



Volume 1, Number 1

NEWS AND IDEAS FOR MATERIALS AND RECORDS MANAGEMENT

HOW *LEGALLY SOUND* IS YOUR ORGANIZATION'S RECORDS RETENTION AND DESTRUCTION POLICY?

Organizations everywhere felt the tremor that rocked the nation when word of the Enron/Arthur Andersen scandal hit the news. The spotlight on indictment charges sustained in connection with destruction of documents and computer files in the case has prompted many organizations to re-examine their own records retention and destruction policies.

Traditionally, records retention programs served the purpose of freeing up valuable space and speeding the retrieval and handling of information. However, in recent years, due to the increased volume of litigation in our court systems, retention programs now encompass standards for records destruction as well. These standards serve the purpose of protecting the organization by making sure documents get destroyed according to policy and before someone on the outside can use that information against the company. Policies need to be legally sound, maintained and enforced throughout all levels of the organization. To ensure that it is legally sound, proper procedures must be followed in developing and operating the program.

When developing a retention and destruction policy, records managers need to work closely with their legal advisers to ensure that the policies in development are legally sound.

Donald S. Skupsky, JD, CRM, FAI, MIT, a legal authority on records retention, outlines the following factors that must be included in an overall records retention and disposition program so that it is legally sufficient:

1. An organization must have systematically and thoroughly developed a records retention program and then have enacted its policies over a period of time.

2. The records retention schedules must be comprehensive and cover all records, including reproductions; schedules that provide for only the original or "record" copy in paper form are inadequate to fully protect an organization.

3. The records retention schedule must also include provisions for records maintained on other media, especially microfilm and data processing media.

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WELCOME!

Welcome to the first edition of *For The Record*, a free publication offered to SYSTEC subscribers! We promise each issue will be packed with valuable information ranging from the latest topics in records management today, to new technologies and product offerings, case studies and much more. It is our goal to make *For The Record* a primary source of contemporary materials and records management information.

For The Record will be distributed via e-mail on a bimonthly basis. Your feedback is important and welcomed! Please e-mail all correspondence to info@systecgroup.com.



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4. Reviews and written approvals must be obtained from the appropriate managers, the CEO and legal counsel to ensure that the program was systematically developed in the ordinary course of business and not due to anticipated litigation or a government investigation.

5. Records should be systematically destroyed as specified by the records retention program and not by haphazard or selective methods, which could indicate that the records

retention program has not been properly implemented.

6. Program controls and management must be provided within the organization, including one manager responsible for the records retention

program who ensures that it is up-to-date and that records destruction proceeds in an orderly manner.

7. Procedures must be provided for the suspension of records destruction in case of foreseeable, pending, or actual litigation or government investigation.

8. Documentation relating to the development and implementation of the records retention program, including records retention schedules, procedures, changes in procedures, approvals, legal research and listings of records destroyed must be maintained.

Allocating all of the necessary resources to analyze, establish and maintain legally sufficient policies concerning records management and destruction is time and money well spent. The repercussions of not doing so can be far too great.

Contact your local SYSTEC representative for assistance with your records retention and destruction policy, and look for more information in our next newsletter!

Visit our website at www.systecgroup.com for complete details on developing a legally sound records retention and destruction policy.

SYSTEC SOLUTIONS

SYSTEC provides a full range of records retention and destruction services to meet any client need. Our network of professionals can assist you in every aspect of your policy; from recommending records retention guidelines to going to the full extent of meeting with your legal staff to develop a legally sound policy.

If your company has a records retention and destruction policy in place that's laborious to maintain, SYSTEC can help by recommending label systems that are more conducive for purging practices.

If your firm loses valuable staff time when purging files, the SYSTEC team can solve any destruction need quickly, efficiently and with little inconvenience. Our team can search, identify and destroy your firm's documents, based on the retention and destruction policy, either onsite or offsite. Our highly skilled team will free up your staff's time by handling the entire destruction process without disturbing ongoing work.

SYSTEC knows what it takes to create and maintain a sound records retention and destruction plan and can assist you in any way.

RECORDS RETENTION

The legal angle

Organizations not only need to have sound policies in place concerning records retention and destruction that meet legal requirements, but need to maintain and enforce them throughout all levels of the organization.

In addition to having a sound policy, it is absolutely critical that an organization establish controls to cease the destruction of all documents when litigation is foreseeable, pending, or in progress.

There are a number of consequences organizations may face for failure to meet such legal requirements.



In cases involving litigation, an organization may have to produce evidence to (1) prove the existence of a records retention policy, and (2) prove that the records were destroyed under guidelines of its program in the ordinary course of business and not without regard for any pending litigation. Failure to do so can result in severe ramifications.

LEGAL CONSEQUENCES

What can happen for failure to meet legal records retention requirements

Loss of rights: When records are unavailable because of improper destruction or even failure to maintain them in the first place, an organization may lose certain rights, such as receiving favorable treatment in the absence of records, for which it otherwise may have.

Loss of time and money: Records provide a credible means to prove a case in litigation and, without them, an organization may need to introduce witnesses to testify instead, which is often more time consuming, expensive, and sometimes less credible than records.

Obstruction of justice: Individuals or organizations responsible for the deliberate destruction of documents when litigation or government investigation is foreseeable, pending, or in progress may be held liable for obstructing justice, and, therefore, should stop destruction of records at the slightest hint of litigation or government investigation.

Contempt of court: When orders have been given to produce documents and a party defies the order by deliberately destroying the documents that were requested, an individual or organization may be held in contempt of court.

Adverse inference in litigation: In litigation between two parties, certain presumptions may come to light when relevant records have been destroyed, giving rise to the adverse inference or unfavorable suggestion that there was wrongdoing.

¹ See Procedural Standards for Developing and Operating a Records Retention and Disposition Program, Retention Subcommittee, Standards Committee, Association of Records Managers and Administrators; the report provides guidelines for records managers on how to develop with guidelines for developing a records retention program.

Source: Donald S. Skupsky, JD, CRM, FAI, MIT

Timeline of Events Surrounding the Anderson Document Destruction

October 12, 2001

Ms. Nancy Temple, an in-house Andersen lawyer, emails Andersen's document retention and destruction policy to Mike Odom, the risk management partner responsible for the Houston office, to "remind" the Enron engagement team of the policy and that it would be "helpful" to ensure compliance.

October 19, 2001

Ms. Temple sends the Andersen document retention and destruction policy to two Andersen partners in the Chicago office professional standards group, who have been consulting on the Enron engagement.

October 22, 2001

Enron publicly announces SEC informal inquiry.

October 23, 2001

According to Andersen, David Duncan, an Andersen partner in charge of the Enron auditing account, calls an urgent meeting of Enron audit managers to instruct them to ensure compliance with the firm's document retention and destruction policy.

October 31, 2001

Enron announces the SEC inquiry has been upgraded to a formal investigation.

November 8, 2001

Andersen receives a subpoena from the SEC for documents relating to Enron.

November 9, 2001

Ms. Temple sends Mr. Duncan a voicemail directing him to preserve all Enron-related documents due to receipt of SEC subpoena. Mr. Duncan's assistant sends an email to others on the Enron engagement stating, "no more shredding."

November 10, 2001

Ms. Temple sends an email regarding document preservation to individuals on the Enron engagement, including Mr. Duncan.

December 2, 2001

Enron files for Bankruptcy, the largest filing in U.S. history

March 7, 2002

Arthur Andersen indicted by a federal grand jury on a single count of obstructing justice. March 14, 2002 the indictment was unsealed.

June 14, 2002

Arthur Andersen found guilty of obstruction of justice by a Houston jury.

June 15, 2002

In a statement, Andersen acknowledged that the jury's guilty verdict will effectively end the firm's audit practice. Andersen is planning to appeal the conviction.

Note: The memos described above have been posted on Arthur Andersen's web site. Excerpts taken from Find Law (www.findlaw.com)

Sidenote Spotlight

Will they become the "Big Four"?

What is the fate of Arthur Andersen? Will they survive following their current legal battle, remaining a Big Five firm?

March 7, 2002 appears to have been the beginning of the end for Andersen. Not only was their image being tarnished with a stream of revelations including questionable accounting methods, extensive off-the-book partnerships and the concealing of billions of dollars in debt, they were now facing one heck of a legal tangle: a federal indictment of obstructing justice. When an organization receives notice or indication of possible pending or actual litigation or government investigation, the destruction of records must cease immediately.

The indictment alleged that employees were instructed to immediately destroy documents related to Enron by Andersen partners and others at urgent, mandatory meetings. "Dozens of large trunks were brought in to haul documents from Andersen's office and Enron's building to Andersen's firm office in Houston in order to destroy literally tons of documents," Deputy Attorney General Larry Thompson told a news conference. "Employees were told to work overtime if necessary to finish the job of destroying documents." Thompson said. According to Thompson, records were destroyed in late October and early November, at a time when Andersen knew they were relevant to federal inquiries.

When records have been destroyed under an existing records retention and destruction program, an organization may have to produce evidence in court to prove two things: the existence of the program and that the records destroyed were done under the program in the ordinary course of business. Andersen had a records retention policy in place, in addition to policies on what to do when there is notification of threatened or actual litigation, but their policies weren't adhered to through-

out all levels of the organization. For whatever reason, some employees violated those policies by destroying documents when litigation was foreseeable, if not already pending.

June 14, 2002 Andersen received another business blow with a jury finding them guilty on obstruction of justice. Assistant U.S. Attorney Andrew Weissman, a member of the prosecuting team, said despite all the complicated testimony and evidence the case was about a simple principle, "When you expect the police, don't destroy evidence, and for Arthur Andersen that police was the SEC and they knew they were coming and they destroyed evidence in advance of their getting there."

The maximum penalty for the indictment charges against Andersen is a \$500,000 fine and five years probation, in addition to losing its right to audit public companies. Sentencing is scheduled for October 11, 2002, however in a statement released June 15, Andersen acknowledged that the jury's guilty verdict effectively ended the firm's audit practice.

Whether Andersen can weather the storm and remain in business remains to be seen. With a tarnished reputation, numerous customer defections and the end of its audit practice, can they maintain enough work in other areas, such as tax and consulting, to remain in business? The entire debacle, however, does serve as a reminder to organizations everywhere about the importance of establishing and maintaining legally sound records retention and destruction policies and procedures ...throughout all levels of the organization. As we are seeing with Andersen, the impact of not doing so can be bring on a slew of legal battles let alone the fight for business survival.

It'll be interesting to see how it all ends...will there be "The Big Four?"



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Duke University Medical Center completes massive file merge and purge

"The project was done ahead of schedule and cost significantly less than if we did it with our own people."

- Patsy Ray, Filing Manager in Health Information Management

At Duke Medical Center, a teaching hospital at Duke University in Durham, North Carolina, there was an escalating space crisis within the on-site active medical record area, compounded by the hospital's need to make room for more clinical space. Hospital administrators made the decision to move active patient records to its on-campus warehouse, which houses thousands of overflow records, and merge and purge them as required.

With a zero destruction policy, the hospital records administrators have managed and maintained hundreds-of-thousands of records since the 1940's when the hospital opened and knew that solving a medical record problem was no small task.

solution

Moved and interfiled 184,000 records,
purged 285,000 records.



The local SYSTEC records management consultant guided Duke in their decision process and helped them develop a plan for solving this mounting task. Having all of the records in one location was sure to speed up the process of locating and searching records, but it was necessary to efficiently store the more than 1.2 million records all at one site in a way that would be easy to locate and file records.

The consultant recommended splitting the files into active and inactive, putting all the inactive into a massive high-density mobile system inside the warehouse and keeping the active on stationary shelving. Once the plan was developed, the SYSTEC team provided all of the professional services needed to complete the record move.

"It would have been impossible for us to do it with our current staff," said Patsy Ray, Manager of Health Information Management. "After we did a time study, we determined that we would have had to do the file move on overtime and it would have been very costly."

The SYSTEC team first went through all of the overflow files and purged anything that was more than 10-years old, approximately 250-thousand files, and then moved them into a massive high-density mobile system inside the warehouse. Next, they then completed a terminal-digit equalization throughout the remaining active files in the warehouse to make room the relocated files.

They then moved more than 160-thousand records from the hospital on shrink-wrapped gondolas to the warehouse then interfiled them into the active files.

"The services were provided in a professional, accurate manner with good communication throughout the project," said Ray. "The project was done ahead of schedule and cost significantly less than if we did it with our own people."



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