

Record Retention

It's not just paper anymore!

Presented by Rebecca Fitzhugh, CPA, CFF, CFE, CIT, CIGA
September 30, 2015



SOBEL & CO. LLC
CERTIFIED PUBLIC ACCOUNTANTS & ADVISORS

Goals For Today

What records are we talking about?

Why is it important to your business?

Considerations for a retention policy

Select retention periods



What You **Won't** Get Today

A simple answer to all your questions.



What are Records?

“Records” are a special subset of **“information”** deemed to have some enduring value to an organization and warranting special attention concerning retention, accessibility, and retrieval.



What Records do You Have?

- Employee records
- Financial records – business & personal
- Medical records
- Purchase/sales records
- Customer information
- Vendor information



Forms of Records

- Paper
- Electronic
 - PDF – text - spreadsheets
 - Email
 - Text and instant messages



What Counts?

“Official business records”

VS.

“Transitory content” and “non-records”



Official Business Records

- Anecdotally, the majority of information retained by an organization is probably unnecessary
- General Mills found that only 5% of its recorded information is “official business records”
- In general, your records may follow the 80-20 rule



Transitory Content

- Typically retain for 1 – 5 years
- Business reference records
 - Standards
 - Marketing plans



Non-records

- Typically retain for very short time
- Ephemeral, transitory information
- Work in progress
- Internal communications/emails



Unnecessarily Retained Records

- Duplicates
- Superseded records
- Draft versions
- Content that has exceeded its retention period
- Orphaned documents from employees who have left the organization.



Why is Record Retention Important?

- Compliance with laws and regulations
- Litigation
- Data security



Laws Affecting Record Retention

Economic Espionage Act (EEA)	1996
European Union Data Protection Directive	2014 update
Fair and Accurate Credit Transaction Act (FACTA)	2003
Freedom of Information Act (FOIA)	1996
Gramm-Leach-Bliley Act	1999
Health Insurance Portability and Accountability Act (HIPAA)	1996
Health Information Technology for Economic and Clinical Health (HITECH)	2009
ISO 15489-1 2001	2001
Managing Government Records Memorandum	2011
Privacy Act of 1974	1974
Sarbanes-Oxley Act (SOX)	2002
Uniform Trade Secrets Act (UTSA)	1979, 1985



*“When you got nothing,
you got nothing to lose.”*

*Bob Dylan
Like a Rolling Stone*



Factors to Consider in Building a Plan

- Jurisdiction – local or international?
- Organization's risk tolerance
- History of litigation
- Intensity of regulatory scrutiny
- Record volumes
- Resourcing constraints



Develop a Policy

Identify your information

- How much data do you have?
- Do you really need it?
- In what form is it stored?
- Where is it stored (are there multiple copies?)
- Who has access to it?



Develop a Policy

Organize your Information

- Type of record
- Business function/process



Develop a Policy

Legal Research

- Identify relevant federal and state laws
- Regulations
- Industry standards



Develop a Policy

- Set minimum & maximum retention periods for each type
- Address copies that may be held in various locations (i.e., different hard drives)
- Address litigation holds
- Include guidelines for handling electronic files
- Cover backup procedures, archiving of documents
- Regular check-ups of the reliability of the system



Implement Your Policy

- Training of employees will be needed
- Pilot the program with a single department
- Monitor compliance
- Update as needed



How long should we keep it?

It depends...



How long should we keep it?

Federal or state legal/regulatory requirements

Tax laws

General auditing requirements

Contractual obligations

Funding agreements

Organizational needs



IRS Guidelines

You must keep your records as long as they may be needed for the administration of any provision of the Internal Revenue Code.

(...not that helpful)



IRS Period of Limitations

IF you...	THEN the period is...
1. Owe additional tax and situations (2), (3), and (4), below, do not apply to you	3 years
2. Do not report income that you should report and it is more than 25% of the gross income shown on the return	6 years
3. File a fraudulent return	Not limited
4. Do not file a return	Not limited
5. File a claim for credit or refund after you filed your return	Later of: 3 years or 2 years after tax was paid
6. File a claim for a loss from worthless securities or a bad debt deduction	7 years



Employer Obligations – Payroll Records

Chapter 194, Laws of New Jersey, 2009 – Payroll Records

1. Full name, address and social security number;
2.
 - Total remuneration paid in each pay period showing separately cash, including commissions and bonuses;
 - the cash value of all compensation in any medium other than cash;
 - gratuities received regularly in the course of employment if reported by the employee, or if not so reported, the minimum wage rate prescribed under applicable laws of this State or of the United States, or the amount of remuneration actually received by the employee, whichever is higher, and
 - service charges collected by the employer and distributed to workers in lieu of gratuities and tips;



Employer Obligations – Payroll Records

Chapter 194, Laws of New Jersey, 2009 – Payroll Records

3. An entry under the heading “special payments” of the amount of any special payments, such as bonuses and gifts, which have been paid during the pay period but which relate to employment in a prior period.

The following shall be shown separately under this heading:

- cash payments,
- cash value of other remuneration,
- the nature of such payments,
- the period during which the services were performed for which special payments were payable;

4. The date hired, rehired and returned to work after temporary layoff;



Employer Obligations – Payroll Records

Chapter 194, Laws of New Jersey, 2009 – Payroll Records

- | | |
|----|--|
| 5. | The date separated from employment and the reason for separation; |
| 6. | Such information as may be necessary to determine remuneration on a calendar week basis; and |
| 7. | The number of base weeks (as the term “base week” is defined in N.J.S.A. 43:21-19(t)) and wages. |



Employer Obligations – Payroll Records

Chapter 194, Laws of New Jersey, 2009 – Payroll Records

- All records referred to in 1. through 7. above must be kept safe and readily accessible at the New Jersey place of business of the employing unit.
- All records referred to in 1. through 7. above must be retained for the current calendar year and for the four preceding calendar years (total of 5 years).
- Once an employer becomes inactive, the employer must keep all records referred to in 1. through 7. above for the subsequent six quarters.



General Business Guidelines

<ul style="list-style-type: none">• Purchase orders, receiving sheets, requisitions	1 Year
<ul style="list-style-type: none">• Contractors' payroll information, correspondence with customers or vendors, employment applications for those not hired, internal reports, physical inventory documentation, tip reporting and substantiation documents	3 Years
<ul style="list-style-type: none">• Payroll registers, sick pay, vacation pay and PTO documentation	4 Years
<ul style="list-style-type: none">• Employee benefits records, including life insurance benefits, dental, and garnishments	5 Years
<ul style="list-style-type: none">• Accident reports and claims for settled cases, A/R aging reports, ledgers and invoices, A/P ledgers and schedules, bank statements and reconciliations, budgets, expense reports and petty cash records, deposit slips, inventory documentation, invoices to customers and from vendors, personnel records of terminated employees, voucher registers and schedules, vouchers for payments	7 Years



General Business Guidelines

<ul style="list-style-type: none">• Canceled checks, expired contracts and leased, expired insurance policies, payroll records and summaries	10 Years
<ul style="list-style-type: none">• Annual reports, audit reports, capital stock and bond records, charts of accounts, corporate documents, legal correspondence, deeds, mortgagees, title papers, bills of sale, financial statements, security and asset acquisition records, journals and journal entries, patent records, partnership agreements, property records, tax returns and worksheets, trademark registrations	Permanent



Attorney Retention of Client Files

- New Jersey - must retain client records for a period of seven years after the event recorded, rather than the period from the date of conclusion of representation.
- New York specifies seven kinds of records that must be maintained for seven years.



Suggestions

Create a policy and follow it.

Update your policy as needed.

Minimize the data you collect and store.



THANK YOU!

Sobel & Co., LLC
293 Eisenhower Parkway
Livingston, NJ 07039
973-994-9494

Rebecca Fitzhugh CPA, CFF, CFE, CIGA
rebecca.fitzhugh@sobel-cpa.com

