she was still employed, but that she only handled the TDEC assessments outside of Nashville, not in the LNC Tower, so the calculation process between TDEC reports may be different. Ms. Neal indicated that Christi Poston may have been with Elizabeth Crawford and Benita Rosario as they completed the LNC Tower assessment.

Kevin McDowell asked to add a comment to the discussion: the individuals that published the report did physically go out to each agency to examine the files and records as well as the rooms where the files were being stored; they were not sitting back in the Tennessee Tower making a guess, it was based on a physical assessment of the files at each agency’s location. Secretary Hargett stated that there is a significant number of estimating on the report. Secretary Hargett used quick math to calculate 2,000 to 3,000 estimated cubic feet on the report; while someone may not have been at the Tennessee Tower and made a guess, they may have went to the LNC Tower and made a guess.

Secretary Hargett opened the floor for discussion and stated the he anticipated reviewing the forms submitted by the respective agencies. Deputy Commissioner Reen Baskin referred to

Secretary Hargett's request to review the forms and verified the following information: 1) Jen Murphy will meet with each agency to review files prior to the moving process; and 2) Kevin Callaghan has thirty (30) days, and that he will look at items such as Project T3 during that time. Reen Baskin stated that, going forward, she thought that some of the numbers could be reevaluated. Secretary Hargett expressed appreciation for Reen Baskin's comment, and he stated that T3 is an ambitious project; the State's attempt to decrease its footprint is laudable. Secretary Hargett agreed that it was cheaper to store files at Richards and Richards, and he stated that it was the PRC's job to ensure that records were maintained and disposed of properly.

Ann Toplovich recalled a discussion from the previous PRC meeting, on November 16, 2012, regarding whether there was a written protocol for the process. Ms. Toplovich wondered of the T3 Project would benefit from a program similar to the RDA application because of its transparency; she did not know if there was a "stage-by-stage" process that the agencies were experiencing. Ms. Toplovich also discussed the cost of storage: Richards and Richards charges two dollars per box, which is the equivalent of a cubic square foot, and the fourteen dollars is for eight cubic feet because we are stacking up.

Secretary Hargett asked if the written protocols in relation to the T3 Project and the movement of records had been found. Deputy Commissioner Reen Baskin stated that she was unaware of any written protocols that T3 had and called on Kevin McDowell to verify that each agency had been met with. Kevin McDowell confirmed that they had met with each agency, and had advised the agencies of when the anticipated move would take place, but they did not instruct the agencies on how to reduce their records or provide a written protocol regarding the reduction of their records.

Secretary Hargett expressed concern that, while Records Management was housed within the Department of General Services, it may have been used to tell agencies to reduce their records to further the initiatives of Project T3. Secretary Hargett suggested additional objectivity, and reminded the Records Management Division that we want the agencies to keep what they are supposed to keep, destroy what they are supposed to destroy, and store the records that they are supposed to store; the code does not set a maximum or minimum amount of cubic feet, instead it charges agencies to determine what they are supposed to do with the records. Secretary Hargett reminded the Commission that it is the Commission's job to make decisions on the RDAs regardless of the space limitations.

There is no further discussion.

VII. Adjournment

Eddie Weeks made a motion to adjourn. The motion was seconded by Reen Baskin. The motion to adjourn was approved.