# Document Retention: To Keep or Not To Keep

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# Electronic Records

- Official Records (minutes)
- Unofficial Records (memos/notes)
  - Internal
  - Outside
- E-mail
- Voice Mail
- Electronic Calendars
- Web pages (intranet/internet)
- Databases

# Electronic File Types

- Office files
  - Word (.doc)
  - Excel (.xls)
  - Image (TIFF, .pdf)
- Emails Outlook (.msg) LotusNotes (.nsf)
- VOIP (.wav)
- Drawings (.CAD)
- Sound (MP3)
- Pictures (.jpg)

# Storage Locations

- Mainframe computer
- Server
- Personal Computer
- Laptop
- Personal Digital Assistant
- Cellular Telephone
- Cordless Telephone
- Voice Mail/Answering Machine

# Storage Locations

- Paging Device
- Facsimile Machine
- Smart/Magnetic Stripe Cards
- Scanner
- Printer
- Copier
- Camera/Camcorder (digital)

# Storage Locations

- Flash Drives
- Global Positioning System (GPS)
- Security Systems (Sonitrol)
- Automobile “Black Box”
- Surveillance Camera
- Archives
- Backup Tapes (virtual tape)
- Third-Parties (vendors)

# Electronic Files are Evidence

- All electronically stored information
  - Word files, PowerPoint, Spreadsheets
  - Database entries
  - Audio, video
  - Internet/Intranet
  - **Electronic Mail # 1 target**
- Wherever stored
  - Office (computer, laptop, voicemail)
  - Home (computer, laptop, answering machine)
  - Flash drive, cell phone, CD, DVD

# How Electronic Records Work

## # 1 Business Communication

- Quick and easy
- Can be accessed any time
- Can be accessed by many people at the same time
- Can be sent anywhere around the world
- Attachments can be sent as well
- 93% NEVER printed to paper

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# How Electronic Records Work

**Electronic Records are <u>not</u> private**

- May travel through the IS system and the Internet
  - Can be intercepted
  - Can be (are) monitored
  - Can be retrieved from outside sources
- You lose all control once stored or sent

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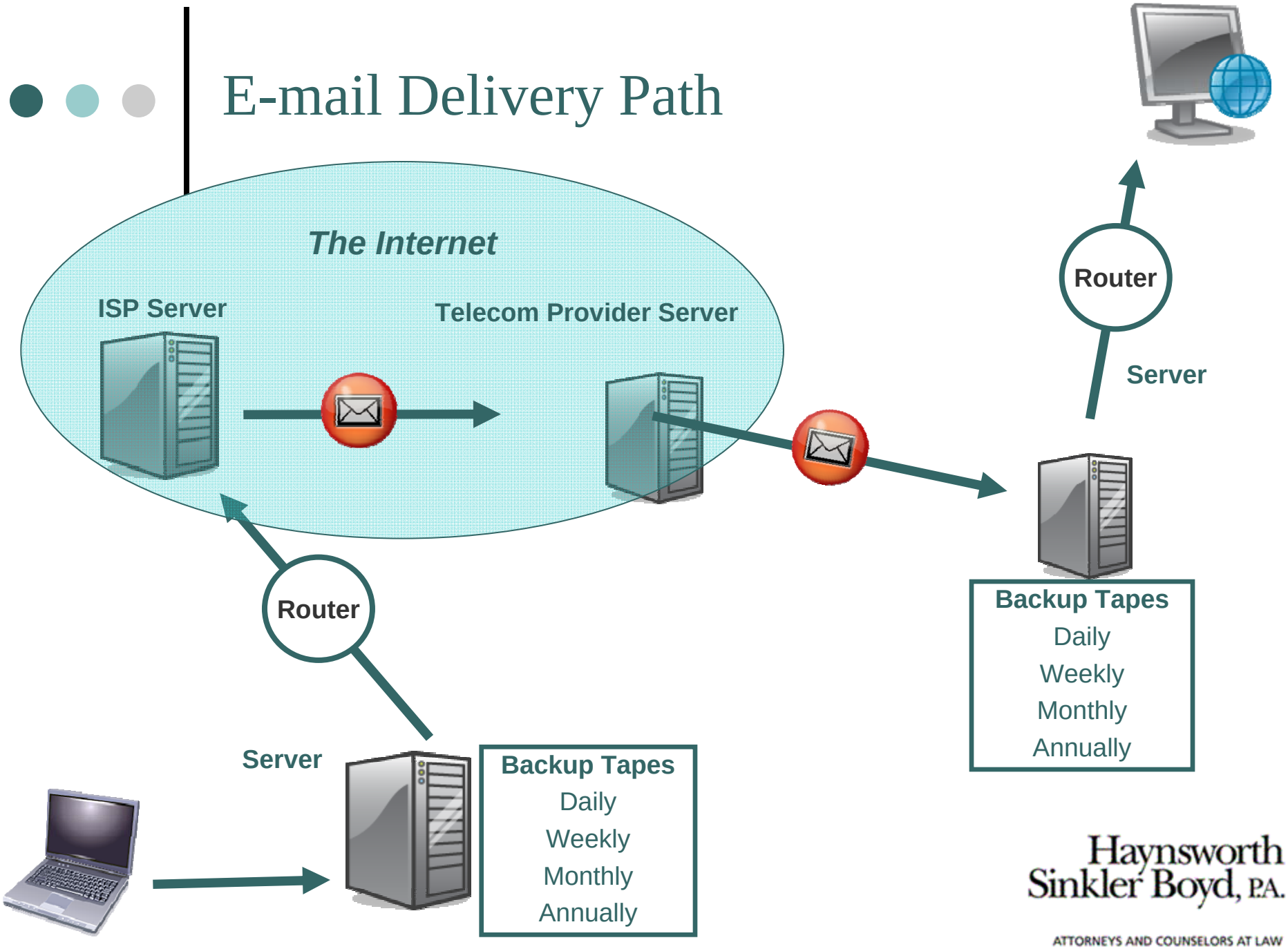
# E-mail Delivery Path

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# How Electronic Records Work

**Electronic Records are <u>permanent</u>**

- "Live" in many places
- Considered evidence
  - Can be requested in lawsuit
  - Can be requested by subpoena
  - Can be seized by government

- **<u>Delete</u> does not mean "destroy"**

# How Electronic Records Work




**FACT: Deleted Electronic Records Can Be Recovered**

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# Real Life Stories

- Enron e-mails (1.6 million employee e-mails posted on gov't website forever)
- Congressman Mark Foley IM's (IM's can be stored, tracked and made public)

# Risky Employee E-mail Habits

- 68 % employees sent/received email at work that could put company at risk
- 61% admit using work email for personal use
- 48% have sent/received joke emails, funny pictures/movies, questionable material
- 22% have sent/received password via email
- 73% aware of company email policy, 46% follow the policy

*Harris Interactive for Fortiva Study (2005)*

# Key: Creating Electronic Records

- Policies
- Employee Education
- Training
- Audit for Compliance
- Consequences for Violations
- Technology a MUST

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# THINK FIRST

- Before you hit SAVE/SEND
- Re-read the entry
- Ask “Would it be okay if this became public?”
- If the answer is “No,” do not save or send it.
- Re-write the entry until you can answer “Yes.”

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# Upper Management Responsible for Records Management

"When senior management fails to establish and distribute a comprehensive document retention policy, which has been communicated to and which is accessible to its employees, management cannot shield a corporation from responsibility because an employee routinely destroyed information relevant to imminent or ongoing litigation."

*United States v. Koch Indus. Inc.*, 197 F.R.D. 463, 483-86 (N.D. Okla. 1998).

# The Business Case

- Facilitating easier and more timely access to necessary information;
- Controlling the creation and growth of information, thereby reducing operating and storage costs;
- Improving efficiency and productivity;
- Incorporating information and records management technologies as they evolve;
- Meeting statutory and regulatory retention obligations;
- Meeting litigation obligations;
- Protecting the integrity and availability of business critical information;
- Leveraging information capital and making better decisions; and
- Preserving corporate history and memory, including evidence to support corporate governance and compliance initiatives.

*The Sedona Guidelines:*
*Best Practice Guideline & Commentary for Managing Information & Records in the Electronic Age (Sept. 2005).*

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# Agency Liability under FOIA

- Attorneys' fees and costs
  - Under 5 U.S.C. § 552(a)(4)(E), district court "*may* assess against the United States reasonable attorney fees and other litigation costs reasonably incurred . . . [if] the complainant has **substantially prevailed**." (emphasis added). *Young v. CIA*, No. 92-2561 1993 U.S. App. LEXIS 20414 (4th Cir. Jun. 8, 1993).
  - Under S.C. Code Ann. § 30-4-100(b), state court *may* award reasonable attorney fees and other costs of litigation to **prevailing party**. If such person or entity prevails in part, the court may in its discretion award reasonable attorney fees or an appropriate portion thereof.
- Civil contempt sanctions
  - *Landmark Legal Foundation v. EPA*, 272 F. Supp. 2d 70 (D.D.C. 2003) (EPA ordered to pay attorneys' fees and costs for reformatting hard drives in violation of court's clear order to preserve e-data).

# Competing Interests

- Laws & Regs. requiring security and prohibiting disclosure
  - HIPAA
  - FACTA
  - FERC/NERC
  - OCC, FRB, FDIC, NCUA, FFIEC

- New rules requiring disclosure
  - Systems information
  - Types of data
  - Security measures (passwords, encryption)

Serious Consequences

Either Way!

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# Retention v. Destruction

- Answer:  Records management.
  - Know what you have, where it is stored, who has access to it.
    - Increases security and ability to comply with retention requirements.
  - Get rid of what you do not need.
    - Reduces cost and risk associated with producing ESI.

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# *Sedona Guidelines* for Electronic Records Management

- An organization should have **reasonable** policies and procedures for managing its information and records.
- An organization's information and records management policies and procedures should be **realistic, practical and tailored** to the circumstances of the organization.
- An organization **need not retain all** electronic information ever generated or received.

*The Sedona Guidelines: Best Practice & Commentary for Managing Information & Records in the Electronic Age (Sept. 2005)*

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# *Sedona Guidelines* for Electronic Records Management

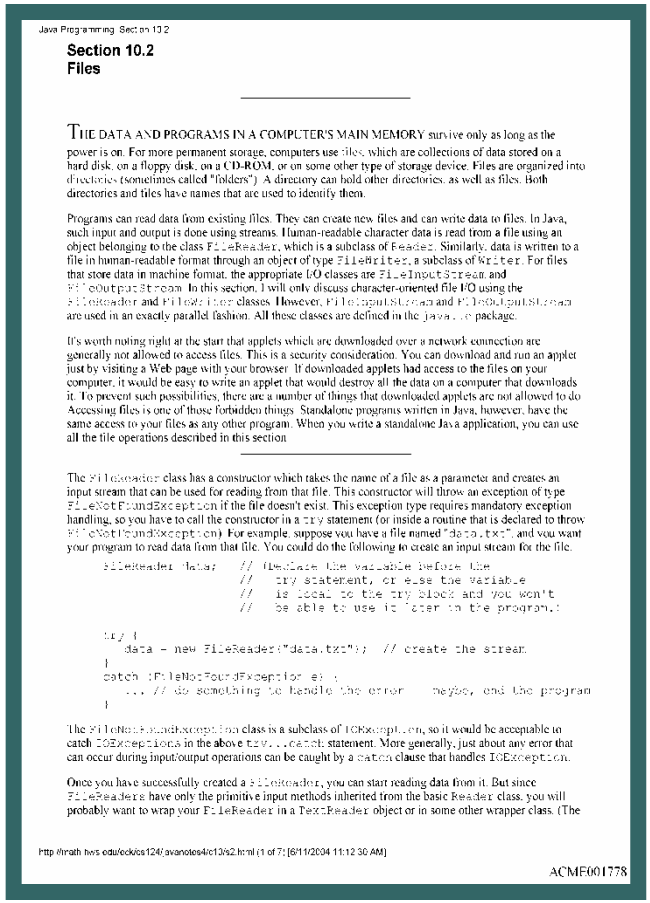
- An organization adopting an information and records management policy should also **develop procedures** that address the **creation, identification, retention, retrieval, and ultimate disposition or destruction** of information and records. (who has access to information, who is responsible for retention, and who has the authority to destroy information?)
- An organization's policies and procedures **must mandate the suspension of ordinary destruction practices and procedures to comply with preservation obligations** related to actual or reasonably anticipated litigation, governmental investigation or audit.

*The Sedona Guidelines: Best Practice & Commentary for Managing Information & Records in the Electronic Age (Sept. 2005)*

# "Managing" Information & Records

- Information must be retained when:
  - Local, state or federal **law** or regulation mandates continued availability and access;
  - **Contractual obligation** to retain;
  - **Business reasons** mandate retention;
  - Information must be preserved under a **litigation hold**; or
  - Information has **other value** to organization.

# Paper Record



Java Programming: Section 10.2

**Section 10.2**
**Files**

THE DATA AND PROGRAMS IN A COMPUTER'S MAIN MEMORY survive only as long as the power is on. For more permanent storage, computers use files, which are collections of data stored on a hard disk, on a floppy disk, on a CD-ROM, or on some other type of storage device. Files are organized into directories (sometimes called "folders"). A directory can hold other directories, as well as files. Both directories and files have names that are used to identify them.

Programs can read data from existing files. They can create new files and can write data to files. In Java, such input and output is done using streams. Human-readable character data is read from a file using an object belonging to the class `FileReader`, which is a subclass of `Reader`. Similarly, data is written to a file in human-readable format through an object of type `FileWriter`, a subclass of `Writer`. For files that store data in machine format, the appropriate I/O classes are `FileInputStream` and `FileOutputStream`. In this section, I will only discuss character-oriented file I/O using the `FileReader` and `FileWriter` classes. However, `FileInputStream` and `FileOutputStream` are used in an exactly parallel fashion. All these classes are defined in the `java.io` package.

It's worth noting right at the start that applets which are downloaded over a network connection are generally not allowed to access files. This is a security consideration. You can download and run an applet just by visiting a Web page with your browser. If downloaded applets had access to the files on your computer, it would be easy to write an applet that would destroy all the data on a computer that downloads it. To prevent such possibilities, there are a number of things that downloaded applets are not allowed to do. Accessing files is one of those forbidden things. Standalone programs written in Java, however, have the same access to your files as any other program. When you write a standalone Java application, you can use all the file operations described in this section.

The `FileReader` class has a constructor which takes the name of a file as a parameter and creates an input stream that can be used for reading from that file. This constructor will throw an exception of type `FileNotFoundException` if the file doesn't exist. This exception type requires mandatory exception handling, so you have to call the constructor in a `try` statement (or inside a routine that is declared to throw `FileNotFoundException`). For example, suppose you have a file named `"data.txt"`, and you want your program to read data from that file. You could do the following to create an input stream for the file.

```
FileReader data;   // Declare the variable before the
                   //   try statement, or else the variable
                   //   is local to the try block and you won't
                   //   be able to use it later in the program.

try {
   data = new FileReader("data.txt");  // create the stream
}
catch (FileNotFoundException e) {
   ... // do something to handle the error  maybe, end the program
}
```

The `FileNotFoundException` class is a subclass of `IOException`, so it would be acceptable to catch `IOExceptions` in the above `try...catch` statement. More generally, just about any error that can occur during input/output operations can be caught by a `catch` clause that handles `IOException`.

Once you have successfully created a `FileReader`, you can start reading data from it. But since `FileReaders` have only the primitive input methods inherited from the basic `Reader` class, you will probably want to wrap your `FileReader` in a `TextReader` object or in some other wrapper class. (The

http://math.hws.edu/eck/cs124/javanotes4/c10/s2.html (1 of 7) [6/11/2004 11:12:30 AM]

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- Everyone knows how to deal with paper.
- Paper is tangible.
- Paper exists until destroyed.
- Paper destruction is routine part of records management.

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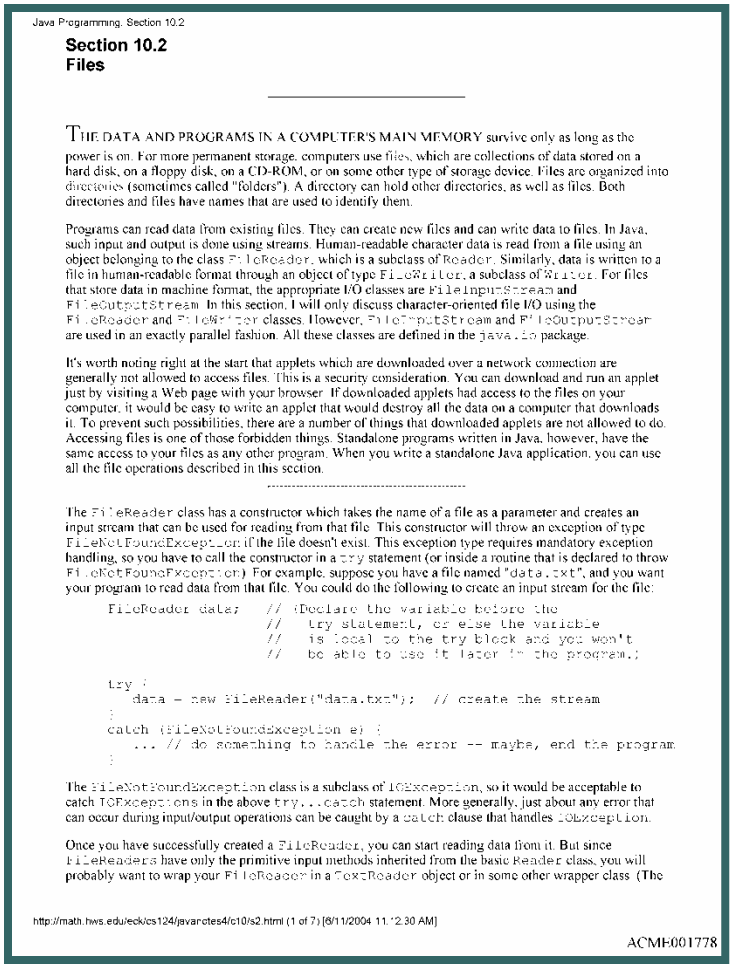
# Electronic Record

- What is “the” record?
- What **metadata** is preserved?
  - Authenticate record
  - Assist with search/retrieval
  - Reduce costs if requested
- How?
  - Record should not be altered (SOX)
  - Certain data must be protected from disclosure (HIPAA)
  - Certain data must be segregated (I-9 Forms)



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# What is a “record”?

- Subset of “information” that has some value to the organization that warrants retention, access, retrieval.
- Content controls (not format).
- Relates to organization’s activities/purpose.
- Policy decision.
- Requires a process for identifying records.
- Requires a process for destroying non-records and records that no longer have value to organization.

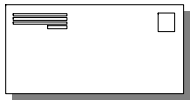
# "Records" Under Federal Records Act

- All books, papers, maps, photographs, **machine readable** materials, or other documentary materials
- Regardless of physical form or characteristics
- Made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government
- Or because of the informational value of data in them.
- Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are <u>not</u> included.

FRA, 44 U.S.C. § 3301.

# Record Life Cycle

Creation or Receipt

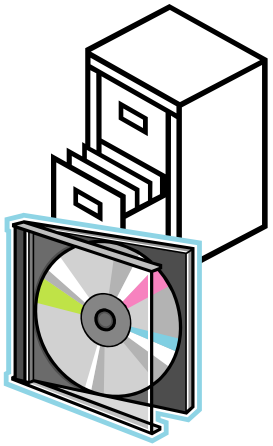


Use and Identify Record

Non records destroyed

Destroy

Maintenance and Continued Use



Disposition

Temporary

Permanent

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# Establishing Retention Schedules

- Retention Schedule
  - How long, where & in what format records kept
  - Final disposition
- What a schedule includes
  - Titles of records
  - Contents description
  - Retention period
  - Final disposition

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# Establishing Retention Schedules

- Types of schedules
  - General schedules (common to many difference government offices)
  - Specific schedules (unique to you)
- Legal justification
  - S.C. Code Ann. § 30-1-10 through -140

# Retention Schedule Benefits

- Identify and preserve records
- Legally destroy records that have outlived their purpose
- Effective use of storage space by removing obsolete records
- Increased efficiency in locating records that still serve a purpose

# Step One: Inventory

- If records not already covered by retention schedule, must inventory records
- Forms available at SCDAH website

# Step Two: Analysis

- Administrative value
  - Business reasons for retention
  - How long?
- Fiscal value
  - Document expenditure of public funds or fulfill financial obligations
  - How long?
- Legal value
  - Federal/state retention laws; contractual obligations
- Historical value
  - History of the government and community

# Step Three: Final Approval

- SCDAH Local Records Analysis Unit
  - Local government sends completed appraisal and forms to DAH (records analyst assists)
  - DHA sends schedule to local government for both the records custodian or department head and governing body to approve
  - Local government returns schedule to DAH for director to approve
  - DAH sends approved copy, along with instructions and forms, back to local government for implementation

# How to Conduct Records Inventory

- Locate, identify, describe, count, and measure all records
  - Loose and bound papers
  - Microfilms
  - Optical disks
  - Magnetic tape/disks

# Who Conducts Inventory?

- Governmental bodies authorized to appoint a records officer vested with authority needed to develop and supervise a records management program
- Should also appoint a staffer in each department to help conduct the inventory

# Planning the Inventory

- Communication
  - Executive directive to meet with records officer
  - Access to all unrestricted documents and information about restricted
  - Access to staff to understand how records are used
- Training and supplies
  - Inventory staff should be trained
  - Supplies:  organizational charts, bank inventory forms, means for identifying records that have been inventoried

# Planning the Inventory

- Preliminary survey
  - Survey all office and storage areas:
    - Identify location of records
    - Estimate their total volume
    - Flag any hazards
    - Note any problems
- Scheduling the inventories
  - Coordinate with department heads

# Conducting the Inventory

- Records
  - Content not format
  - Policy decision
- Non-Records
  - Not evidence of governmental activities (reference materials, trade publications, catalogues, magazines)

# Records Inventory

- Inventory records as series (groups of identical records that can be evaluated as a unit because they are filed, used and disposed of together)
- Use standardized form developed by SCDAH (can download online)
- Begin with active records

# Develop a System

- Be systematic
- Look at every record
- Open every file
- Check accuracy of labels or file names
- Older (historical) records may require more study
- Send 3-4 completed forms to SC DAH for review before continuing with inventory

# Retention Schedules for Municipal Records

- South Carolina Department of Archives and History
- www.state.sc.us/scdah/

# General Schedules

- **Administrative**.
  - Deeds (Conveyances) - Permanent
  - Cancelled Bonds/Coupons – (1) copy permanent. Other records 10 years after cancellation.
  - Grant Files – Applications, Grant Contract Agreements, Annual and Final Grant Project Reports – Permanent. Other records 3 years after completion of grant project

# General Schedules

- **Administrative.**
  - Contracts – 3 years after completion
  - Cemetery records – Permanent
  - Fixed Assets Inventory File – Until superseded
  - Maps and Blueprints – Permanent
  - Election Records – Results and certification permanent. Other records 2 years.

# General Schedules

- **Building Inspections/Planning/Zoning**
  - Zoning Commission Minutes – Permanent
  - Building Permits – Permanent
  - Plans & Specs – Blueprints permanent. Non-public building project 1 year after COO.
  - Inspectors' File – 2 years after project completion
  - Certificate of Occupancy - Permanent

# General Schedules

- **Business License.**
  - Applications – 3 years
  - Business Licenses for Earliest Extant Year and Every Other Year Thereafter - Permanent

# General Schedules

- **Council.**
  - Council Meeting Recordings – 2 years
  - Council Minutes – Permanent
  - Agenda Packets – Permanent
  - Ordinances – Permanent
  - Resolutions - Permanent

# General Schedules

- **Finance.**
  - Annual Budgets - Permanent
  - Budget Files – 3 years
  - Audit Reports – Permanent
  - General Ledgers – Permanent
  - Bids, Pos, Requisitions – 3 years
  - Accounts Payable Check Registers – 5 years
  - Claims, Banking Records – 3 years

# General Schedules

- **Fire.**
  - Annual Report to State Fire Marshal – Permanent
  - Incident Report – 10 years
  - Fire Hose Record – 3 years
  - Fire Hydrant Testing – 3 years
  - Arson Files – 10 years
  - Daily logs – 3 years

# General Schedules

- **Personnel.**
  - EEO-4 – Permanent
  - Personnel Files – 5 years after termination
  - Application File (not hired) – 2 years after application
  - Occupational Injury/Illness Logs – 5 years following calendar year to which relate
  - Workers Compensation Records – 3 years
  - Year-end Payroll Register – 60 years

# General Schedules

- **Police.**
  - Criminal History Cards – Until death or 75 years (whichever is first)
  - Case Files – 30 years
  - Juvenile Files – 3 years after majority
  - Radio/Telephone Logs – 3 years
  - Field Contact Cards – 1 year
  - Incident Reports – 5 years
  - Traffic Tickets – 3 years

# General Schedules

- **Public Works.**
  - Maps & Blueprints – Permanent
  - Encroachment Permits – Permanent
  - Maintenance Request Forms – 3 years
  - Work Orders – 3 years
  - Vehicle Maintenance & Service Files – Until disposal of vehicle

# General Schedules

- **Utilities.**
  - Service Applications (Residence/Business) – 3 years after cancellation of service
  - Meter Books – 3 years
  - Bacteriological Files – 5 years
- **Tax.**
  - Tax Digests – Permanent
  - Tax Receipts – 3 years

# Questions?

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# Thank You.

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