2010-09


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### Make Your Own Assessment

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SI 655
Management of Electronic Records

Week 2
January 26, 2009
Recordkeeping Requirements in Law, Policy, Practice
Recordkeeping Requirements

• Where do they come from?
• What are they?
• Why do they matter?
• How are they enforced?
Where do recordkeeping requirements come from?

- Practical need to keep track of things, obligations, agreements
- Broad social goals to hold people accountable for their actions
  - Law
  - Policy
  - Professional Standards
  - (Best) Practice
  - Social “Warrant”
Types of Recordkeeping Requirements

• Historical Evolution
  – Need to keep track of things (early accounting)
  – Need to prove things (receipt of good, bills paid, land ownership, rights and obligations)
  – Need for precedent
  – Need for accountability

• Types of Recordkeeping Requirements
  – General (generic)
  – Specific (by time, place, function/activity)
## Types of Recordkeeping Requirements

2...

<table>
<thead>
<tr>
<th>Voluntary</th>
<th>Mandatory</th>
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</thead>
<tbody>
<tr>
<td><strong>Generic</strong></td>
<td><strong>Federal, State, Local Government Records Laws</strong></td>
</tr>
<tr>
<td>Pittsburgh Project</td>
<td>Sarbanes-Oxley</td>
</tr>
<tr>
<td>InterPARES</td>
<td>FDA New Drug Applications</td>
</tr>
<tr>
<td>Sedona Guidelines</td>
<td>Truth in Lending</td>
</tr>
<tr>
<td>Guidelines for managing e-mail</td>
<td>SEC filings</td>
</tr>
<tr>
<td>Records policies of organization x</td>
<td>Airplane operations and maintenance records, etc.</td>
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Scope of Recordkeeping Requirements

• Creation / Capture
• Content
• Quality
• Structure / Organization
• Retention / Disposition
• Disclosure / Accessibility / Protection
General Recordkeeping Requirements

• Efforts to define generic voluntary requirements for all electronic records

- InterPARES: www.Interpares.org
- Sedona Guidelines: http://www.thesedonaconference.org/
General Recordkeeping Requirements

- **Source**: Archival, Records Management, Legal, Audit, IT Professions
- **Type**: Voluntary
- **Scope**: Create/Capture, Content, Quality, Structure/Organization; Retention/Disposition; Disclosure/Accessibility/Protection
- **Issues addressed**:  
  - Difference between information and records  
  - Roles and responsibilities
Pittsburgh Functional Requirements 1...

• CONSCIENTIOUS ORGANIZATION
  – Compliant

• ACCOUNTABLE RECORD KEEPING SYSTEM
  – Responsible
  – Implemented
  – Consistent
Pittsburgh Functional Requirements
2...

• CAPTURED RECORDS
  – Comprehensive
  – Identifiable
  – Complete
    • Accurate
    • Understandable
    • Meaningful
  – Authorized
Pittsburgh Functional Requirements
3...

• MAINTAINED RECORDS
  – Preserved
    • Inviolate
    • Coherent
    • Auditable
  – Removable
Pittsburgh Functional Requirements
4...

• USABLE RECORDS
  - Exportable
  - Accessible
    • Available
    • Renderable
    • Evidential
  - Redactable
Duff on the Power of “Warrant”

• Voluntary requirements are important
  - Rankings w/o warrant on a scale of 1 (not important) to 9 (very important) (6.45–8.55)

• Voluntary guidelines are not enough

• Some requirements matter more to certain professionals/functions
Conclusions / Observations

• General Recordkeeping Requirements originating in the ARM professions have more weight when accompanied by/endorsed by other professions (e.g. law)

• Different requirements are more important in some domains than others

• Literary warrant presents a powerful persuasion tool for stakeholder buy-in in building ER
Discussion points

• How do recordkeeping requirements help an organization demonstrate accountability?

• How can electronic records managers deploy recordkeeping requirements to assist an organization to demonstrate accountability?
Recordkeeping Requirements (Law)

- Location (where/jurisdiction)
- Type of Activity
- When (time frame)
- Events
Law (location/jurisdiction)

- Global
- International
- Supra-national
- National
- Sub-national
Law (type of activity)

- Government
- Business
  - Generic
  - Domain Specific
- Not-for-profit
- Individual
Law

- Generic
  - Government Records
    - Records include all books, papers, maps, photographs, machine-readable records, or other documentary materials regardless of physical form or characteristics, made or received by an agency of the U.S. 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, function, policies, decisions, procedures, operations or other activities of the Government or because of the informational values of data in them.

Source: 44 U.S.C. 3301
Recordkeeping Requirements Examples

- US Customs Service Recordkeeping Requirements
- San Diego County Air Pollution Control District Recordkeeping Requirements
- American Academy of Pediatric Dentistry Guideline on Recordkeeping
- UMASS General Guidelines, Do’s and Don’t’s for Keeping Lab/E-Lab Notebooks
- Identification, Maintenance, and Preservation of Digital Records created by the University of Michigan
Sedona Guidelines

• Develop sound and defensible processes to manage ER via law, IT and RM lenses
• Voluntary
• Best Practices
• General
• Scope
  – Creation/Capture
  – Content
  – Quality
  – Structure/Organization
  – Retention/Disposition*
  – Disclosure/Accessibility/Protection*
1. Reasonable Policies

• An Organization should have *reasonable* policies and procedures for managing its information and records
  – Not all information and documents have to be retained
    • FR = removable
2. Realistic, Practical, & Tailored to the circumstances of the organization

• Practical, flexible, scalable
  – Assess legal requirements
    • FR = compliant
  – Assess strategic value of Information
    • FR = accurate, understandable, meaningful
3. Need not retain all electronic information made or received

- Destroy (vs. Delete)
  - FR = removable
    - Absent ongoing or continuing value
    - Absent RKR
4. IRM Policy should address:
creation, identification, retention, retrieval
and disposition

• Documented & implemented policy; employee training; compliance reviews
  – FR =
    • captured
    • implemented
    • auditable
    • available
5. Suspension of Destruction

• Legal holds
  – FR =
    • Compliant
    • Auditable
    • Available
Records and Information Requirements-based approach (Lemieux)

- High profile cases have resulted in increased awareness of risk management connection between RKR and development of new RK laws for accountability

- RKR need to be customized to context (identification, threats, consequences of non-compliance)

- RKR approach time consuming and may be difficult to integrate into extant risk management approaches
Impact of OSHA RK Regulations on Occupational Illness Injury & Illness (Friedman & Forst)

- Does drop in incidents = safer workplace?
- What is relationship between RKR and public knowledge about workplace safety?