

Outsourcing Records Responsibilities: *Responsibility for Public Records Requests and Records Management Requirements*

Outsourcing services is a popular solution for both public and private sector enterprises. We outsource single services (hiring employees, workers' compensation) or entire Sections (Accounts Payable / Receivable). While outsourcing is a good option for State and Local Agencies, there is an important responsibility that we cannot outsource – records.

The **Arizona Revised Statutes (ARS) Title 39** and **Title 41** detail the responsibilities placed upon State and Local Agencies for both public records requests and public records management. A public body cannot simply waive its Title 39 and Title 41 responsibilities merely through outsourcing of services to a third-party vendor.

Anytime that a State or Local Agency is **outsourcing a service that will either create or receive public records**, the State or Local Agency is still responsible for the Title 39 and Title 41 responsibilities, including, but not limited to, servicing public records requests, retaining records per approved retention schedules, and disposition of records.

There are several key statutes that detail the records responsibilities that always belong firmly with the State or Local Agency. The first is from Title 39:

ARS 39-121.01

B. All officers and public bodies **shall maintain all records**, including records as defined in section 41-151.18, reasonably necessary or appropriate to maintain an accurate knowledge of their official activities and of any of their activities which are supported by monies from this state or any political subdivision of this state.

C. **Each public body shall be responsible for the preservation, maintenance and care of that body's public records, and each officer shall be responsible for the preservation, maintenance and care of that officer's public records.** It shall be the duty of each such body to carefully secure, protect and preserve public records from deterioration, mutilation, loss or destruction, unless disposed of pursuant to sections 41-151.15 and 41-151.19.

Section B states that officers and public bodies shall do the maintaining of their records. Section C places the responsibility for preservation, maintenance, and care of a public body's records on the public body. Section C then also states that it is the public body's duty to secure, protect, and preserve its records from loss or destruction.

The above statute places all of the onus on the public body and its officers. It does not allow for the shifting of any responsibility to a third party. This means that the public body and its officers are always responsible for retaining,

preserving, and protecting its records. A State or Local Agency that contracts with a third party to do some of its work cannot somehow shed the responsibility for their records without violating the statute.

The second key statute is from Title 41, and echoes what is required under Title 39:

ARS 41-151.14:

A. The head of each state and local agency shall:

1. Establish and maintain an active, continuing program **for the economical and efficient management of the public records of the agency.**
2. **Make and maintain records** containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions **of the agency** designed to furnish information to protect the rights of the state and of persons directly affected by the agency's activities.

Arizona's Public Records Request Statutes: see §§ 39-101 through 221.

Arizona's Records Management Statutes: see §§ 41-151.12 - 151.19.

If you have any questions or comments, please contact the Library, Archives and Public Records – Archives and Records Management Branch at records@azlibrary.gov or 602-926-3815.