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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 1...

- 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...

	VOLUNTARY	MANDATORY
GENERIC	Pittsburgh Project InterPARES Sedona Guidelines	Federal, State, Local Government Records Laws
SPECIFIC	Guidelines for managing e-mail Records policies of organization x	Sarbanes-Oxley FDA New Drug Applications Truth in Lending SEC filings Airplane operations and maintenance records, etc.

Scope of Recordkeeping Requirements

- Creation / Capture
- Content
- Quality
- Structure / Organization
- Retention / Disposition
- Disclosure / Accessibility / Protection

General Recordkeeping Requirements 1...

- Efforts to define **generic voluntary** requirements for all electronic records

    - Pittsburgh Project: http://web.archive.org/web/20000818163633/www.sis.pitt.edu/~nhprc/

    - InterPARES: www.Interpares.org

    - Sedona Guidelines: http://www.thesedonaconference.org/

General Recordkeeping Requirements 2...

- <u>Source</u>: Archival, Records Management, Legal, Audit, IT Professions
- <u>Type</u>: Voluntary
- <u>Scope</u>: Create/Capture, Content, Quality, Structure/Organization; Retention/Disposition; Disclosure/Accessibility/Protection
- <u>Issues addressed</u>:
  - 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, <u>made or received</u> by an agency of the U.S. Government under Federal law or in connection with the <u>transaction of public business</u> and preserved or appropriate for preservation by that agency or its legitimate successor as <u>evidence of the organization, function, policies, decisions, procedures, operations or other activities</u> 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
- SEE: Code of Federal Regulations:

  http://www.gpoaccess.gov/cfr/index.html

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?