



DEVELOPING A RECORDS MANAGEMENT POLICY: WHY YOU WANT TO AND HOW

Ellen Freedman, CLM
© 2005 Freedman Consulting, Inc.

In a previous article, "*Records Retention: What Do You Do With Old Client Files?*" I focused specifically on client files and their contents. In this article I step back to take a broader focus on the entirety of the practice, and development of a records management policy.

It has been said that science and technology information increases 13% each year and doubles every 5.5 years. My experience with law firms and their records has been that this may well be a conservative figure. Regardless, our information explosion leaves us to deal with practical issues of determining what records to keep, how to organize and store them once we've decided to keep them, and how to avoid the trouble we can get into if we make the wrong decisions.

A records management policy enables the firm to determine what records must be retained to operate the firm, and how to organize them so that they can be easily retrieved when needed. Perhaps just as important, a records management policy will take into account statutory requirements, and also potential litigation.

Statutory requirements are established by government entities, and provide explicit guidelines for storing records. For example, since the IRS can audit tax records seven years back, all tax-related documents should be retained at least that long. As another example, The Fair Labor Standards Act (FLSA) requires that basic records relating to employee compensation be kept for three years.

All businesses, including law firms, hope to avoid litigation. But law firms know that wishing cannot replace proper preparation. Litigation-related considerations MUST be part of any records management policy. Consider that Microsoft documents, including emails, suggested that the company violated anti-trust regulations. Consider that Wal-Mart suffered sanctions as large as \$18 million for withholding and destroying documents in connection with various lawsuits.

Documents are destroyed during the normal course of business. Voicemails and files are erased. Emails are deleted. But if a court finds that documentary evidence was improperly destroyed, heavy sanctions can be imposed, and all of a party's claims or defenses can be denied. Evidence of having followed normal business practices within an

overall records management policy can show good intent. And ensuring that certain records are deleted in the normal course of business according to a records management policy can provide peace of mind that certain types of company records will not ultimately be used against it.

The first step to establishing a records management policy is to carefully identify all types of records in the firm, such as client records, accounting records, employment records, benefit policy records, insurance records and so forth. Don't forget to include all electronic records including email, vmail, word processing documents, stored images, back-up tapes and so forth.

Carefully look at any statutory requirements first, to determine what MUST be preserved and for how long. One might think that incorporating guidelines in your records management policy is easy where statutory compliance is concerned. In some cases it is. The Bureau of National Information provides a fair amount of information on employment-related requirements. However, determining requirements on other records is not quite so clear or easy. A search on the internet for records retention guidelines set forth by accounting firms produced a wide variety of results. As an example, I chose to look at bank statements. One would think that there would be a consensus of opinion on this item, but alas I found three different retention recommendations (1, 2, and 5 years) on three CPA-firm web sites. There was an even larger disparity on other sensitive accounting records. Therefore, the firm must be careful of the source(s) used to determine statutory requirements. In the case of a disparity, I would recommend the firm use the more conservative term of retention.

After statutory requirements are taken into account, the firm should next look at potential litigation. In response to the proliferation of employment-related lawsuits, some firms are now electing to NOT back up their email, and are establishing guidelines for the types of information which should not be transmitted via email at all, due to the tendency of emails to proliferate and be retained in unanticipated mailboxes. These are the types of difficult discussions and considerations which the firm partners and administrator can anticipate before finalizing a policy.

Once these discussions are finalized and all of the firm's information is categorized and retention guidelines are established, attention must be turned to several final items. First and foremost, is the organization and retrieval of retained information.

It does you no good to retain information if you cannot quickly and easily retrieve it when needed. What system do you have in place for your stored information? If you depend on electronic storage for the bulk of past information, has your software platform changed to the extent that retrieving that information will be difficult or impossible? Should you consider a document management package such as Worldox? Should you establish file organization conventions to be consistently followed throughout the firm,



rather than have everyone do “their own thing?” Should you consider a records management package which barcodes files, and can track storage locations of the files and easily facilitate retrieval?

Next is accountability and communication. Who is in charge of implementing the policy, and seeing that it is carried out consistently? Who maintains the index of client files destroyed, including how and when? Who makes sure that records which were to have been deleted are not lingering on the hard drives of workers in remote locations? Who makes sure that everyone in your firm “gets the message” and follows the policy?

A well thought out document management policy is crucial to assist the firm to efficiently organize and locate its information, keep the cost of information storage to a minimum, meet its ethical obligations to its clients, and avoid legal problems and sanctions. Although it is an issue which must be addressed at all firms, regardless of size, I am frequently contacted on the hot line by family members of solo practitioners who are left with the responsibility of determining what to do with firm records. Particularly when it comes to client files—where there has been no establishment of a records management policy, nor communication to clients in this regard—family members become unnecessarily burdened for long periods of time dealing with storage, disposition and communication issues which would have been better handled by the attorney while actively engaged in practice.

A version of this article originally appeared in the Fall, 2000 issue of the Pennsylvania Bar Association Solo and Small Firm Section Newsletter

©2005 Freedman Consulting, Inc. The information in this article is protected by U.S. copyright. Visitors may print and download one copy of this article solely for personal and noncommercial use, provided that all hard copies contain all copyright and other applicable notices contained in the article. You may not modify, distribute, copy, broadcast, transmit, publish, transfer or otherwise use any article or material obtained from this site in any other manner except with written permission of the author. The article is for informational use only, and does not constitute legal advice or endorsement of any particular product or vendor.