

Tip of the Month



Why Information Governance Matters: Lower Costs, Reduced Risk and Better Business

Scenario

The chief executive officer of a large organization with multiple divisions and tens of thousands of employees across the United States is interested in minimizing the risk of lost records, reducing costs, and enhancing the ability of the organization's employees and customers to use the information and knowledge collected by the organization. The CEO asks each operating unit of the organization to update and enhance its records management policies and practices.

Proper Management of Electronic Records

In most companies today, 90 percent or more of the records being created are electronic. The overwhelming growth of electronic messages—email, instant messaging, texts, and twitter—and the likelihood that messages are stored multiple times on various media, makes the management of electronic records a critical business issue. How that information is managed has significant business, legal, and technology ramifications. However, from a records management perspective, the medium used to create, deliver, or store information is irrelevant; it is the *content* of a record that mandates how the document should be managed. Yet, in many organizations, the function of records management is still the realm of paper folders, physical file rooms, and dusty warehouses. As the amount of electronic information grows, the ability to manage that information, which is often very valuable to an organization, can diminish rapidly.

Presidential Memorandum on Managing Government Records

On November 28, 2011, President Obama issued a [Presidential Memorandum](#) directing all executive agencies to begin the process of reforming records management policies and practices.¹ Although the requirements of this memorandum apply only to federal agencies, these timely records management reminders are important for private companies and other non-governmental organizations as well.

Recognizing that "[i]f records management policies and practices are not updated for a digital age, the surge in information could overwhelm agency systems, leading to higher costs and lost records," President Obama ordered all heads of federal agencies to begin the process of reforming their records management policies and practices. The memorandum, in an effort to "develop a 21st-century framework for the management of Government records," outlines a number of steps

federal agency directors must now take, including:

- Within 30 days of the date of the memorandum, designate in writing to the Archivist of the United States (Archivist), which senior agency official will supervise the review process explained below; and
- Within 120 days of the date of the memorandum, submit a report to the Archivist and the Director of the Office of Management and Budget (OMB) that:
 - “describes the agency's current plans for improving or maintaining its records management program, particularly with respect to managing electronic records, including email and social media, deploying cloud-based services or storage solutions, and meeting other records challenges;
 - identifies any provisions, or omissions, in relevant statutes, regulations, or official [National Archives and Records Administration (NARA)] guidance that currently pose an obstacle to the agency's adoption of sound, cost effective records management policies and practices; and
 - identifies policies or programs that, if included in the Records Management Directive required by section 3 of this memorandum or adopted or implemented by NARA, would assist the agency's efforts to improve records management.”

Lessons for the Private Sector and Non-Government Organizations

The President's memorandum, although limited in scope to federal agencies, nonetheless can serve as a reminder and inspiration to private companies, state governmental agencies, and other non-governmental entities of the importance of efficient, modern, and legally sound records management policies and practices.

- *Designate an official who is knowledgeable in records management practices.* Whomever is tasked with analyzing, updating, and improving the management of records should be familiar with the entity's current records management protocol, as well as more recent developments in the field, especially practices involving electronic records (including email and social media) and cloud-based services.
- *Ensure the proper allocation of resources.* Although a principal benefit of records management reform is long-term cost savings, entities will likely need to allocate resources in order to enact these money-saving procedures.
- *Familiarize senior management with records management requirements and benefits.* Records managers in private companies and non-governmental organizations can work to educate senior management on records management legal obligations, including data privacy and regulatory obligations, and the benefits of information governance to the bottom line and business efficiency.
- *Make information governance a priority for the entire organization.* The successful implementation of improved records management policies will cut costs, streamline the agency's information management system, and facilitate a more efficient and effective

response to the demands of litigation.

- *Information and records management policies and procedures should be realistic, practical, and tailored to the circumstances of the organization.* No single standard or model can fully meet every organization's unique needs. Each organization should consider its own particular business needs, operations, IT infrastructure, and regulatory and legal responsibilities before putting in place a practical, flexible, and scalable records management policy.
- *An organization need not retain all electronic information ever generated or received.* This is especially important in today's world of email, instant messaging, text messaging, and multiple duplication of data for disaster recovery and other purposes. Absent a legal requirement to the contrary, an efficient records management policy should include programs that routinely delete redundant records and other data.
- *Ordinary destruction practices must be suspended as necessary to comply with preservation obligations related to actual or reasonably anticipated litigation, government investigations, or audits.* Legal holds should be tailored to the legal requirements of the situation and informed by legal judgment. Moreover, effectively communicating and ensuring implementation of notice of a legal hold is an important component of an organization's records management policy.

In an era when a single smartphone, laptop or tablet computer can hold more information than some libraries, it is important that entities have effective and workable records management programs and policies. Knowing where and what records are kept, how to access those records, and when to discard them is a good way to start the process of developing and implementing a information governance program for the digital age.

For inquiries related to this Tip of the Month, please contact Anthony Diana at adiana@mayerbrown.com, Kim A. Leffert at kleffert@mayerbrown.com, or Aaron Chait at achait@mayerbrown.com.

Learn more about Mayer Brown's [Electronic Discovery & Records Management](#) practice or contact Anthony J. Diana at adiana@mayerbrown.com, Michael E. Lackey at mlackey@mayerbrown.com, or Ed Sautter at esautter@mayerbrown.com.

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¹ Mayer Brown LLP represents the National Day Laborers Organizing Network in a FOIA litigation against various government agencies in the Southern District of New York. As part of that representation, the government agencies' record-keeping practices for electronic records have been exposed as insufficient, as highlighted in a decision by Judge Scheindlin regarding the need to produce certain metadata for electronic records in response to a FOIA request. This case has been mentioned in the press as a leading driver behind this Presidential Memorandum.

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