

# To keep or not to keep ...

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To keep or not to keep, that is the question. Had the Bard been faced with the issue of file retention that might have been the question. Fast forward 500 years and as reams of paper are piling up and files are becoming quite dated, we are faced with two big questions: what documents do we need to keep and for how long? From a risk and practice management perspective, the answer is always the same – keep it all, do not throw anything out! However, given limited storage space and the cost of physical storage, a better solution would be to create a records management policy so you save only what is necessary and only for as long as required.

## *What is a record?*

A record is any document in any medium, created in the course of business that records information about that activity, including but not limited to a letter, memorandum, report, opinion, presentation, graph, computer database file, electronic mail message, audio recording (e.g. a voice message), video tape or film, photograph, map, drawing and any other thing on which information is recorded or stored or stored by graphic, electronic or mechanical means.

Records are created, received and used in the conduct of your business activities to support the continuing conduct of your business, comply with the regulatory environment and provide necessary accountability.

Your records are critical assets and every effort must be taken to organize, control and protect them.

## *Records Management Policy*

A records management policy should establish principles to:

- Improve efficiency and reduce costs. Establishing retention schedules, organizing filing systems, controlling access to records, creating index tools and reducing office space required to store records all contribute to making records easier to use and reduces the costs associated with handling them.
- Support compliance by establishing retention schedules in accordance with statutory and regulatory laws related to records. A records management program must act first in accordance with the law, otherwise, there is no proper foundation for decisions made about the creation, use, storage, or disposition of recorded information.
- Support the creation, maintenance and use of accurate records and support the development of records management systems that place the highest priority on accuracy and integrity. Records have a life cycle and can be altered or misinterpreted at every stage of that cycle. Therefore, you must undertake analyses and make recommendations regarding the appropriate creation, storage and use of information to ensure its integrity.

Your records management policy should stipulate whether it applies to all paper and electronic files (this is recommended), when it becomes effective and how you are going to apply it to current files, closed files and those files already in storage.

Your records management policy needs to have records retention schedules so that you keep your records for the appropriate length of time keeping in mind your audit obligations, your obligations pursuant to the *Legal Profession Act*, your ethical obligations under the *Handbook* and the provisions of the *Limitations of Actions Act*. Think about what your lawyer would need in order to reconstruct your file in a professional liability insurance claim or what you would want to produce if a client complained.

You can and should thin your files. Remove duplicates and case law. Consider scanning your files and saving them electronically (with OCR capability for ease of future searching).

Your records management policy should identify who is responsible for implementation. This could be an administrative assistant, compliance officer, risk management team or records management committee. Your policy should also create a naming convention that is logical, consistent and easily understood. Alphabetizing by surname is a good starting point, but including dates, area of practice codes or numeric extensions for sub-files will avoid confusion.

Lastly think about destruction. An effective retention policy should allow for the routine destruction of records after a predetermined time period in accordance with your record retention schedule. Also, care and consideration need to be exercised when destroying a file so properly shredding paper documents will ensure you continue to protect your client's confidentiality. Remember, electronic files are not destroyed by simply hitting the "delete" button.