



August 1, 2018

Ken Levine, Director
Sunset Advisory Commission
P.O. Box 13066
Austin, TX 78711-3066

Dear Mr. Levine:

Thank you and the Sunset Commission for the opportunity to respond to the Sunset Advisory Commission Staff Report on the Texas State Library and Archives Commission. Our mission is to “provide Texans with the information they need to be informed, productive citizens.” The agency accomplishes that mission through four statutorily mandated programs: preserving the archival record of Texas; enhancing the service capacity of Texas public, academic, and school libraries; assisting public agencies in the maintenance of their state and local records; and meeting the reading needs of Texans with disabilities through the Talking Book Program.

We live in an information-based economy. Educational, economic, and civic success depends largely on citizens’ access to the technology, informational resources, and educational services and programs that foster literacy, learning, independence, and innovation. TSLAC provides information services to broad array of Texas stakeholders. Our client groups include the general public, libraries, state and local government, educational institutions, and persons with disabilities.

The agency provides Texans with access to millions of digital educational materials through our TexShare and TexQuest programs. The Texas Digital Archive offers the public direct access to electronic archival collections. We support the technology infrastructure in communities, provide resources for workforce and small business development, assist people with reading disabilities, and foster student engagement in STEM fields. We provide ongoing access to the rich history of Texas through the acquisition and preservation of Texas historical records and promote the use of primary materials by working with educators, developing online exhibits, and working with the state’s network of research and historical depositories.

The agency partners with other state agencies and local governments to promulgate records management practices that support open government. The critical work of creating, reviewing, and updating retention schedules forms the basis of government accountability. We pride ourselves on operating in an ethical, conscientious way and believe that our clients would concur with the Sunset Commission staff characterization that our “professional and dedicated” staff strive to “zealously” perform our mission.

We want to begin this response by thanking the Sunset Advisory Commission staff for their professional and open approach to the review process. Their interactions and questions were always thoughtful and collaborative. While we did not always fully agree on some conclusions, staff listened to our position and took our perspective into consideration in the development of their final recommendations.

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Issue 1

Change in Statute 1.1: The Staff Report appropriately cites the importance of a formal plan for managing the backlog of materials in the State Archives. We agree that updating and expanding current efforts and formalizing those efforts into a strategic plan is important. The recommendation is consistent with agency's work to increase access to archival resources, and it offers a means to demonstrate the pressing demands of managing both new accessions of materials (including the vast recent inclusion of electronic archives) and the existing body of backlog materials. We are positioned to undertake this planning work immediately.

The Staff Report identifies a lack of a strategic approach. While we concur that the agency's plans should be reviewed holistically and needs updating, any characterization that the agency has not been active, thoughtful, and dedicated in addressing the backlog is inaccurate. The agency has repeatedly assessed staffing levels and requested additional funding for archivists to deal with the backlog and process incoming records.

Since 2009, the agency has requested additional archivists and other archives-related resources to ease the backlog and increase public access to archival holdings. While a limited number of archival staff have been added, staffing levels have not kept pace with the growing volume of records. Nonetheless, staff continued working on both new acquisitions as well as long-standing needs.

In 2015 TSLAC received long-requested support to begin an electronic archives program, or the Texas Digital Archives (TDA). Archivists began working on the critical ingest of electronic records, including the inaugural accession of Governor Perry records, which included large amounts of both paper and electronic records. Prior to the creation of the TDA, Texas was among only a handful of states without the capacity to properly preserve state government electronic archives. With the support of the legislature for this project, the agency has become a nationally recognized leader in establishing access to digital archives. With millions of electronic records (over 40 terabytes) now available to the public, the agency's commitment to preservation and public access has branched out in critical new ways.

To make the case for the TDA and see it to fruition, the agency evaluated and shaped a plan to identify and meet research and agency priorities. These priorities included work on the archival backlog, which was formally assessed in 2012 to ascertain the amount, nature, and contents of the backlog. Staff developed a working list of processing priorities based on the professional standards of use, research areas, and preservation issues. Staff also developed a general timeframe for completing processing of the records series included in the count.

While it is true that final target dates were not established, staff worked on specific assigned areas of the backlog and processed over 7,000 cubic feet of paper records (including over 2,000 cubic feet of backlog records) since the 2012 accession. Again, it is critical to note that the agency's small archival staff must constantly balance the workload of dealing with the backlog with the demands of processing incoming materials that must be addressed quickly, such as the Perry records and other series

that are of high public interest and will be subject to many Public Information Act requests. Priorities have been kept intentionally fluid to allow for shifts as more high-demand materials may arrive unexpectedly.

Archival processing is a labor-intensive and complex process. The agency cannot acquire records “on demand” and must accept records as they are transferred. The agency must make decisions to prioritize new accessions at certain times. These conditions all point to a dynamic situation, where the backlog is not a static body of records, and a significant portion (about 30%) of backlog records have had some degree of processing.

The agency is in alignment with the Staff Report recommendation to develop an updated strategic plan for eliminating the backlog and apprising stakeholders of the needed resources to accomplish this critical task.

Change in Statute 1.2: The Staff Report accurately identifies the need for TSLAC to have clear statutory authority to distinguish between different types of information requests. Specifically, the need to separate standard research requests from written Public Information Act requests would allow the agency to better manage and respond to both requests. We agree with this recommendation.

Management Action 1.3: The agency is in full agreement with the need to adopt a fee schedule for PIA requests and plans are already underway to develop a fee schedule for commission approval in FY 2019.

Issue 2

Change in Statute 2.1: The agency concurs with the Staff Report recommendation to clarify the process for waiving confidentiality on legislative correspondence when legislators leave office. Statute specifying a process for waiving confidentiality offers legislative offices and citizens with a defined and transparent means to establish to what degree (if any) public access to certain legislative records will be provided.

As the Staff Report notes, state law currently sets a default of confidentiality for certain legislative correspondence. State law further allows members of the Legislature to waive confidentiality if they so choose. These laws allow the legislator to make these records public if “the official determines that the disclosure does not constitute an unwarranted invasion of personal privacy of the communicator or another person.” (GC 306.004 (3)). Provision of an option to open such records (with any restrictions the official may seek to impose) supports the overall affirmation of open government and public accountability fundamental to the State’s Constitution. Statute assigns the decision to open such records to the “official.”

TSLAC is charged in statute to “take custody of, preserve, and make available for public use state records and other historical resources that document the history and culture of the Texas as a province, colony, republic, or state.” TSLAC holds this legislative trust in extreme care and works diligently with legislative offices and the House and Senate public information officers and records managers to apprise legislative offices of all

records and archival related responsibilities, including planning for and ultimately transferring archival legislative records once the official leaves office.

Statute, however, does not explicitly specify a process by which officials can open legislative correspondence. To address this matter, TSLAC created the waiver form noted in the report. The form was approved by the agency's administrative attorney with the Office of the Attorney General in 2002. The form asks legislators to specify if the records are to be either open or closed (and if closed, for how long). If the form is not completed before the legislator leaves office, the records are closed, as is the default condition set by statute. We believe legislative offices and the citizens of Texas are best served by increased clarity in the process.

We note that the report recommendation focuses on the process for conveying and tracking the waiving of closure by legislative offices through the waiver form. Underlying this matter is a question as to the degree of guidance and expectation state government will place on open access. Any proposed revision to statute to specify a process for waiving confidentiality offers an opportunity to ensure the balance of legislative and public interests.

The Staff Report describes the agency's tracking system as informal and, although no instance of the improper release of any information was found, notes that such a system creates risk. We emphasize that the agency's protocol adheres to legislative officials' confidentiality decisions. However, the agency understands the points raised by the Staff Report and will begin reviewing and updating the process and system for documenting the status of legislative correspondence records. We also look forward to working with representatives of the House, Senate, and Legislative Council to systematize more fully the transfer of archival legislative records for long-term preservation and access.

Change in Statute 2.2: Statute currently allows legislators the option to place their records in alternate facilities approved by TSLAC. Regional Historical Resource Depositories are a first option and TSLAC reserves the right to allow legislative records to be transferred to other public institutions pending an evaluation by staff as to the suitability of that institution to properly manage the records. However, it is the assumption of TSLAC that the great majority of state legislator records will come to the State Archives to form the permanent and central record of state government in Texas. Given the statutory mechanism already in place, we believe this issue can be addressed through a management recommendation. Following the guidance of the Sunset Staff Report, we will revisit our procedures regarding the transfer of state legislator records with the intention of removing any inconsistency or ambiguity from the process.

Change in Statute 2.3: We agree with the Staff Report recommendation to discontinue the unnecessary requirement for TSLAC to approve local government records retention schedules. This issue was raised by TSLAC staff, and we appreciate the Sunset staff's thorough review.

Change in Statute 2.4: We agree with the Staff Report recommendation to authorize TSLAC to transfer custody of certain local records to local institutions, as appropriate

and mutually agreed on. This issue was another raised by the agency, and we appreciate the consideration given the important and practical need to allow for greater local autonomy of local records when advisable.

Management Action 2.5: We concur with recommendation to form a working group of House, Senate, and Legislative Council personnel to examine legislative records issues.

Management Action 2.6: We concur with the Staff Report recommendation to begin the process to update the minimum state records retention schedule. As TSLAC staff noted to Sunset staff, the review of the state records retention schedule was the next significant review process planned for the agency's slate of retention schedules. The process does require the broad involvement of state agency representatives and covers the full range of state functions and documentation, so the revision process will require some time. The agency expects to begin this process well within the September 1, 2020 start date identified in the report.

We note that our State and Local Records Division is diligent in reaching out to local and state government representatives. From hosting annual meetings, soliciting feedback formally and informally, to conducting customer surveys and developing workgroups for specific retention schedule topics, the SLR staff provides several meaningful strategies for input and collaboration. The Staff Report notes the need for greater engagement with stakeholders. We underscore that productive and consistent strategies are already used, but we are committed to building additional channels for communication to further our ability to serve our local and state agency customers.

Issue 3

Management Action 3.1: The Staff Report directs TSLAC to update our process to prohibit a reviewer with an application to score any grants in that category. While the Staff Report noted no issue with any of the grants awarded, we agree with the recommendation. We want to emphasize that our internal auditor reviews our grants program each year and has never raised this as a concern. The Institute of Museum and Library Services also monitors this process and no concerns have ever been raised. We also note that it is our Commission which makes the final decision on grant awards.

Management Action 3.2: We partially concur with the recommendation to openly solicit grant reviewers. The current process reflects a two-fold strategy that helps achieve important equity. First, we seek reviewers who represent a balance of geography, library size, and library type. Second, we seek libraries that have never received a competitive grant. Urging participation by libraries that have not had a grant is a way of introducing and demystifying the grants process so that they will be more likely to apply. We believe that we can update our process to solicit new reviewers while also ensuring geographical and size-of-library representation.

Management Action 3.3: Upon completion of the Sunset process, we will review our grant application process to establish means to ensure a wider distribution of underrepresented libraries.

Issue 4

Change in Statue 4.1: We agree there is a continuing need for the Texas State Library and Archives Commission and thank the Sunset staff for this recommendation. The report finds that Texas benefits from supporting library services and preserving and providing access to historic document and government records, and “no substantial benefits” arise from changing the current structure of the agency. We agree.

Change in Statue 4.2: TSLAC provides each new commissioner with a manual, an orientation, and training (including rule-making authority and limits). We agree with the recommendation.

Change in Statue 4.3: We agree that authorization for the commission to establish advisory committees in rule would be beneficial.

Appendix A

As the Staff Report explains, TSLAC’s significant contracts for online databases do not have available HUB vendors which bears directly on the overall HUB performance and specifically in category of other services. TSLAC’s database contracts account for almost 60% of the agency’s overall budget. TSLAC’s performance in professional services exceeded state goals in FY 15, 16, and 17 and exceeded goals in FY 16 and 17 for commodities. In other categories, the agency had minimal purchasing in heavy construction, special trade and none in building construction.

Appendix B

As the report notes overall, the agency meets civilian workforce averages for females, but lags in some areas for Hispanic and African-American employment. The information science profession is underrepresented, with a 2017 assessment of professional affiliation showing 4.4% African American participation and 4.7% Hispanic participation. TSLAC is committed to ensuring a diverse and successful workforce. We work with professional associations and graduate programs to encourage individuals from diverse backgrounds to enter the profession. The agency has established volunteer opportunities and project programs for graduate students. We are fully committed to this goal and will continue to find and implement new strategies toward this end.

We very much appreciate the opportunity to respond to recommendations made in the Staff Report. We again thank the hardworking Sunset staff, and we look forward to appearing before the Sunset Commission to answer any questions members may have.

Sincerely,



Mark Smith
Director and Librarian



MEMORANDUM

TO: Senator Brian Birdwell, Chair
Representative Chris Paddie, Vice Chair
Sunset Advisory Commission

FROM: Mark Smith, Director *MS*
Texas State Library and Archives Commission

DATE: October 22, 2018

SUBJECT: Follow-Up related to Sunset Review, Texas State Library and Archives Commission

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Gloria Meraz

Thank you for the kind reception for our agency at the August 29 hearing of the Sunset Advisory Commission. It was our honor and pleasure to be able to present information about our agency and the services provided to the state by our dedicated Commission and staff.

I write to respond to a few questions raised in our hearing.

Grants Administration – Chairman Birdwell asked several questions about TSLAC's competitive grants program. Attached to this memo are two maps demonstrating the distribution of grants from 2008 to 2019. Also attached to this memo is a factsheet with detailed information about the grants program and the number and distribution of grant recipients. These supplemental materials demonstrate the statewide distribution of TSLAC competitive grants to both rural and urban areas and to cities and towns of varying sizes. Since 2008, 603 grants have been awarded to 197 public, academic, and K-12 libraries and library-serving organizations.

To address the points raised in Issue 3 of the Sunset Commission Report, TSLAC staff intend to propose to the Commission several new procedures, including more grant training and more extensive notification of grant opportunities. Staff also intend to review current grant categories and propose categories and application and review procedures that will make the process more accessible to libraries statewide. We will also act to implement the Sunset staff recommendation that a library cannot be considered for a grant award in a category where an employee of that library is a reviewer.

Transfer of Legislator Records – A number of questions were raised in the hearing regarding the transfer and disposition of legislator records. We have processes in place to ensure that a legislator's records end in a location that can adequately

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maintain both the hard-copy and electronic files. In response to the Chairman's question, we take various steps to work with legislative office staff to ensure that they are aware of best practices for maintaining legislative records. Most notably, much of this information is included in our publication, *Begin with the End in Mind: A Records Management and Archives Manual for Texas Legislators*, which is made available to all offices and which is covered in training TSLAC offers at the beginning of each legislative session. We include a copy of the manual with this material.

To reiterate information shared with members in the hearing, we prefer for legislator records to come to the State Archives to ensure their proper management and context in relation to other archives of state government. If a legislator requests that their records be transferred to an alternate location, we prefer the option of using one of the 23 Regional Historical Records Depositories (RHRD) across the state. If a legislator prefers an alternate location that is not an RHRD, we will work with that institution to make sure that they are able to properly maintain the records.

Records Storage Capacity – We appreciate the question regarding TSLAC's acute records and archives storage space needs. As noted during the hearing, a recent change in state contracting (among other factors) has created a dramatic increase in records storage needs among state agencies. The attached Records Storage FAQ provides additional details, but in summary, many state agencies must find new storage for upwards of 240,000 cubic feet of state records as soon as feasibly possible. TSLAC's records storage facility on Shoal Creek is already over 90 percent full.

Without immediate action, state agencies will either have to procure space at a much higher cost to the state or house records in expensive state office facilities. Additionally, state archival storage space (located primarily at the Lorenzo de Zavala Building on the Capitol grounds) is at capacity as well. TSLAC is proposing both a short-term solution to allow agencies to plan accordingly and a long-term solution to address the situation for the next 20 – 25 years.

The proposal is a two-pronged approach to increase storage capacity for both state and archival records. TSLAC is requesting legislative authority and funding (working through the Texas Public Finance Authority) to equip 20,000 square feet at a state warehouse located in Southeast Austin to provide immediate storage capacity while the agency builds a 60,000 square foot expansion of its Records Storage Center at Shoal Creek. Combined, these facilities will provide the needed additional storage capacity for state records as well as archival materials.

Accreditation of Texas Public Libraries – We appreciate the questions regarding the accreditation of Texas public libraries to be eligible for competitive grants and other statewide resources. To reiterate our testimony, there is no federal requirement that conditions federal funding on our adoption of criteria for local library service. The Minimum Criteria for Public Library Accreditation have been a mainstay of Texas public library service for over 40 years and are overwhelmingly supported by the vast majority of public libraries. The accreditation process and criteria are approved by the Commission and recommended by peer librarians from libraries of all sizes and parts of the state. Currently 94 percent of

all public libraries in Texas (519) are able to meet—and in most cases greatly exceed—these minimum criteria.

In response to the Chairman's questions, and as promised in the hearing, we will discuss with our Commission in November a process to review the rules to ensure that they not represent an undue burden and continue to promote the state's interest in public accountability.

Authority to Advertise Services – In response to the question from Sen. Buckingham regarding the Talking Book Program, we reiterate that Texans with visual impairments would greatly benefit from being aware of and participating in TSLAC's Talking Book Program. The program now currently reaches only about 4-5 percent of eligible Texans. The ability to advertise would be a welcome strategy to encourage greater participation in this life-changing service.

Many thanks to the members of the Sunset Commission and the Sunset Commission staff for the careful review and guidance provided to the Texas State Library and Archives Commission. We stand by ready to answer any further questions of the Commission, and to serving the information needs of Texans for another 12 years.

Attachments

Questions and Answers Regarding TSLAC Competitive Grants 2008-2019

Competitive Grants 2008-2019 Statewide Map and Distribution by Grant Type

TSLAC Records and Archives Storage Solutions for State Agencies

Begin with the End in Mind: A Records Management and Archives Manual for Texas Legislators