

MINUTES
RECORDS MANAGEMENT INTERAGENCY
COORDINATING COUNCIL MEETING
February 15, 2007

The Records Management Interagency Coordinating Council (RMICC) held a meeting on Thursday, February 15, 2007 at 2:00 p.m. The meeting was held in the Nell Hays Conference Room on the fourth floor of the James E. Rudder Building located at 1019 Brazos Street.

MEMBERS PRESENT:

Eva Dechene, Chair
Cathy Hartman, Vice-Chair/Chair Elect
Teresa Morales, Member
Dan Procter, Member
Brian Rawson, Member
Laura Taylor-Woods, Member

MEMBERS NOT PRESENT:

Richard Kautz, Member
Karen Rabon, Member (Represented by Lisa Villarreal)
Peggy D. Rudd, Member (Represented by Michael Heskett)

GUESTS:

Mary Ann Bridges, Texas Library and Archives Commission
Michael Heskett, Texas Library and Archives Commission
Chris LaPlante, Texas Library and Archives Commission
Tim Nolan, Texas State Library and Archives Commission
Martha Richardson, Department of Information Resources
Hadassah Schloss, Office of the Attorney General

A quorum being present, Chair Eva Dechene called the meeting to order at 2:02 p.m. and requested the Council Clerk to conduct a roll call.

1. INTRODUCTION OF MEMBERS

Chair Dechene welcomed RMICC members. The record of this meeting reflects that Mr. Michael Heskett and Ms. Lisa Villarreal attended this meeting as representatives for members Ms. Peggy Rudd (Texas State Library and Archives Commission) and Ms. Karen Rabon (Office of the Attorney General), respectively.

II. APPROVAL OF DECEMBER 7, 2005 MINUTES

It was noted that Ms. Nancy Edwards was incorrectly shown as attending the December 7, 2005 RMICC meeting as a representative of the Department of Public Safety. Ms. Edwards instead attended as a representative of the Texas Department of Health Services. As a result, minutes were approved, as amended, as set forth below.

MOTION made by Ms. Teresa Morales, seconded by Mr. Dan Procter, and carried unanimously to approve, as amended, the minutes for the meeting of the Records Management Interagency Coordinating Council held on December 7, 2005.

III. DISCUSSION OF H.B. 59 WITH COUNCIL MEMBERS AND OPEN TO THE PUBLIC

Mr. Tim Nolan of the Texas State Library and Archives Commission (TSLAC) addressed the RMICC regarding H.B. 59 by Representative Carl H. Isett as filed with the 80th Texas Legislature relating to the management, security, and protection of personal information and governmental records and providing for a criminal penalty. The bill has been referred to the Business and Industry Committee.

Mr. Nolan informed RMICC members of the bill's provision in §561.102(b) that the RMICC, as established under Texas Government Code, §441.2003, shall provide guidance and policy direction to state and local governmental entities in appropriately incorporating developments in electronic management of information into their information management systems in ways that protect personal privacy and the security of this state and promote appropriate public access to public information that is not excepted from required public disclosure.

Mr. Nolan noted similarities between H.B. 59 and S.B. 122 by Senator Juan Hinojosa, 79th Texas Legislature relating to the Identity Theft Enforcement and Protection Act. A review of S.B. 122 indicated that its enactment amended the Code of Criminal Procedure to require a written report by law enforcement and to redact personally identifiable information (PII) included therein. The bill also added Chapter 48 (Identity Theft Enforcement and Protection Act) to the Business and Commerce Code. Contained within Chapter 48 were various definitions (i.e., "personal identifying information", sensitive personal information", etc.). Furthermore, S.B. 122 prohibits persons from getting and using PII without consent; required businesses to implement reasonable procedures to protect unlawful use and to destroy customer records not retained by the businesses; and required businesses to disclose any breach of a security system as soon as possible.

Disclosure of breached security applies to owners as well as custodians of information. Delay in disclosure is permissible if required by a law enforcement agency. Notification procedures are set forth within S.B. 122, and consumer reporting agencies are to be notified if breached security affects more than 10,000 people. The bill also provides for civil penalties and for court orders that declare an individual a victim of identity theft.

During the current session, 15 bills have been filed thus far concerning confidentiality, open records, privacy, etc. Of particular interest to the RMICC was H.B. 1262 which would amend §48 of the Business Code by providing for private as well as public liability for each individual affected by breached security. The provision includes actual damages, a statutory fine, and the cost of credit report updates, all of which could prove costly. Mr. Nolan informed RMICC members that most states have some form of law requiring disclosure of security breaches, most of which are modeled on California law.

Other issues addressed to the RMICC regarding H.B. 59 were as follows:

- Definition of Personal Information. Texas has two or three similar but different definitions for PII as do most states. Therefore, Mr. Nolan stressed the importance of developing a correct definition. While considered somewhat detailed, Arizona was indicated as a good model to follow in structuring a more complete definition for PII.
- Encryption. Whether to incorporate encryption.
- Notification Timelines. Language used by most states regarding timeliness is similar to that used by Texas; namely, “as quickly as possible” or “without unreasonable delay.” Indicating the importance of a clearly defined timeline, Mr. Nolan noted that only two states (Florida and Ohio) have a defined timeline of 45 days. Also to be considered is determining how long to delay notification because of an ongoing investigation due to the fact that it could take some time to determine the scope of a breach in certain instances. Mr. Nolan added that Texas has a “law enforcement” clause stating that notification may be delayed until law enforcement determines that it will not compromise investigation.
- Determination of No-risk Security Breaches. Whether there is a need to notify if there is no risk.

In conclusion, Mr. Nolan recommended policy guidelines as delineated below.

1. Provide a comprehensive PII definition.
2. Include encrypted as well as non-encrypted data in the definition.
3. Eliminate subjective requirements for timeliness of notification.
4. Integrate security breach disclosure law requirements into a concise set of guidelines that employ the development of comprehensive security program guidelines that protect all information (not just PII); development of data classification standards that identify PII for internal policies; a risk assessment of all PII to ensure proper security controls are in place; and the development of policy for handling security breaches that compromise PII.

Ms. Mary Ann Bridges of TSLAC commented on the effects of H.B. 59 upon her agency in the event of its passage. Ms. Bridges stated that clarification on scheduling is required in fulfilling the H.B. 59 mandate in that TSLAC envisions each record series containing a private data element to be listed. If the retention period for the data element is less than

that of the record series, it also would be documented. Also noted was the uniqueness of “privacy” and “confidentiality.”

While the intent of H.B. 59 was applauded, input from the records management community and various governmental agencies would be required to determine method of implementation. Ms. Bridges noted that 129 of the 134 state agencies have approved schedules. Within local government, only 26,400 of the 900,827 local governmental entities have an adopted retention schedule. Therefore, many local governments will have to create a listing of records series for private data elements, the data elements, and retention periods.

In addressing the effects of H.B. 59 upon TSLAC staff training, Ms. Bridges stated that the addition of TSLAC analyst positions would require six months training for minimum service and three years training in all the current classes. To illustrate TSLAC involvement in training, Ms. Bridges informed RMICC members that the agency provided training to 2,126 state employees and 3,142 local governmental employees in FY-06, representing 12,906 training hours. This number is expected to double under H.B. 59 provisions. Ms. Bridges noted that, while TSLAC is developing online training classes and DVDs, many local governments function without electronic access thereby exacerbating training opportunities.

Ms. Bridges then referred to the Local Government Records Act (Act). Under the Act, officials are responsible for protecting the legal and financial rights of local government, the state, and the persons affected by the activities of the local government. At the state agency level, each agency head must protect the financial and legal rights of the state and any person affected by the activities of the state agency. As a result, Ms. Bridges stressed the importance of state agency responsibility in ensuring that vendors conducting business with the state also protect the privacy of the state’s clients to the same degree as state agencies.

Overall, Ms. Bridges recommended the inclusion of training on privacy within the Governor’s training program for executive management and increased responsibility in the management of information at both state agency and local governmental levels. Also recommended was a review of privacy laws by the Office of the Attorney General in light of the complex definition for confidentiality and the need for making state agencies responsible for clearly identifying all records with private information and documenting the manner in which such information is protected.

Ms. Bridges concluded her presentation by expressing concern as to the exponential ramifications from this bill, emphasizing the importance of the appropriate people providing effective input that would assist in making H.B. 59 a manageable, effective law.

Following Ms. Bridges’ presentation, Mr. Michael Heskett of TSLAC informed RMICC members that a virtually identical version of H.B. 59 was considered as a committee substitute to an existing bill late in the regular session of the 79th Texas Legislature. The

substitute was voted out of House committee and subsequently placed on the House calendar where it died. Pursuant to RMICC member inquiry, Mr. Heskett is to research the fiscal note prepared on the substitute.

Mr. Heskett concurred with Ms. Bridges' earlier expressed concern regarding the ramifications of H.B. 59 upon records management principles. In noting the addition of Chapter 142, Confidentiality of Social Security Numbers, in Section 2 of the bill to Title 6, Civil Practices and Remedies Code, Mr. Heskett noted that the question arises on what constitutes "public records" as set forth in §142.001 of that chapter.

Ms. Hadassah Schloss, of the Office of the Attorney General and representing the Open Records Steering Committee, noted that Chapter 552 addresses "public information" but not "public records" as a result of a statutory change in 1995. She noted that there are currently 580 Texas statutes relating to privacy. An additional concern expressed by Ms. Schloss was the cost that will be involved in the implementation of H.B. 59, which invariably will require additional funding for governmental entities.

Ms. Teresa Morales, RMICC member from the Comptroller of Public Accounts, inquired on whether H.B. 59 had a companion bill and whether any other bills possibly affecting the RMICC were under consideration in the current session. The indication was that there is no companion bill and that there are no other bills directly affecting the RMICC.

Also of interest to the RMICC was whether there are bills in the current session that affect records retention schedules as a whole for state agencies or local governments. It appears that most of the filed bills primarily affect local government.

Upon the conclusion of discussion on H.B. 59, RMICC members discussed as other business the potential effects of the XML standard stipulated in S.B. 466 by Senator Juan Hinojosa, relating to an open document format for electronic state documents. Mr. Brian Rawson, RMICC member from the Department of Information Resources (DIR), informed the RMICC that his agency is in the process of developing a bill analysis. Legislation is to be monitored due to RMICC concern on the bill's effective date of December 2007.

IV. REQUEST NOMINATIONS FOR VACANT AUXILIARY VOTING MEMBER POSITION

Chair Dechene requested nominations for the auxiliary member position currently vacant on the RMICC. In the absence thereof, Mr. Rawson of DIR suggested placing a call for nominations on the DIR website. The RMICC concurred with Mr. Rawson's recommendation.

V. **PUBLIC COMMENT**

No public comment was presented at this meeting. There being no further business,
Chair Dechene adjourned the meeting at 2:55 p.m.

 11/5/07

CATHY HARTMAN, VICE-CHAIR
Records Management Interagency Coordination Council