

Retaining Records and Documenting the Governor's Legacy

Establish a Records Retention Policy

Managing gubernatorial records can be one of the more vexing issues an outgoing administration could face if there has not been an ongoing attempt to manage papers, records and other materials throughout the life of the administration.

One former governor reports an “unfortunate shadow” cast over his last months in office “when some overzealous aides discarded or destroyed records that might more appropriately have been saved for historical purposes and sent to the state archives.” He lamented, “If I could repeat any of the transition activities so that I might improve on what was done, I would more clearly direct an office-wide records disposition policy during the transition period.”

Former governors, aides and professional archivists urge incumbent governors to establish a policy and systematic program for managing gubernatorial documents. Laws, policies and procedures regarding gubernatorial documents vary considerably among the states.

The first step should be for the governor’s legal counsel to fully investigate the laws and practices of the state in addressing official papers. If the state law recognizes both official and private papers, then the governor’s office should determine the policy for separating the two and begin the process of arranging for the ultimate repository for both public and private papers. Incumbent governors and their staff should look to the designated state agency or agencies for active assistance with this increasingly complex and important issue.

Incumbent governors need to make decisions on the retention and disposition of papers long before they

prepare to leave office. Ideally, a gubernatorial records retention policy should be established at the very beginning of an administration when the governor assumes office.

(More information and guidance on records management is available in the National Governors Association (NGA) Management Brief, *Managing Gubernatorial Records: A Guide for Governors*, which was prepared with assistance from the Council of State Archivists.)

A policy should be established and a plan should be developed to:

- Distinguish personal papers from public documents;
- Transfer official records;
- Transfer personal papers; and
- Maintain active files for the next administration

Distinguish Personal Papers from Public Documents

A former chief of staff recalls: “Without question, the most difficult part of the transition out ‘and the area of greatest shortcoming’ was disposition of official and personal papers. Much of the difficulty was in distinguishing between the two. State statutes should help resolve this dilemma, but few do.”

Many states have statutes that prescribe the retention and disposition of and access to public records. Common practice permits governors wide latitude in determining and controlling personal papers.

On the surface, distinctions between personal papers and public documents seem obvious.

- **Official records** are those created or received by the governor, his or her immediate staff and

other units and individuals in the executive office, in the conduct of government business. These records relate directly to the constitutional and administrative functions of the office and document those functions.

- **Personal papers** are materials of a personal or private character that do not relate to the carrying out of official duties. These include personal correspondence and political files, where they do not relate to government business.

In practice, such distinctions are not always clear. For example, political campaign documents clearly would be personal papers. Some documents maintained by an appointments office about prospective appointees clearly relate to official business, but are highly political and most assuredly are considered by staff to be private. The same may be said about handwritten notes and staff advice about politically or personally sensitive matters. Working papers also may prove to be problematic.

Such distinctions can be a lawyer's dream and a governor's nightmare. Incumbent governors and staff should consult the governor's legal counsel and seek the help of state archivists to interpret applicable state laws and to distinguish personal papers from public documents. In addition to distinguishing personal papers from public documents, gubernatorial staff should establish guidelines for retention and disposition of personal papers.

Transfer Official Records

By definition, official records are considered public property. State laws vary on requirements for retention, disposition and access. Many states mandate the transfer of official records to a designated state agency, such as the state archives. Even if it is not mandated, governors still can choose this option. Other options include transferring official documents to historical societies and universities.

Professional archivists generally appraise the records for their administrative, fiscal, legal and historical

value, and establish retention and disposition schedules based on their archival value. If left to the final days of an administration, the process may be rushed and incomplete. Incremental transfers throughout an administration are advised.

Governors and their staff may be concerned about public access to sensitive or confidential information in official records. Questions about record retention, disposition and access should be resolved before any documents are transferred. A plan for the orderly transfer of official records then should be developed and implemented.

Maintain Active Files for the New Administration

Although most official records should be transferred by the end of an administration, some documents and files should be retained for immediate use by the incoming administration. Otherwise, the new administration will be handicapped when dealing with pending or residual issues.

Departing staff should be in the best position to identify essential documents needed to address such issues and to facilitate efficient office operations. In meeting with counterpart staff to discuss these issues and operations, departing staff should help determine, if possible collaboratively, which documents and files should be kept active.

With the exception of active files handed over to the new administration and briefing materials specifically prepared for the incoming administration, the goal is to leave behind no miscellaneous paper. It is wise to consider making copies of active files left behind to ensure retention of a complete set of present administration documents. Of course care needs to be given to preserve copies of confidential documents, or documents protected from disclosure, that will be used by the incoming administration as soon as they have taken office.

Handle Personal Papers

As a general rule, personal papers are handled as the governor desires. Several personal decisions are needed, including where these papers should be housed, under what access controls and for how long.

One former governor interviewed six years after leaving office pointed to an adjoining room filled from floor to ceiling with boxes of his personal papers. Another former governor divided his official records and personal papers between two archival institutions and suffered through years of definitional and jurisdictional disputes. Such problems can be alleviated, if not prevented, by advance planning.

Repository options for personal papers include the state archives (sometimes in a separate collection from official papers), a historical society or a university. The decision on which option to choose should not be made casually or sentimentally. Many factors should be considered, including proximity to the governor's official records, professional competence of the repository (i.e., its reputation for preservation, care, cataloguing, accessibility), enduring interest of the papers and state custom.

It should be kept in mind that state archives may be reluctant to relinquish private papers and may aggressively seek to maintain them by cooperation and persuasion or by laying legal claim to them. Consequently, whatever repository is chosen, access of the governor, staff and others should be negotiated, including permissions required and time limits. A deed of transfer incorporating these conditions should be executed and the papers then transferred accordingly. Such decisions and arrangements should be completed before leaving office.

All records may be sealed for a short time, if allowed by law, to allow the governor or a representative to write the record of the administration. Some individual records may also be sealed for varying periods of time to either protect confidentiality of ongoing issues being faced by the new administration or protect individuals from certain potentially

embarrassing disclosures for a period of some years. However, as some former governors have discovered, a decision to seal records can lead to highly critical reaction. Therefore, the decision to seal records needs to be considered carefully and judiciously.

Document the Outgoing Administration's Legacy

A positive legacy is promoted most often by a job well done and documented while in office. It is likely that undue emphasis on legacy during the transition between administrations will be greeted with skepticism by the incoming administration, the general public and historians. Indeed, the incoming administration's seeming inattention to transition documents might be attributed to suspicions that the documents are "propaganda" or that they are motivated by a political desire to leave a legacy. A transition oriented to the incoming governor may have a more credible and lasting effect.

At the same time, outgoing governors may think that the official record of their administration does not tell the whole story of its accomplishments. The governor's legacy and proper place in history may be obscured in the archives. Consequently, governors and their staff undertake legacy projects to preserve a record of their administration's work.

Some governors have allowed academia or the media to conduct a retrospective or analysis of their administrations. However, key reasons why governors should strongly consider undertaking a legacy or other retrospective activity of their own are:

- **If you do not do it, no one else may do so.** For some governors, personally, no analysis or a very cursory analysis may suffice, but to simply let an administration fade away does not do justice for either the governor or their supporters and staff in regard to their many years of hard work and successes. A legacy document also sets the stage for further public activity by an outgoing governor if that is contemplated.

- **If someone else does it in depth first, then their version of the story is the prevailing one and can only be rebutted to varying degrees of success.** If the administration tells the story first, then at least their version is the first one in play and anyone else is in the role of challenging it.

The first and foremost step in preparing a legacy is to begin developing a plan from the start of the governor's tenure. On day one decide the best way to consistently record and archive the significant achievements of the administration. Special efforts to present the overall record and major accomplishments of an administration should be approached cautiously and done objectively.

The process of synthesizing and analyzing what has been documented according to the plan should begin during the governor's final year in office. One former chief of staff recommends creating two lists—one of the governor's accomplishments and the other of actions by the administration that might be viewed negatively in retrospect, and then narrowing those down to a workable number of issues to formally address in a legacy piece.

The same chief of staff emphasized the importance of starting to release legacy documentation while the governor is still in office. One suggestion for doing this is to establish theme weeks in the final year of the governor's term, during which specific accomplishments of the administration can be highlighted in appropriate settings. Another idea is to provide each cabinet member with talking points about the administration's accomplishments to include in speeches.

Looking to the longer term, the format, scope and content of post-tenure legacy pieces vary widely based on the objectives of each administration. It is helpful to take into account both technology and longevity when deciding on the best approach for your governor's legacy project. Using a variety of mediums can help make this effort an ongoing work-in progress during the final year while also reaching out to a wider audience.

For example, using the governor's website can help create an online summary for public view, and this version can become the basis for a more formal presentation available for distribution or archives. Presentations designed for post-tenure distribution include books or booklets, personal websites and CDs/DVDs.

Whatever approach and format an outgoing governor decides to use, most legacy pieces are organized as follows:

1. An introduction consists of an overview or summary of achievements and a letter or statement from the governor.
2. The body of the legacy piece is usually organized by key issue areas and accomplishments, or possibly chronologically to describe significant actions and highlights from the governor's term(s) in office.
3. The closing provides a final summary of the administration's achievements and often includes such things as a listing of state cabinet members; biographies of the governor, lieutenant governor, and governor's spouse; and notable quotes about or by the governor.

Commonly included in legacy pieces are photographs (of significant events, outings throughout the state, bill signings and the first family); excerpts from speeches such as state of the state or inaugural addresses; and succinct timelines of the governor's years in office. Some legacy pieces are written in a narrative form while others are developed as a record of accomplishment with short, bulleted summaries.

Former governors also have been creative in supplementing their primary legacy pieces. Examples of such supplements include:

- Collections of film clips;
- A library of television and radio interviews;
- Oral histories, including videotaped interviews of key administration officials and sage observers; and
- A televised end-of-term review, such as a special cabinet meeting.

NGA has examples of legacy pieces from past administrations that can be provided if desired.

Funding for Legacy Pieces

Funding is also a key consideration in legacy documentation. Governors should determine as early as possible in their administrations what state appropriations are available for documenting their accomplishments and to what extent private funding may be necessary or justified to support the effort. If private funding is required, a fundraising plan should be developed and implemented in a timely manner. One option is a hybrid approach to funding and formatting legacy products using the governor's website to tally the record of his or her accomplishments, followed by the release of a privately funded book or magazine style publication of the governor's legacy for distribution to supporters, staff, libraries and other state repositories.

In times past, the "yearbook" approach was prevalent: some sort of limited edition publication, often paid for by private funds, in which the governor's accomplishments are listed with accompanying photos, etc. In some states, there is a custom of annual published summations of the years past and in those states, the final report can simply be expanded to look back at all the years served. In states where a yearbook approach is not the custom, it may be advisable to raise private funds if there is no specific appropriation for a final report.

*Contact: Nikki Guilford
Director, NGA Consulting
202-624-5422*