

Records Retention

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Agenda

- Introductions
- Records Management Overview
- Records Retention for Actuaries
- Q&A


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Overview

- Records management, including creation, retention, and destruction, is a business imperative in today's world
- Regulators, business leaders and clients depend on and hold companies and individuals accountable for adequate record keeping
- Ignorance of the requirements is not a defense
- In light of this, companies and individual consultants should be aware of the requirements and expectations and be prepared

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What is a Record?




- Evidence of a decision or action taken in the course of business
- Can take almost any form—e-mails, instant messages, text files, voice mails, paper, invoices, employee records, a website, a collaborative team space, reports, and even maps, rocks, or other physical samples
- The total collection of corporate records constitutes the organization's memory

Source: AIIM E-Doc Magazine, November/December 2007

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Examples of Non-records...




- A draft that does not document significant changes in calculations, wording or advice
- Does not document a business transaction or communicate a final decision
- Does not provide historical information that could be used to recreate an outcome
- An inter-team administrative document with no ongoing value
- Trivial e-mail correspondence
- Newsletters, articles, or reference materials with no value beyond project close
- Personal e-mail and documents

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Paper and electronic records


Paper Records

- Paper records can provide an important transition to electronic records management
- Some business processes and records cannot be preserved solely by electronic means




Electronic Records

- Electronic records present special challenges and must adhere to certain regulations that govern the type, access and format of electronic records




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E-mail 

- E-mail has become our primary form of business communication
 - Presents new record management challenges
 - Can help or hurt our record retention efforts
 - Extremely important to address explicitly
- E-mails contain critical business information and are easily copied
- Many employees assume that saving personal copies of e-mail is acceptable
- Others may lack discretion in terms of the content included in e-mail
- As a rule, e-mails should be preserved electronically in a single repository

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E-mail 

- During litigation, opposing counsel often uncovers damaging information in e-mails
- This may be due to the common, but inaccurate, perception that once deleted, email is gone forever.
- It may also be because people are much more casual in their use of email than they are when writing a letter or memorandum.

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Why do you need a records management program?

- Professionals are bound to comply with laws, regulations and professional standards for record retention
- Clients expect us to properly document our work, and to manage and protect their data, work products, and deliverables
- In case of lawsuit, an effective records management program facilitates legal discovery for you and your clients
- Adequate and proper records management can protect your clients, your employees, and your firm's revenue and reputation

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An adequate records management program...

- Establishes, documents and ensures compliance with a records management policy
- Is able to produce required records when requested by the client or legal counsel
- Provides employees with adequate guidance and official repositories to maintain copies of records, including e-mails and paper copies
- Disposes of records after the retention period expires

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Can your company afford to ignore this critical business issue?

- | | |
|--|----------------------------------|
| Philip Morris | Sanctioned \$2.75 million |
| Deleted e-mails after court's preservation order | |
| Bank of America | Fined \$10 million |
| Failure to produce documents to SEC | |
| URB Warburg | \$29 million verdict |
| Destroyed e-mails | |
| Morgan Stanley | Fined \$15 million |
| Inability to produce e-mail | |
| Arthur Andersen | Corporate Failure |
| Inadequate records management practices | |

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Can your company afford to ignore this critical business issue?

- Victor Stanley, Inc. v. Creative Pipe, Inc. (2010) - Judge ordered jail time (unless and until awarded attorneys' fees and costs are paid) for repeated, intentional destruction of thousands of electronic documents. Sanctions for spoliation and violations of electronic document preservation
- Pension Committee of the University of Montreal Pension Plan v Bank of America Securities (2010) - Gross negligence in failing to preserve electronic documents
- Rimkus Consulting Group, Inc. v. Cammarata (2010) - Willful destruction of relevant data
- Grange Mutual Casualty Co. v. Mack (2008) - \$8.83 million in sanctions. A pattern of abuse and obstruction described by the court concerning paper documents also occurred in electronic discovery, where the obstruction prevented the other party from accessing evidence needed to bring the case.
- Qualcomm, Inc. v. Broadcom Corp. (2008) - \$8.5 million in sanctions. Massive discovery failure: the court held that Qualcomm had withheld "tens of thousands of emails"
- Southern New England Telephone Co. v. Global NAPs, Inc. (2008) - \$5.89 million in sanctions. Failure to comply with discovery orders

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Characteristics of an effective records management program

- Clearly defines requirements
- Complies with laws and regulatory authorities and professional standards
 - Focuses on risk reduction
 - Facilitates discovery in cases of litigation
- Builds a supporting infrastructure and compliance mechanism that includes both paper and electronic records
 - Eliminates need to rely on system backups that are designed for disaster recovery
 - Takes into account all types of records—including e-mail
 - Creates an easy-to-use electronic management system that facilitates adherence to the policy

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Records Management For Actuaries

Risk

Client Expectations

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U.S. DOL's Definition of Acceptable Electronic Media

- Electronic record management (ERM) system has reasonable controls to ensure the integrity, accuracy, authenticity and reliability of the electronic records.
- Electronic records are maintained in a reasonable order and in a safe and accessible place.
- The system provides for indexing, preserving, retrieving and reproducing the electronic records.
- Records must be convertible into legible paper copy.
- System doesn't interfere with a company's ability to comply with ERISA reporting and disclosure requirements.
- Adequate record(s) management practices are implemented.
- Records exhibit a high degree of legibility when viewed electronically.

Source: U.S. Department of Labor

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Actuarial Standards Board

- Records—Communications that are always records
 - Actuarial Communication—A written, electronic, or oral communication to a principal or member of the intended audience by an actuary with respect to actuarial services.
 - Actuarial Findings—The results of the actuary's work, i.e., the actuary's professional conclusions, recommendation, or opinions.
 - Actuarial Report—A written or electronic presentation prepared as a formal means of conveying the actuary's findings that records and communicates the actuary's methods, procedures, and assumptions.
- Records or non-records—Actuary makes determination
 - Transcripts or summaries of an oral communication of actuarial findings
 - Internal communications, for example within a company, organization, firm or government agency
 - Communications, during the course of an assignment, among those providing actuarial services

Source: Actuarial Standards Board, Actuarial Standard of Practice No. 41, March 2002 (Doc. No. 086)

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Applicability of ASOP 23

- ASOP 23—*“For purposes of data quality, data obtained from inventory or sampling methods are comprehensive if they contain sufficient data elements or records needed for the analysis.”*
- ASOP 23—*“Review of Prior Data—If similar work has been previously performed for the same or recent periods, the actuary should consider reviewing current data for consistency with the data used in prior analysis”*

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Applicability of ASOPS 36 and 41

- ASOP 36 – Old documents may be needed to review prior opinion or for other matters.
- ASOP 41 – An actuary may choose to keep file material other than which is to be disclosed under this ASOP.

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Consideration for insurance industry

- Consistency---Electronic Vs Paper
- Managing retention period effectively
- Educating employees
- Minimizing E&O exposure/legal issues
- Catastrophe planning

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Document retention policy

- The actuaries should maintain sufficiently detailed work papers such that another qualified actuary could evaluate their reasonableness
- Actuaries should consider what documents to keep and what to discard
- A qualified attorney can help to develop a document retention policy
- Once the policy is in place, consistent compliance can reduce risk

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Record(s) categories and types ...

- Promote consistency in the way associates file client records and non-records (paper or electronic)
- Can effectively merge electronic content management (front-end user) with records management (back-end system administrator)
- Allow the seamless application of retention schedules
 - Record category—Broad classification for records
 - Record type—Sub-classifications of records that often have common retention periods


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Retention period for actuarial records

- State of NY has specific rules for insurance industry on document retention rules
 - <http://www.ins.state.ny.us/ogco2005/rg050332.htm>
- Every state requires employer to maintain adequate insurance records
- Records are adequate, accessible, consistent, and orderly and comply with state record retention requirements- *NAIC Market Conduct Examiners Handbook - Chapter VII, Section A, Standard 6*
- Document retention rules vary from state to state for the same document
- A seven year retention period will generally meet state requirements
- Actuaries must get familiar with the state's document retention rules

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Records retention and destruction...



- Retains and disposes of records in compliance with the Company's policy, applicable laws and regulations
- Assigns a set period of time for which all records, by category or type, regardless of format, will be preserved
- Automatically disposes of records at the end of the retention period
- Meets business, operational and legal requirements
- Most importantly, acts as an organization's safe harbor during litigation

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Program Execution

| Analysis | Design | Acceptance | Deployment |
|---|---|---|--|
| <ul style="list-style-type: none">□ Review records management policy and procedures and create/update if necessary□ Conduct business process analysis□ Document requirements and secure approvals, including budget | <ul style="list-style-type: none">□ Complete system design document and secure approvals□ Develop ERM solution | <ul style="list-style-type: none">□ Conduct IT and user acceptance testing and revise system as appropriate based on feedback□ Execute a business pilot using real data and revise system as necessary | <ul style="list-style-type: none">□ Develop a manageable plan for deployment□ Provide associates with the training and support to succeed |

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Lessons Learned



- Be prepared: Designing and implementing a full records management program, including an ERM solution, is not cheap or easy
- Build a network of business champions
- Enlist an executive sponsor and make sure the program is a corporate priority
- Listen to the business—and make sure IT does the same
- Develop a practical solution for legacy data migration or storage
- Make sure that IT has the commitment, tools, expertise and resources to support the program
- Use the crawl-walk-run model for deployment
- Recognize that change is tough. Going from the paper to electronic worlds is challenging

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Q & A

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