

**Mind the Paper  
Document Destruction  
and Retention**

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2:00 – 3:00 pm EST**

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**Key Concepts**

- v Having a Document Retention/Destruction Policy can help your nonprofit comply with the law!
- v Exposures:
  - State laws require certain retention periods
  - Federal laws have their own retention periods
  - Destruction of documents relevant to a legal investigation is a **violation of Sarbanes Oxley**
  - Email is treated just like hard copy
- v Every nonprofit is slightly different – policies need to be customized

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**What can go wrong?**

Lost or missing documents:

- v Board can't establish that actions were properly taken.
- v Organization can't defend itself in a legal challenge because documents are missing – examples:
  - State Department of Labor requires time records for employees' hours worked.
  - In a wrongful discharge case, the plaintiff may allege that termination was due to discrimination, when in fact the plaintiff violated a policy.



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**Too many documents...**

- Can crash your computers
- Take up all your office space
- Create a fire hazard
- Reduce efficiency of operations

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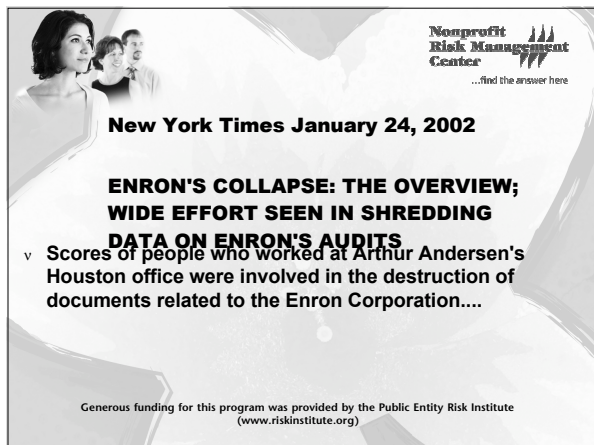
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**New York Times January 24, 2002**

**ENRON'S COLLAPSE: THE OVERVIEW;  
WIDE EFFORT SEEN IN SHREDDING  
DATA ON ENRON'S AUDITS**

v Scores of people who worked at Arthur Andersen's Houston office were involved in the destruction of documents related to the Enron Corporation....

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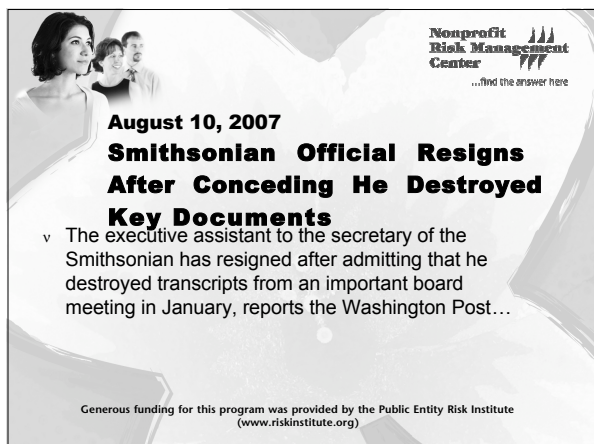
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**August 10, 2007**

**Smithsonian Official Resigns  
After Conceding He Destroyed  
Key Documents**

v The executive assistant to the secretary of the Smithsonian has resigned after admitting that he destroyed transcripts from an important board meeting in January, reports the Washington Post...

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**Do we really need a policy?**

- ✓ A policy helps the nonprofit impose discipline on itself,
- ✓ A policy demands consistent conduct across the organization,
- ✓ A policy can be enforced,
- ✓ A policy can demonstrate thoughtful, deliberate efforts to comply with the law,
- ✓ But ...policies needs to be followed! And someone needs to be responsible for oversight of the policy

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**Best Practice Models all encourage nonprofits to have document retention policies:**

Panel on the Nonprofit Sector, Principle #5  
[www.nonprofitpanel.org](http://www.nonprofitpanel.org)  
 Also, state nonprofit principles and formal accreditation standards

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**Principle #5**

A charitable organization should establish and implement policies and procedures to protect and preserve the organization's important documents and business records.

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**What is a document retention policy?**

A document retention policy provides for the systematic review, retention and destruction of documents received or created in the course of business.

A document retention policy will identify documents that need to be maintained and contain guidelines for how long certain documents should be kept and how they should be destroyed.

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**What's the Big Deal?**

- v Missing documents might be needed
  - Example: old board minutes tell us whether notice for a meeting was proper – and therefore whether the elections of board members was proper
  - Old minutes will tell us who dissented from a particular vote
- v In a legal proceeding or challenge to tax status you may not be able to defend the organization adequately if you can't find the relevant documents.

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**Understanding your exposures**

- v Inefficient operations and use of resources
- v Inability to defend the organization effectively
- v Civil penalties (e.g. payroll records missing)
- v Criminal penalties (e.g., SOX)

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**What if we didn't know that a document would be important in a legal action in the future?**

- v Destruction is permitted in accordance with a schedule if there is no knowledge of legal action
- v The best defense is evidence of a clear and consistently enforced document retention policy, enacted for valid purposes.

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**Who will be responsible for document management at your nonprofit?**

**Who needs to be involved in drafting the policy?**

- Chief Financial Officer
- Director of Administration
- HR Manager
- IT Manager

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**What should the policy cover?**

- v What should be retained and for how long;
- v That absent a specified retention period, documents should be destroyed on a regular basis, but only in accordance with the policy and
- v That employees should not destroy documents relevant to a legal investigation –
- v Also WHO is responsible for compliance, and
- v What the consequences are for violation of the policy

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**Where to begin?**

- v Start with a default of what must be retained.
- v Determine how long to retain.
- v Everything else may be destroyed according to schedule.
- v Create logical categories of documents relevant to your nonprofit's environment.
- v Identify special categories of documents that may have special retention periods – e.g., health care reimbursement (HIPAA compliance), and federal government program compliance (HUD).

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**Categories of Documents**

- v Governance and founding documents
- v Tax Exemption and Tax Compliance
- v Finance and Accounting
- v Personnel Records
- v Insurance Records
- v Legal records (contracts); Charitable Registration and Fundraising
- Gift Agreements

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**How long should we retain X?**

- v Does the law require retention?
- v Is there a use for this document in the future?
- v Will there be a negative result if we can't find this document in the future?
- v Can this document be stored in another form or obtained from another source (eliminate duplicate documents if possible!)

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**Special Categories**

- v Youth serving organizations – files of client information
- v Volunteer records
- v Intellectual property
- v Computer and internet records: diskettes, hard drives, Web pages...(we're not kidding...)

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**Where should X be stored?**

- v Do we need this document on hand at all times?
- v Should it be nearby in case it's needed?
- v Can it be kept in a storage space?
- v If archived electronically, is there a back up?  
Involve IT experts in electronic data storage solutions.
- v Personnel records/medical records/health records  
Health and medical stored separately from regular personnel matters.

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**Communicate the policy to staff and board**

Staff and board need to be aware:

- v How to store documents
- v That destruction should not occur in some situations
- v That failure to comply with the policy is serious

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**Review the Policy regularly**

- v Implement consistently.
- v Does it still make sense?
- v Do we need new/different categories?
- v Do all employees know about the procedures?

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**What other corporate policies are key to good housekeeping?**

- v Conflict of Interest policy—disclosure questionnaire
- v Code of Conduct/Confidentiality/Code of Ethics for board and staff
- v Whistleblower Protection policy
- v Document Retention and Destruction policy

Newly revised IRS Form 990 asks whether a nonprofit has each of these policies

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**Webinar Review**

- v A document retention policy is good governance and good risk management
  - Using a template is fine, but you need to customize.
- v Someone needs to be responsible for implementing the policy and overseeing compliance.
- v The board should approve the policy
- v Legal guidance can be helpful in smoothing the process

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**Thank You! We'd love your feedback on our survey that will follow.**

Contact us with questions: 202-785-3891  
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**Next Month's Webinar**

**Crisis Management and Crisis Communication for Your Nonprofit**

December 5, 2007  
2:00 – 3:00 pm EST

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