

# Archives Advice No. 14

## Outsourcing IT Functions: Records Management Issues

### Considerations for Government Officials

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State agencies are required by law to manage all records created or received by their offices, whether those records are created in paper or electronic form. If the records are electronic, the agency's responsibility continues whether the agency designs, builds, and maintains the system in-house or contracts the work to an outside vendor. If the agency contracts the work to be done by private contractors it is important for both the agency and the contractor to understand, and comply with, the record keeping requirements of Georgia law.

The following guidelines highlight some of the more important aspects of that law, regardless of whether the records are being maintained by a state agency or a contractor on behalf of the agency. *Agencies should consult their agency counsel for more specific information regarding Georgia law as it applies to outsourced IT functions.*

#### **The term "record" includes electronic records.**

A government record is any record made or received by a state agency while performing their functions. The term "record" includes documents, papers, letters, maps, books, microfilm, magnetic tape and other material, *regardless of physical form or characteristics.* (See O.C.G.A. §50-18-91)

#### **Records maintained for an agency by a private person or entity are still public records.**

Records that are maintained by private persons or entities on behalf of government agencies are still subject to the state's open records and retention laws and "subject to disclosure to the same extent that such records would be subject to disclosure if received or maintained by [the] agency." In fact, state law prohibits any agency from placing records into the hands of private entities in order to avoid disclosure. The superior court's ability to enforce compliance with the open records act extends to the custodian of the record, which may include private contractors. (O.C.G.A. §50-18-70; §50-18-73).



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**Government records must be protected from alteration or destruction.**

In Georgia, it is a felony to falsify, alter, or steal a government record. Records that are maintained outside the immediate control of state agencies must be protected against alteration or theft. Whenever the authenticity or integrity of an electronic record is challenged, the burden of proof falls on the entity defending the electronic record's authenticity (O.C.G.A. §45-11-1; §10-12-4).

**Records may be destroyed only in accordance with approved records retention schedules.**

Agency records that are created or received in the performance of duty may be destroyed only if their destruction is part of an approved records retention schedule. In addition, records should not be retained *beyond* their approved retention period (O.C.G.A. §50-18-102).

**Ultimately, the state agency is responsible to actively manage its own records.**

Georgia law requires each state agency to create and maintain an active program to manage its records and designate a records management officer to oversee the program. In addition, state agencies bear specific responsibility to safeguard their records against removal or loss. Records maintained by outside contractors remain subject to this requirement (O.C.G.A. §50-18-94).

If you need further assistance, please call the Georgia Archives at (678) 364-3790.