

## Book Review

# Access to Government in the Computer Age: An Examination of State Public Records Laws (ABA Press, 2007)

Edited by Martha Harrell Chumbler

### A Book Review by Elisabeth Foster

Does the public, under state public records law, have a right to access e-mails sent between public officials? When are public officials' e-mail or instant message exchanges considered meetings that must be open to the public? Is the state required to provide electronic access to electronically stored public records?

*Access to Government in the Computer Age: An Examination of State Public Records Laws (Access to Government)*, edited by Martha Harrell Chumbler, provides a broad overview of these and other electronic access issues and the varying answers given by legislatures and courts nationwide. Unfortunately, these vary from state to state, just as the definition of a public record varies from state to state. *Access to Government* provides a guide through the myriad issues raised when applying state public records laws – often adopted before electronic filing was begun – to requests for access to electronic records. Litigants, including government attorneys, will find this a useful resource when arguing the broader issues of electronic access to public records, as the book provides citations to case law on both sides of many issues.

After surveying the impact electronic public records has had on public records access, *Access to Government* provides readers with a background on the role of public records in litigation. As a guide to the issues raised by electronic information requests in litigation, a useful survey of Court decisions weighing in on preservation, maintenance and production of electronic records is provided. The book also provides a useful survey of the litigant's right of access under state public records laws as an alternative to traditional discovery. While these surveys are not finely tailored to the issue of access to electronic government records, they do assist the reader in grappling the more specialized electronic information access issues that follow.

Among these issues is the matter of privacy raised by the proliferation of personal information contained in public records. Prior to electronic recordkeeping, the contents of most public records were lost in "practical obscurity" since the records were only available to those with time and resources to visit a physical location to access tangible records. Chumbler describes the erosion of privacy when electronic databases of public records are available to the public. Data brokers, such as Choicepoint or KnowX, are able to compile databases from public

records that might not provide personal information individually, but in the aggregate can be used for personnel screening, criminal background checks and even antiterrorist activities. Most states make no distinction between a data broker's request for electronic access and that of a citizen, despite the impact on privacy rights caused by commercial uses of public records information.

Other privacy concerns raised by public records laws include the privacy interests of government employees in personal e-mails and the privacy and proprietary interests of private entities contracting with the government. *Access to Government* provides useful guidance to corporate counsel in helping their client protect proprietary information from public records disclosure when contracting with the government. The text concludes with a chapter surveying the attorney-client privilege and work product issues raised for government attorneys under public records laws.

*Access to Government* also provides state-by-state guidance in case law and statutory appendices as well as a CD-Rom with guides to several states' public records laws. However, while *Access to Government* cites New Hampshire law, the book omits relevant New Hampshire material. For instance, while the CD-Rom accompanying the text contains Attorney General memoranda from many states, the 2006 memorandum of New Hampshire's Attorney General are not available through this resource.<sup>1</sup> While *Access to Government* cites a 1973 New Hampshire Supreme Court case that held that a computer tape was a public record,<sup>2</sup> the book fails to mention *Hawkins v. Department of Health and Human Services*,<sup>3</sup> a 2001 case involving access to electronic databases maintained by the Department of Health and Human Services. In addition to more recent case law, the House recently passed a bill that may resolve many of the issues raised in *Access to Government* for New Hampshire practitioners and public officials.<sup>4</sup> However, *Access to Government* still serves as a useful research tool and starting point for New Hampshire practitioners addressing the specialized issues of electronic access to public records in an evolving area of public records laws.

(Footnotes omitted. See the website version of this article for the footnote text.)

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