



NEW YORK ASSOCIATION  
OF LOCAL GOVERNMENT RECORDS OFFICERS

# Network

## CHANGES AT THE NEW YORK STATE ARCHIVES

By Geof Huth, Director, Government Records Services, New York State Archives

Since the inception of the Local Government Records Management Improvement Fund, the New York State Archives has staffed each regional office with one professional position, a Regional Advisory Officer (RAO), and one clerical position, a Regional Office Assistant (ROA).

As many of you are already aware and as result of Governor Paterson's workforce reduction plan, the positions of the State Archives' Regional Office Assistants (ROAs) were targeted for elimination last year, and the ROAs' last day of work was December 31, 2010. The ROAs provided invaluable assistance to their respective RAOs and constituents, and they were often the first point of contact for you, our local government constituents. They were the friendly voice you heard when you called a regional office, and they could often answer your basic questions. If they could not answer your question right away, they would contact the RAO to make sure someone answered your question as soon as possible.

The loss of our ROAs has forced us to change how we will deliver services to local governments and to cut back on certain services we used to provide. We made these decisions with a heavy heart, but also with an eye towards ensuring that you continued to receive excellent service from the Ar-

chives. The following are some of the changes you will see in the next few months:

Since Regional Advisory Officers are often on the road, often there will be no one in the office to answer your phone call now. We encourage you to use email to contact your RAO, but if you need a question answered right away you can also call our new Regional Services Coordinator in Albany, Maggi Gonsalves, at 518-486-2858 or email her at [mgonsalv@mail.nysed.gov](mailto:mgonsalv@mail.nysed.gov). Maggi will be able to answer many of your basic administrative and records management questions, and she can contact RAOs or others to help respond to your questions when she doesn't have the answer handy.

As RAOs take on more work themselves, you may see fewer workshops offered in your region. Right now, we have nine regions but only seven RAOs, so three of our RAOs are covering more than one region. Lorraine Hill is covering her own region, Long Island (Region 10), as well as New York City (Region 1). Denis Meadows (North Country, Region 4) and Linda Bull (Lower Hudson, Region 9) are splitting responsibility for Region 3 (Albany and Catskills). With this and other increases in the RAOs' workloads, the quantity of services simply has to reduce a little, but we will al-

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# PRESIDENT'S MESSAGE

by NYALGRO PRESIDENT  
*Donna Mumbulo*

*Dear Records Management Professional:*

*The NYALGRO Board of Directors would like to welcome two new members to the board, Cynthia Hicks from Manhasset-Lakeville Water and Fire District and Steve Geurds who returns to the board from the Town of Colonie.*

*I would also like to take the time to thank our Board members who have departed: Dianne Tarity, Sue DiBenedetto and Jim Ranger for all of their hard work and dedication to the organization over the years. We will surely miss all three of them!*

*The Board has been hard at work to coordinate and plan another great educational program for our members and others who attend our annual school. This year has been a challenge with everyone dealing with budget cuts but we as a board have coordinated another school in at a fantastic venue, informational sessions for a price we feel is affordable.*

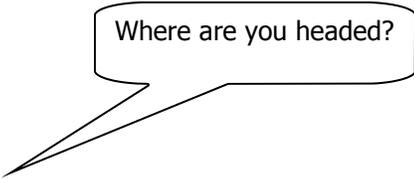
*The NYALGRO Board is excited to offer the **2011 NYALGRO School** being held at the **Turning Stone Convention Center in Verona, NY, June 5-8<sup>th</sup>, "Against all Odds: Facing Challenges in Records Management"**. The facility offers a perfect setting for our sessions, wonderful food and after hour's entertainment. We are pleased with being able to offer sessions covering, Paper vs Digital Court Records, Fire District Records, Social Media, Records Policies and Emails, Microfilm vs. Digital, Document Management Systems, Disaster Preparedness and FOIL, just to mention a few. We will be offering two Archive Certification Classes. We will be offering tours of the Oneida Indian Cultural Center and our Plenary Session – The Aftermath of September 11th Tragedy - Ten Years Later.*

*A reminder to members we will continue to give out some \$500 scholarships, so please don't miss the*

*opportunity to apply for a scholarship. I am also asking everyone to review their packets carefully because we have had to make some changes in how to register and set up your accommodations for the school. In the past we offered packages that included your hotel and food, now it is broke down in separate packages. Hotel reservations are separate from meal and registration.*

*We are hoping everyone will be able to attend and benefit from these exciting and informational sessions. As always if you have any questions or information you would like to share please fill free to contact me or any other board member.*

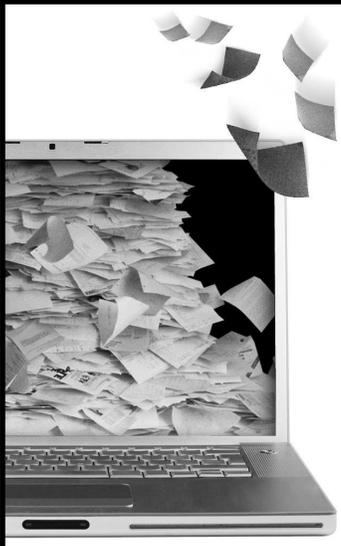
Donna M. Mumbulo



Where are you headed?



To page seven! I need a scholarship!



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ways be there to help you with your records management issues.

We will no longer be able to provide packets at our workshops. From now on, workshop handouts will be available on the Archives' website, and you can print the materials and bring them with you to the workshop. This solution ensures that RAOs don't spend their even more valuable time copying workshop packets. This also has the advantage of providing you will easy access to all of our workshop packets, so you can distribute copies to colleagues and even evaluate the workshops ahead of signing up for one. (We also strongly encourage you to register for workshops directly on our website. Go to <http://www.archives.nysed.gov> and then click on "workshops.")

Later this year we will introduce regularly scheduled webinars as a new training tool. RAOs will be

developing and leading these sessions, which will save you the time and effort of traveling to a workshop. Also these webinars will be no more than an hour in length, so they will be an efficient way for you to learn.

Almost all of the State Archives' publications are available for download on our website, or you can order paper copies through our website or by sending an email request to [arch-pubs@mail.nysed.gov](mailto:arch-pubs@mail.nysed.gov). Regional offices will no longer be able to send you publications as the RAOs are currently returning their stores of publications to the Archives.

Although we must rethink how we do our work and how we provide services, our number one goal is to still provide you with the best services we possibly can. If you have any questions about these changes, or ways that we can improve our services to you, please contact me or anyone else in the Archives with your ideas.

## ***Email: Food for Thought***

By Robert J. Freeman, *Executive Director, Committee on Open Government*

What had been yesterday's fantasy in terms of written communications has become today's reality. But along with the reality is a need to raise consciousness, a need to think of e-mail not merely as an instant means of leaving or responding to messages in a manner similar to phone calls and voice mail. Rather, we should think about e-mail for what it really is: an equivalent, in actuality and legally, to an old-fashioned letter or memo. In consideration of public rights of access, retention and disposal, and the functions and responsibilities of public employees, e-mail should be treated in most respects just like paper.

### **RETENTION AND DISPOSAL OF E-MAIL**

The "Local Government Records Law", Article 57-A of the Arts and Cultural Affairs Law, deals with the management, custody, retention and disposal of records by local governments. For purposes of those provisions, §57.17(4) of the Arts and Cultural Affairs Law defines "record" to mean:

"...any book, paper, map, photograph, or other information-recording device, regardless of physical form or characteristic, that is made, produced, executed, or received by any local government or officer thereof pursuant to law or in connection with the transaction of public business. Record as used herein shall not be deemed to include library materials, extra copies of documents created only for convenience of reference, and stocks of publications."

With respect to the retention and disposal of records, §57.25 of the Arts and Cultural Affairs Law states in relevant part that:

"1. It shall be the responsibility of every local officer to maintain records to adequately document the transaction of public business and the services and programs for which such officer is responsible; to retain and have custody of such records for so long as the records are needed for the conduct of the business of the office; to adequately protect such records...to dispose of records in accordance with legal requirements... 2. No local officer shall destroy, sell or otherwise dispose of any public record without the consent of the commissioner of education. The commissioner of education shall, after consultation with other state agencies and with local government officers, determine the minimum length of time that records need to be retained. Such commissioner is authorized to develop, adopt by regulation, issue and distribute to local governments retention and disposal schedules establishing minimum retention periods..."

In view of the foregoing, records cannot be destroyed without the consent of the Commissioner of Education, and local officials cannot destroy or dispose of records until the minimum period for the retention of the records has been reached. The provisions relating to the retention and disposal of records are carried out by a unit of the State Education Department, the State Archives and Records Administration (SARA). SARA has published *Managing Records in E-mail Systems*, which offers guidelines for developing policies and procedures for the effective management of records created and captured in e-mail systems.

### **HITTING THE "DELETE" KEY**

Many of us have received e-mail messages, read them and then deleted them, for we have treated those communications like phone messages. For reasons described earlier, e-mail clearly constitutes a record for the purposes of FOIL, and it may have to be preserved under a SARA retention schedule. It is also important to know that hitting the delete key does not mean that the record has been destroyed. Frequently the message that has been deleted can be found by hitting the "trash" key. In that situation, because the message still exists, it would be subject to FOIL or perhaps more importantly, to a subpoena or discovery in a lawsuit.

## E-MAIL AND THE OPEN MEETINGS LAW

There is nothing in the Open Meetings Law that would preclude members of a public body, such as a city council or village board of trustees, from conferring individually, by e-mail or telephone. However, a series of communications between individual members or telephone calls among the members which results in a collective decision, a meeting held by means of a telephone conference, or a vote taken by e-mail would be inconsistent with law. Voting and action by a public body may only occur at a meeting during which a quorum has physically convened.

The Open Meetings Law is intended to provide the public with the right to *observe* the performance of public officials in their deliberations. That intent cannot be realized if members of a public body conduct public business as a body or vote by e-mail or phone.

A recent decision indicates that action taken by means of series of telephone calls violated the Open Meetings Law, and the same conclusion would likely be reached with respect to action taken through a series of e-mail communications. In Cheevers v. Town of Union (Supreme Court, Broome County, September 3, 1998), the court stated that:

"There was no physical gathering, but four members of the five-member board discussed the issue in a series of telephone calls. As a result, a quorum of members of the Board were 'present' and determined to [take an action]. The failure to actually meet in person or have a telephone conference in order to avoid a 'meeting' circumvents the intent of the Open Meetings Law (see e.g., 1998 Advisory Opns Committee on Open Government 2877). This court finds that telephonic conferences among the individual members constituted a meeting in violation of the Open Meetings Law..."

If a majority of the members of a public body engage in "instant e-mail" or communicate in a chat room in which the communications are equivalent to a conversation, it is likely that a court would determine that communications of that nature would run afoul of the Open Meetings Law. In essence, the majority in that case would be conducting a meeting without the public's knowledge and without the ability of the public to "observe the performance of public officials" as required by the Open Meetings Law (see §100).

### THINK AND PLAN

E-mail can be a magical tool. An agency's well-designed and managed e-mail system can expedite business communications, reduce paperwork, increase productivity and diminish costs. Nevertheless, there should be an awareness of a variety of legal obligations, particularly those relating to FOIL, records management, and even the Open Meetings Law.



## CHERYL STEINBACH MEMORIAL SCHOLARSHIP APPLICATION 2011

This annual scholarship was established in honor of Cheryl Steinbach who was the Town Clerk and RMO for the Town of Chautauqua, and past Treasurer and NYALGRO board member. Cheryl's commitment and dedication to records management issues provided a leadership example for all public servants, not just those involved in records management. NYALGRO will award three (3) scholarships, not to exceed \$500.00 per award, toward the total cost of school registration and hotel accommodations.

Complete the application below and attach a brief explanation stating why you should be considered for a scholarship, what you hope to accomplish and/or learn, and how this will benefit you in the future.

- Applicant must be a member of NYALGRO and be in good standing by April 15, 2011
- Applicant's government/agency will not be assuming the cost of expenses at the annual NYALGRO school.
- Deadline for submissions is May 1, 2011.

A panel of NYALGRO board members will review all applications and make recommendations to the full Board for approval. Applicants awarded scholarships will be notified as soon as possible, and the scholarships will be presented at the annual school. Your attendance is required.

Name \_\_\_\_\_ Title \_\_\_\_\_  
Government/Agency \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
Phone # \_\_\_\_\_ e-mail address \_\_\_\_\_  
Years in Records Management \_\_\_\_\_  
Signature \_\_\_\_\_

### ***Department Head/Elected Official Authorization***

Expenses at the annual NYALGRO School by the above name individual will not be paid by this government/agency. I support this application.

\_\_\_\_\_  
Print Name Title  
\_\_\_\_\_  
Signature Date

## WHEELER B. MELIUS AWARD FOR EXCELLENCE IN RECORDS MANAGEMENT

**ATTENTION NYALGRO MEMBERS!** Be on the lookout for a worthy nominee for the Wheeler B. Melius award. This award is given to a NYALGRO member who demonstrates outstanding service to his/her local government and New York's records management community.

The award is named after a clerk who worked in the Albany County Clerk's office in the latter part of the nineteenth century. Wheeler B. Melius gained his notoriety when on February 10, 1880, he was the first to reach the burning Albany City Hall which housed an immense quantity of public archives and legal records. Melius, once on site, began to pass precious volumes of land records through a narrow window to volunteers outside. Single-handedly, Melius passed 700 volumes—nearly six tons of charred and often soaking, oversized books—out of the building.

If you would like to nominate a deserving NYALGRO member for this award, please contact:

Patricia C. DePasquale  
NYALGRO Scholarship Committee Chair  
1250 Union Road  
West Seneca, NY 14224  
Office (716) 558-3215 Fax (716) 558-2250  
pdepasqu@twsny.org

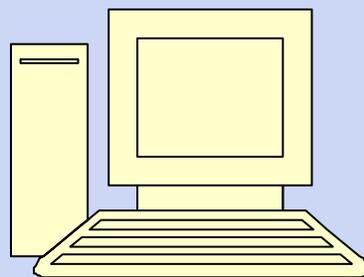
## ROBERT ARNOLD AWARD FOR DISTINGUISHED SERVICE

NYALGRO presents its Robert Arnold award for Distinguished Service to an individual who has demonstrated characteristics similar to that of a Regional Advisory Officer in lending expertise and assistance to other local officials in the establishment or furtherance of records management programs.

If you would like to nominate a deserving NYALGRO member for this award, please contact:

Patricia C. DePasquale  
NYALGRO Scholarship Committee Chair  
1250 Union Road  
West Seneca, NY 14224  
Office (716) 558-3215 Fax (716) 558-2250  
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