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Mind the Paper
Document Destruction and Retention

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Key Concepts

- Having a Document Retention/Destruction Policy can help your nonprofit comply with the law!
- 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
- Every nonprofit is slightly different – policies need to be customized

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What can go wrong?

Lost or missing documents:
- Board can’t establish that actions were properly taken.
- 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

New York Times January 24, 2002
ENRON’S COLLAPSE: THE OVERVIEW;
WIDE EFFORT SEEN IN SHREDDING
DATA ON ENRON’S AUDITS
✓ Scores of people who worked at Arthur Andersen’s
Houston office were involved in the destruction of
documents related to the Enron Corporation....

August 10, 2007
Smithsonian Official Resigns
After Conceding He Destroyed
Key Documents
✓ 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...
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 need to be followed! And someone needs to be responsible for oversight of the policy

Best Practice Models all encourage nonprofits to have document retention policies:
Panel on the Nonprofit Sector, Principle #5
www.nonprofitpanel.org
Also, state nonprofit principles and formal accreditation standards

Principle #5
A charitable organization should establish and implement policies and procedures to protect and preserve the organization’s important documents and business records.
**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?**

- 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
- 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**

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

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

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

What should the policy cover?

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

- Start with a default of what must be retained.
- Determine how long to retain.
- Everything else may be destroyed according to schedule.
- Create logical categories of documents relevant to your nonprofit’s environment.
- 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

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

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How long should we retain X?

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

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**Special Categories**

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

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**Where should X be stored?**

- Do we need this document on hand at all times?
- Should it be nearby in case it’s needed?
- Can it be kept in a storage space?
- If archived electronically, is there a back up?
  - Involve IT experts in electronic data storage solutions.
- 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:

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

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Review the Policy regularly

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

Review the Policy regularly: does it still make sense? Do we need new/different categories? Do all employees know about the procedures?

What other corporate policies are key to good housekeeping?

- Conflict of Interest policy—disclosure questionnaire
- Code of Conduct/Confidentiality/Code of Ethics for board and staff
- Whistleblower Protection policy
- Document Retention and Destruction policy
- Newly revised IRS Form 990 asks whether a nonprofit has each of these policies

What other corporate policies are key to good housekeeping? Conflict of Interest policy—disclosure questionnaire, Code of Conduct/Confidentiality/Code of Ethics for board and staff, Whistleblower Protection policy, Document Retention and Destruction policy, Newly revised IRS Form 990 asks whether a nonprofit has each of these policies.

Webinar Review

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

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