

Presidential Memorandum—Managing
Government Records
A View from the States

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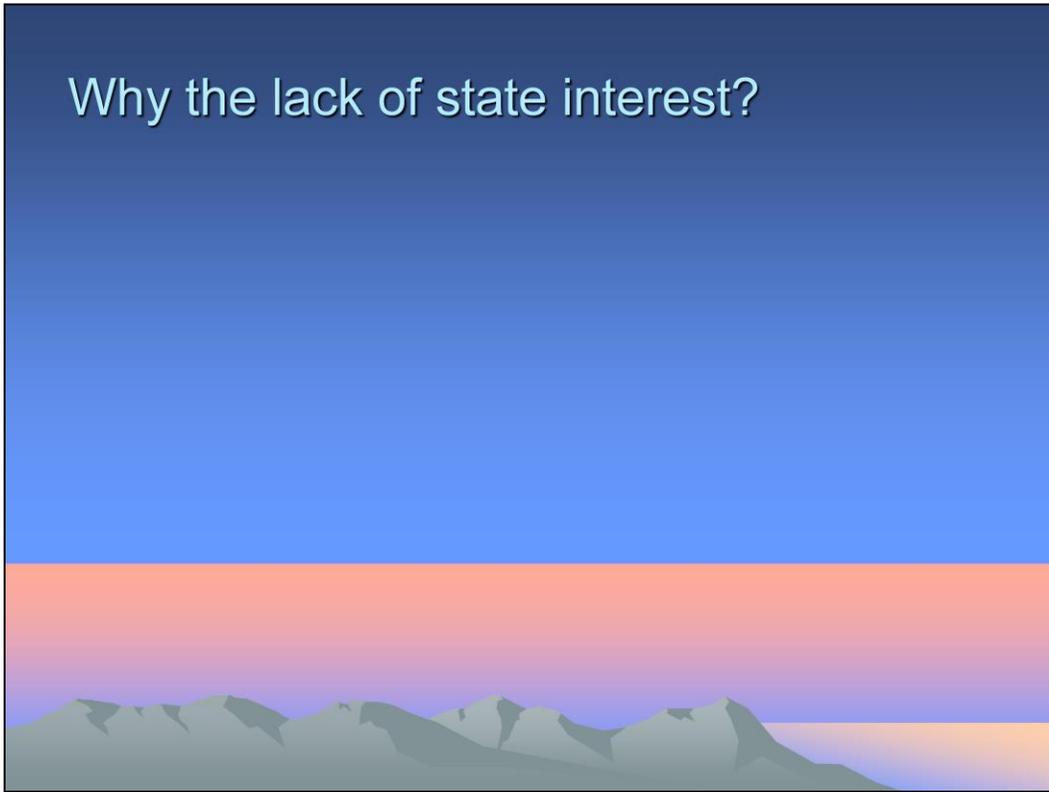


Overview

- Why hasn't Presidential Memorandum attracted more state interest?
- Laying foundation for future state-level advocacy

As you might expect, the Presidential Memorandum on Managing Government Records has attracted a lot of attention at the federal level, but neither the memorandum nor the directive that NARA released in late August has made much an impression at the state or, for that matter, the local level. During the next few minutes, I'm going to outline some of the reasons for this state of affairs and then discuss some of the ways in which the Presidential Memorandum and NARA's efforts to transform federal records management could spur similar state-level efforts in the future.

Why the lack of state interest?



Why the lack of state interest? Well, it's not for lack of trying on NARA's part. Paul has taken part in at least one Council of State Archivists conference call that was devoted to the Presidential Memorandum, and Paul and Arian will both be at the 2012 Best Practices Exchange, an annual event that brings together archivists, librarians, IT professionals, and other people who seek to preserve digital state government information. So if NARA's not the problem, what is?

States are struggling

- Income and sales tax revenues are down
- Demand for services is up
- Budgets must be balanced

By far and away, the number one reason for the lack of state-level interest is the overall state of the economy. As we all know, the nation has suffered a major recession, and with very few exceptions, states have been particularly hard-hit. Income and sales tax revenues are down pretty much across the board, and citizens who have lost their jobs or homes have been applying for assistance programs that are funded, at least in part, but state dollars.

Moreover, the overwhelming majority of states—including the seven states that comprise the MARAC region—have statutory or constitutional balanced budget requirements. The stringency of these requirements varies from state to state, but they are deeply embedded within state political cultures.

Finally, there is minimal public appetite for raising revenue via increased taxation. A substantial segment of the American electorate believes that government at all levels has become unsustainably large, and gubernatorial and legislative candidates who have promised to shrink the size of state government now hold office in many states.

State archives are struggling

- Budgets static or shrinking
- Staff shrinking
- Users still require services

"I'm so glad the state government will restrict public access to the Georgia Archives to save money," said no Georgia citizen ever.

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In this environment, state archives are struggling to keep their heads above water. Although there are some exceptions, state archives are confronted with budgets that are either flat-lining or shrinking from one year to the next and staff levels that are shrinking as a result of layoffs or inability to replace departing employees. At the same time, users still want and need access to their holdings.

Thankfully, none of the state archives in the MARAC region has experienced the agony of the Georgia Archives, which has repeatedly had its budget reduced, experienced several waves of layoffs, and very narrowly escaped losing all of its public service hours. (Incidentally, anyone who wants to study archival advocacy needs to look at the actions of Friends of Georgia Archives and History and other organizations and individuals who have fought valiantly to save the Georgia Archives and have won, at the least, a temporary restoration of public service hours.)

State archives in MARAC region

State	Archives staffing		Records management staffing	
	FY 2006	FY 2010	FY 2006	FY 2010
Delaware	9	5	13	19
Maryland	4	N/A	97.5	77
New Jersey	19	11	16	14
New York	40	31	37	30
Pennsylvania	16	9.5	17	20
Virginia	17	5	15	11
West Virginia	N/A	2	10	14

However, just about every state archives in the MARAC region has suffered staff losses in recent years. The Council of State Archivists periodically conducts surveys of state archives, and the figures in this chart are taken from the published 2007 *The State of State Records Report* and an unpublished report that CoSA Executive Director Vicki Walch shared with me.

The figures in the chart reflect all types of staffing—administrative, professional, technical, and clerical—so the story may be a bit more complex than the numbers suggest. However, the trends are pretty apparent.

With the exception of Delaware and West Virginia, the number of state archives employees who work with archival records declined between FY 2006 and FY 2010. Every state for which comparative data is available suffered substantial losses of records management staff, and in some instances the losses are staggering: Delaware, New Jersey, and Pennsylvania lost approximately 40 percent of their records management staff within the space of three years, and Virginia lost roughly 70 percent of its records management employees.

In contrast, the public information I found on the National Archives website indicates that NARA's staffing levels have remained relatively consistent in recent years.

Sources: Council of State Archivists, *The State of State Records: A Status Report on State Archives and Records Management Programs in the United States* (January 2007); Council of State Archivists, *The State of State Records: A Status Report on State Archives and Records Management Programs in the United States* (unpublished, draft produced June 2011).

State CIO's are struggling

- Need to control costs
- New challenges and expectations

State chief information officers, who in many states play a key role in shaping the environment in which electronic records are created and managed, are also struggling to control costs and to cope with cloud computing, mobile technology, and other new challenges and expectations.

2009 priorities	2010 priorities	2011 priorities	2012 priorities
Consolidation	Budget/cost control	Consolidation/ optimization	Consolidation/ optimization
Shared services	Consolidation	Budget/cost control	Budget/cost control
Budget/cost control	Shared services	Health care	Governance
Security	Broadband and connectivity	Cloud computing	Health care
ERM, digital preservation, e-discovery	American Recovery and Reinvestment Act	Shared services	Cloud computing
Enterprise resource planning	Security	Governance	Security
Green IT	Transparency	Security	Broadband and connectivity
Transparency	Infrastructure	Broadband and connectivity	Shared services
Health information	Health information	Legacy modernization	Portal
Governance	Governance	Data/information management	Mobile services/ mobility

Every year, the National Association of State Chief Information Officers polls its members and comes up with a list of the ten top priorities for state CIOs for the following year. Note how things have changed. When the 2009 list came out in late 2008, many state government archivists and records managers were elated to discover that “electronic records management, digital preservation, and e-discovery” was number 5 on the list. However, that particular item doesn’t appear on the 2010, 2011, or 2012 lists.

One expects these lists to change over time. The American Reinvestment and Recovery Act of 2009 compelled states to track and post online information about ARRA expenditures, the Health Care Reform Act of 2010 has pushed health information toward the top of the 2011 and 2012 lists, and CIOs would be struggling with mobile technology issues even if the economy were roaring. The inclusion of the “electronic records management, digital preservation, and e-discovery” item in the 2009 list was itself rooted in changes to the legal discovery provisions in the Federal Rules of Civil Procedure that were made in 2006.

However, the complete disappearance of this item from the 2010, 2011, and 2012 lists is striking. If you look at the top five priorities on the 2012 and 2013 lists, all of them—with the exception of health care—relate in some way to making scarce dollars stretch further. In an environment in which CIO’s are hard-pressed to support today’s business needs, records management, digital preservation, and other long-term considerations all too often fall by the wayside.

Sources: National Association of State Chief Information Officers, “Top Ten Priorities for State CIOs,” 2009, 2010, 2011, and 2012.

Executive-archives relationship

- Archivist of the United States is a Presidential appointee
- Most state archivists hold subordinate positions within larger agencies

Another reason: in most states, the relationship between the governor and the state archivist isn't quite like that between the President and the Archivist of the United States. The Archivist of the United States is appointed directly by the president. Although the National Archives and Records Administration Act of 1984 states that "the Archivist shall be appointed without regard to political affiliations and solely on the basis of the professional qualifications required to perform the duties and responsibilities of the office of Archivist," Presidents appoint Archivists with whom they feel at least some degree of comfort. In contrast, most state archivists are not gubernatorial appointees. Instead, they hold subordinate positions within larger agencies.

State archives and records management in the MARAC region

State	Archives function	Records management function
Delaware	Dept. of State	Dept. of State
Maryland	<i>Freestanding agency</i>	Dept. of General Services
New Jersey	Dept. of State	Dept. of Treasury
New York	Education Dept.	Education Dept.
Pennsylvania	Historical and Museum Commission	Historical and Museum Commission
Virginia	Library	Library
West Virginia	Division of Culture and History	Dept. of Administration

The placement of the state archives varies from state to state, and the state archives situated in the MARAC region exemplify this variation. Of the seven states in the MARAC region, only one—Maryland—has a state archives that is a freestanding agency. The state archives of Delaware and New Jersey are situated within their respective Departments of State; however, in an interesting twist, Delaware’s Secretary of State is a gubernatorial appointee and New Jersey’s Secretary of State is an elected official. The state archives of Pennsylvania and West Virginia are located within larger cultural heritage agencies, and Virginia’s state archives is part of a freestanding state library agency. Finally, New York’s state archives is part of the state’s Education Department, which is headed by a legislatively appointed Board of Regents.

As the chart indicates, there’s another wrinkle that should be taken into account: the Archivist of the United States and some state archivists oversee both the archives and records management functions, but some state archivists do not. Three of the states in the MARAC region place the archives function in one agency and the records management function in another.

Sources: Sources: Council of State Archivists, *The State of State Records: A Status Report on State Archives and Records Management Programs in the United States* (January 2007); Council of State Archivists, *The State of State Records: A Status Report on State Archives and Records Management Programs in the United States* (unpublished draft, June 2011); websites of the New Jersey Dept. of State and Dept. of the Treasury.

Executive records laws

- Presidential Records Act of 1978
 - Records created after 20 January 1981
 - Are public records
 - Must be managed and preserved appropriately
 - AOTUS must be consulted before non-permanent records are destroyed
 - Must be transferred to NARA
 - Are subject to clearly defined access process

Differences between federal and state laws relating to the ownership and control of executive records also increase the distance between governors and state archivists.

Since 20 January 1981, all Presidential and Vice Presidential records have been covered by the Presidential Records Act of 1978, which clearly defines these records as public records, mandates that they must be preserved and managed appropriately, requires that they be transferred to NARA when a President leaves office, and outlines a clear process for making such records accessible and restricting records that meet certain criteria.

The Presidential Records Act isn't perfect; for example, it doesn't require the Executive Office of the President to seek NARA's input on the design of recordkeeping systems. However, it's far more comprehensive and far more explicit than just about any state law relating to gubernatorial records—in part because the Presidential Records Act was enacted as a result of an ongoing struggle over the records of President Nixon. At least as of this time, no modern governor has been embroiled in a Nixon-style scandal.

Executive records laws in the MARAC region

State	Mandatory transfer to state archives?
Delaware	Yes
Maryland	No (extensive gubernatorial holdings)
New Jersey	Yes
New York	No (some gubernatorial records, new retention schedule)
Pennsylvania	No (most governors transfer records via deposit agreements)
Virginia	Yes
West Virginia	Yes

As is the case with the placement of state archives, state-level executive records laws vary widely and laws in force in the states that comprise the MARAC region highlight the variations. Delaware, New Jersey, Virginia, and West Virginia all require their governors to transfer their records to their state archives upon leaving office, but Maryland, New York, and Pennsylvania do not. The Maryland State Archives and the Pennsylvania State Archives have rather extensive holdings of gubernatorial records. The New York State Archives holds some records of some modern governors and a new records retention schedule covers the records of the current governor. However, the fact remains that in these three states, governors are pretty much free to do what they please with their records. Given that executives generally do not wish to see their powers limited, governors who aren't legally obliged to hand over their records tend not to view this situation as problematic—or to see the need for cultivating closer relationships with their state archivists.

Sources: Charles Schultz, "Gubernatorial Records: Status, Access, and Content (paper delivered at the 2002 annual meeting of the Society of American Archivists); "Records of Governors and Mayors: Policy and Practice" (summary of incubator session at the 2003 annual meeting of the Council of State Historical Records Coordinators); website of the Maryland State Archives.

Differences in perspective

- Presidents
 - May think of their legacy
- Governors
 - May have future plans

Finally, Presidents and governors tend to have different perspectives and different goals, and these differences also shape their relationships with their state archivists. To be blunt, the position of President isn't a stepping stone on the way to a future goal. Former presidents tend to devote the remainder of their lives to writing their memoirs, doing good works, and cultivating their legacy. Some former governors also do those things. However, some former governors—and some current governors—do have future goals, and in some instances that goal is becoming President.

High court to review 'Dean Papers' case
 By March 12, 2005
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SARAH PALIN
Palin e-mails show routine work, running feuds
 June 11, 2011 | By Matt Smith, CNN

Thousands of pages of e-mail from former Alaska Gov. Sarah Palin's administration range from the mundane details of governing to efforts to crack down on state news leaks and push back against critics.

Scattered among the 24,000 pages, released by state officials in Juneau on Friday, are glimpses of Palin periodically butting heads with top Alaskan political figures as she pushed to get landmark oil and gas legislation through the statehouse; demanding that Exxon finish paying damages for the 1989 Exxon Valdez oil spill; even dealing with complain offering to bake brownies.

Massachusetts opens long-hidden Romney archives
 By Stephen Braun
 Associated Press / December 6, 2011

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WASHINGTON—Massachusetts will make available to the public hundreds of boxes of documents from Republican presidential candidate Mitt Romney's term as governor that have long been locked away, the state said Tuesday. The same agency that is opening the files said it would not pursue an inquiry into the purge of electronic records at the end of Romney's term.

Tuesday, February 22, 2011

State Archives: Months Needed To Review Richardson Records
 Associated Press

SANTA FE — The State Records Center and Archives says it needs several months before it can comply with a request to inspect certain records of former Gov. Bill Richardson.

As Howard Dean, Sarah Palin, Bill Richardson, and Mitt Romney have learned, governors who decide to run for President typically find that their gubernatorial records suddenly become a matter of great interest to the news media and political opponents. Governors who have hopes of attaining higher office have compelling reasons to avoid cultivating a close relationship with their state archivists or broaching the topic of records management altogether.

Sources:

Howard Dean: *Times-Argus* (Montpelier-Barre, Vt.), 12 March 2005

Sarah Palin: CNN, 11 June 2011

Mitt Romney: *Boston Globe*, 6 December 2011

Bill Richardson: *Albuquerque Journal*, 22 February 2011

Looking to the future



Now that I've outlined all of the reasons why the Presidential Memorandum on Managing Government Records and the August 2012 NARA directive haven't had much impact at the state level, I would like to devote a little time to identifying some of the ways in which the memorandum and all of the activity that will follow in its wake might serve as a case study for archivists and records managers who seek to improve the management of state or local government records or other types of records. From a state perspective—and I really hope I don't have cause to eat these words at some point in the future—things will probably get better at some point. The economy can't remain in the dumps forever, and not every governor regards his or her state archives with profound suspicion. Some care deeply about their legacy, and many are passionate about making sure that state government runs smoothly.

Memorandum as case study

- How did records management end up on President's agenda?

Memorandum as case study

- NARA actions as models for state activity?
 - “Investigate and stimulate applied research in automated technology to reduce the burden of records management responsibilities”
 - “Embed records management into cloud architecture and other Federal IT systems and commercially-available products”

Other NARA actions specified in August 2012 NARA directive:

- Revised transfer guidance for electronic records
- Revised e-mail guidance

Memorandum as case study

- Impact of resulting changes?
 - Cost savings
 - Increased efficiency
 - Repurposing of information
 - Transparency and enhancement of access