Legal Framework

Summary
State and federal laws govern records management practices, whether records are in paper or electronic form. It is important to know about and understand the laws that may affect your records management policies and procedures.

Legal Framework in Minnesota
Electronic records, just like paper records, are subject to specific Minnesota statutes that you must understand and comply with, including general records laws and electronic records laws. Therefore, your understanding of existing Minnesota statutes is crucial as you begin to develop your electronic records management strategy.

General Record Laws

Official Records Act; Minnesota Statutes, Chapter 15.17

The Official Records Act is a general records law that mandates that “all officers and agencies” at all levels of government “shall make and preserve all records necessary to a full and accurate knowledge of their activities.” This mandate reflects a concern for accountability: since government spends public money on public services, government agencies must be accountable to citizens, government administrators, courts, the legislature, financial auditors, and to history—that is, to future generations. Under the Official Records Act, your agency’s chief administrative officer is responsible for creating and preserving government records, including electronic records. This statute also allows you to copy records to another format or storage medium and still preserve the authenticity, reliability, and legal admissibility of the record, as long as the copies are made in a trustworthy process.

Records Management Act; Minnesota Statutes, Chapter 138.17

The Records Management Act recognizes that creating comprehensive records and preserving them forever would be an impossibly expensive burden. Instead, the Act creates a mechanism for the orderly and accountable disposition of records in the form of the Records Disposition Panel.

Records Disposition Panel Members
The Records Disposition Panel includes the:

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Attorney General, for expertise on the legal value of records

Director of the Minnesota Historical Society, for expertise on the historical value of records

Legislative Auditor (for state agencies) or State Auditor (for local agencies), for expertise on the accounting value of records

Records Disposition Panel Functions
The panel reviews and approves or disapproves record retention schedules as well as non-routine requests to dispose of or transfer records. Fundamentally, the panel provides oversight, but does not initiate any actions. If your agency wants to keep records forever, then you never have to work with the panel. However, if your agency wants to do anything else legally with your records, you must submit your proposal to the panel for approval. See Preserving and Disposing of Government Records for more information.

Minnesota Government Data Practices Act (MGDPA); Minnesota Statutes, Ch. 13
The MGDPA assumes that government records (including electronic records) should be accessible to the public. However, government agencies create some records that are confidential or sensitive, such as child protection records and adoption records. So, while in theory all records are presumed to be publicly accessible, many exceptions exist. Only the Minnesota state legislature defines these exceptions. Any organization, public or private, that improperly releases data covered by the act could suffer significant penalties.

The Department of Administration’s Information Policy Analysis Division offers assistance with interpreting and meeting the requirements of the MGDPA.

Electronic Records Laws
Uniform Electronic Transactions Act (UETA) and Electronic Signatures in Global and National Commerce (E-SIGN)
UETA (Minnesota Statutes, Chapter 325L) and E-Sign were both enacted in 2000. These laws intend to facilitate the use of information technology in government and business by addressing the legal obstacles that exist in a system that was created for paper records and signatures.

4 Minnesota Statutes, Chapter 13; http://www.revisor.leg.state.mn.us/stats/13/
6 Minnesota Statutes, Chapter 325L; http://www.revisor.leg.state.mn.us/stats/325L
The primary message of the laws is that a court may not determine that an electronic record or signature is untrustworthy simply because it is in an electronic format. A court can, though, reject electronic records and signatures because a government agency is creating, using, or managing them in an untrustworthy system or manner. One indicator of untrustworthiness would be an agency’s failure to follow the state laws governing records.

**Uniform Electronic Legal Materials Act (UELMA) (a model law)**

The National Conference of Commissioners on the Uniform State Laws (NCCUSL), also known as the Uniform Law Commission (ULC), drafted and approved in 2011 a model law that addresses the authentication and preservation of state electronic legal materials. The Uniform Electronic Legal Material Act\(^7\) (UELMA) establishes an outcomes-based, technology-neutral framework for providing online legal material with the same level of trustworthiness traditionally provided by publication in paper form. The Act requires that official electronic legal material be: (1) authenticated, by providing a method to determine that it is unaltered; (2) preserved, either in electronic or print form; and (3) accessible, for use by the public on a permanent basis. Information and links to the recent activities, including state enactments, can be found on the Uniform Law Commission website.\(^8\)

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