Electronic Records

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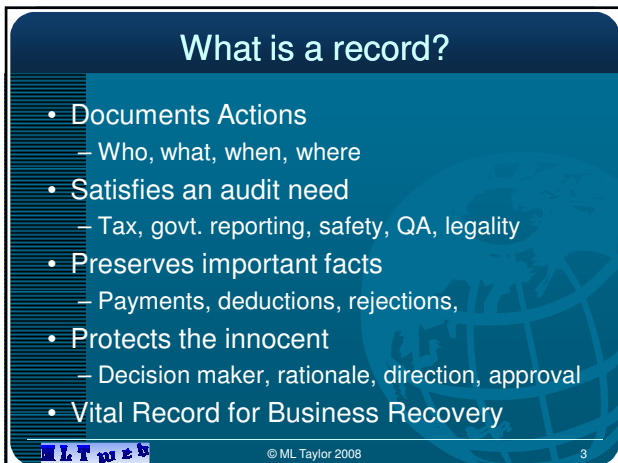
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Agenda

1. **What is a Record?**
2. **Electronic Record Issues**
3. **Policies and Practices**
4. **References and Discussion**

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What is a record?

- Documents Actions
  - Who, what, when, where
- Satisfies an audit need
  - Tax, govt. reporting, safety, QA, legality
- Preserves important facts
  - Payments, deductions, rejections,
- Protects the innocent
  - Decision maker, rationale, direction, approval
- Vital Record for Business Recovery

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Salient Issues

- Meeting Record Storage Requirements
  - Searching, versioning,
- Meeting Business needs for information availability
  - Native files vs PDF vs System unique documents (eg SAP)
- Meeting Legal Requirements
  - Authenticity, change control,

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Essential "Recordness"

- Secure from change
- Authentic
- Recoverable
- Version control
- Retention Policy

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example

- A pump purchased for the Hanford site, cost charged to the Department of Energy. Government DCAA auditor is verifying the transaction.
  - Purchase was made in my electronic contract system – there is no paper purchase order
  - Invoice scanned on receipt, approved electronically and sent to electronic record storage system – no paper copy kept
  - Correspondence is primarily email

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Slide 1

Washington State Digital Archives

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About the Digital Archives

Home > Legal Aspects of Electronic Records

Legal Aspects of Electronic Records - Q&A

Aren't electronic records different from paper records?

No. Although physically different, Washington State law makes no legal distinction between paper records and electronic records.

Chapter 40.14 RCW (which governs the retention, destruction and long-term archival preservation of public records) makes no distinction between "paper records" and "electronic records." Both are subject to the laws and regulations governing records retention periods, and the potential destruction or long-term archival preservation of such records.

RCW 40.14.010 defines a "public records" as "...any paper, correspondence, completed form, bound record book, photograph, film, sound recording, map drawing, machine-readable material, compact disc meeting current industry ISO specifications, or other document, regardless of physical form or characteristics, and including such copies thereof, that have been made by or received by any agency of the state of Washington in connection with the transaction of public business, and legislative records as described in RCW 40.14.100."

Chapter 42.17 RCW (the Public Disclosure Act) also makes no distinction "paper records" and "electronic records." Both are subject to regulations governing the disclosure of public records.

RCW 42.17.020(36) defines a "public record" as "...any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics..."

The Office of the Attorney General Open Government Internet Deskbook, Chapter One, provides excellent guidance in determining what is a public record.

Internet | Protected Mode: On

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Slide 2

Issues

- E-commerce data
  - Who owns the record and the rights to it
- Meta Data
- Ambiguity
- Sox
  - Management intent, policy, common practices
- Privacy

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Slide 3

Record Pitfalls

- Fraud, deliberate omissions,
- Collusion
- "Inflammatory" Language
- Security
- Inconsistent retention policy
- Location, Location, Location

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Scenarios

- Disgruntled employee
- Computer Glitch
- Natural Disaster
- Government

Files are lost or destroyed
Files are scrambled / changed
Files are made public
Files are sold to the highest bidder
Files come back to haunt you

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Retention Policy

- Definition, location & storage process
- Archiving and long-term retainage
- Recovery plan
- Retirement plan

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Google Search

- NARA
- "Digital Signature Act"
- "E-Discovery"
- "record management"

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www.cadence-group.com/practiceAreas/recordmgmt/index.htm

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www.archives.gov/preservation/records-emergency/

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Electronic Discovery - traps

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Video reviews: Buried Alive and For the Record

Information Management Journal, Oct 2001 by Pemberton, J Michael

TITLES: Buried Alive and For the Record

DISTRIBUTOR:

Commonwealth Films

LENGTH: 23 minutes and 21 minutes respectively

PRICE: $707 each

($637 ARMA members)

SOURCE: ARMA International

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IT Solutions – *Caveat Emptor*

IT Compliance Institute
The Global Authority for IT Compliance Information and Alerts

Trends and Technologies

E-Discovery Sanctions: A Continuing Trend

Given the vast amount of electronic information retained by most companies, the complex task of managing discoverable ESI and the risk of severe sanctions for e-discovery missteps are a major concern and a potential liability for all companies.

By Thomas J. Smith, Michael J. Crossey, Jr.

Introduction

It is now black-letter law that electronically stored information ("ESI" for short) is discoverable if relevant or likely to lead to relevant evidence. Indeed, the revisions to the Federal Rules of Civil Procedure ("FRCP") that went into effect on December 1, 2006 addressing the discovery of ESI confirm that the 21st Century is witnessing the transformation of traditional trial practice to accommodate ESI in all phases of litigation, from initial discovery and production through trial. Given the vast amount of electronic information retained by most companies, the complex task of preserving, retrieving, and producing discoverable ESI and the prospect of extremely harsh sanctions for discovery missteps, the discovery of electronically stored information, or "e-discovery," has become a major concern and potential liability for all companies.

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Records Management

UW Home > UWIN > Business Services > Records Management

Welcome to Records Management Services

Required by RCW 40.14, Records Management Services manages and oversees University compliance with state and federal laws and regulations relating to the preservation and destruction of electronic and paper information.

The program is the legal authority, designated by the University and by the State of Washington, to determine how long electronic and paper records and information must be retained. The office is responsible for developing Records Retention Schedules that identify records created or received by the University and specify how long those records must be retained. It is responsible for establishing standards, relating to University business requirements and needs, which ensure the legal legitimacy of University record-keeping systems. The program counsels and advises the University administration on the implementation of policy and procedure which promotes adherence to these standards and minimizes risk. It provides a wide range of services which are designed to help ensure the University is meeting its record-keeping responsibilities.

The records management program for the UW Medical Center, Harborview Medical Center, and all other hospital or clinical sites affiliated with the University, is under the direction the UWMC Patient Data Services Department. **All questions regarding records retention scheduling and records storage for hospital units should be directed to UWMC Records Storage, 206-598-2242, hrc@u.washington.edu**

What Is A University Record?

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www.archives.gov/era/index.html

Electronic Records Archives (ERA)

ERA is the National Archives and Records Administration's strategic initiative to preserve and provide long-term access to uniquely valuable electronic records of the U.S. Government, and to transition government-wide management of the lifecycle of all records into the realm of e-government.

www.archives.gov/records-mgmt/initiatives/erm-guidance.html

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GAO

United States General Accounting Office
Report to the Chairman, Committee on Governmental Affairs, U.S. Senate

May 1992

DOE MANAGEMENT

Better Planning Needed to Correct Records Management Problems

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www.archives.gov/records-mgmt/initiatives/erm-guidance.html

Guidance for Building an Effective Enterprise-wide Electronic Records Management (ERM) Governance Structure

Defines governance and its importance to the success of IT, the purpose and function of that governance, how project-specific governance (such as those instituted for enterprise-wide ERM) fits within and alongside other established governance structures, and the risks attendant in the absence of good governance.
http://www.archives.gov/records-mgmt/policy/governance-guidance.html

Recommended Practice: Evaluating Commercial Off-the-Shelf (COTS) Electronic Records Management (ERM) Applications

Summarizes the Environmental Protection Agency's (EPA) experience identifying the COTS products that would best meet the needs of agency staff for both Electronic Document Management (EDM) and Electronic Records Management (ERM).
http://www.archives.gov/records-mgmt/policy/cots-eval-guidance.html

Guidance for Coordinating the Evaluation of Capital Planning and Investment Control (CPIC) Proposals for ERM Applications

Provides a set of decision points to help determine if office-specific ERM systems should be funded independently or integrated with an agency's enterprise-wide ERM system.
http://www.archives.gov/records-mgmt/policy/cpic-guidance.html

Electronic Records Management Guidance on Methodology for Determining Agency-unique Requirements

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www.abanet.org/scitech/ec/isc/dsgfree.html

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www.ftc.gov/os/2001/06/esign7.htm

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