

IT CAN BE A COMPANY'S SAVING GRACE

EVEN SMALL FIRMS NEED DOCUMENT RETENTION POLICY

A flurry of ill-timed document shredding helped bring the venerable accounting firm Andersen to its knees. Could the same thing happen to your business? According to legal experts, it could happen to any company that doesn't have a solid document-retention policy that employees follow to the letter.

"The law doesn't differentiate between small, medium and large companies as it relates to the legal requirement to retain records for specified periods of time," says Randolph Kahn, an attorney and principal with Kahn Consulting, Inc., a Highland Park-based information management consulting firm.

A document-retention policy tells you when and how to legally dispose of memos, tax records, employee files, e-mails and other company documents. The policy also tells you how and where to store these records. A document-retention policy isn't difficult to follow, but establishing a policy from scratch for your company can be time-consuming. That might explain why it's not high on every company's list of action items.

"Often, companies look at it like filing," said Judy Pier, a consultant and certified records manager who owns Windy City Records Management in Chicago. "They don't devote much money or interest in it. But as we've seen recently, it can bring a company down."

Consultants can help you get your own program off the ground, or you can develop your own system. After you've created an inventory of all your records, including paper and electronic files, consult your accountant and lawyer about document-retention requirements pertaining to tax laws, requirements of the Occupational Safety and Health Administration, and other laws and regulations that might apply to your industry.

After you've determined what needs to be saved from a legal and business standpoint, you can determine which methods you'll use to store, and later discard, those records.

Paper files immediately come to mind when people hear the words "document retention." However, electronic files are equally important. Your computer contains a wealth of records that may not be as expendable as they seem. E-mail messages are a prime example.

"Contracts and business relationships are formed every day via e-mail," said Kahn. "Even if it's casual in nature, an e-mail can rise to the level of having contractual significance. It can be something as simple as 'I got your revised proposal. It's a go. Get your people here on Monday.'"

E-mail's role as a smoking gun made headlines in recent months as Microsoft CEO Bill Gates and executives from Oracle and Merrill Lynch were confronted with e-mail messages that they thought had been deleted.

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The problem is that computers have their own definition of the word “delete.” Instead of destroying an unwanted file after you hit the delete button, your computer marks the space occupied by that file and only dumps it for good when new data comes along to replace it. Because computers don’t store data sequentially, you don’t know when the old data will actually be erased from your system. So, until a new file parks itself in your old file’s place, a forensic engineer can come in and recover the information you tried to delete.

According to Kristin Nimsiger, an attorney and computer forensics expert with Kroll Ontrack, a Minneapolis-based company that specializes in data storage and recovery, “One of the single most important things an employer can do is to make sure people understand the nature of e-mail and how it’s used. E-mail is the modern equivalent of water cooler conversation, but it has a great deal of permanence. My advice: Don’t write anything in an e-mail unless you’d be happy having it blown up as an exhibit in court.”

Instant messages, a form of real-time communication that is increasingly being used in business, falls into the same category. Dave Zaret, director of collaboration architecture at Divine Inc., a Chicago company that supplies an IM-like system that is used by financial firms, says his customers have had to search their messaging archives to prove that a particular piece of information was or wasn’t discussed.

“Our customers are pushing data through the system that’s extremely valuable to them. The SEC monitors and regulates that data,” he said.

Whether it’s electronic or paper records, your document-retention policy also needs to take into account what to do if your firm is involved in litigation or other matters that require you to produce documents that might be scheduled for destruction.

According to Kahn, “If you have records with a 10-year period of retention, and next year is the end of their retention, if a lawsuit happened today and those records are potentially relevant to the investigation, the [company’s document retention] rule has to be suspended to make sure the records continue to exist until the end of the litigation, audit or investigation that extended the rule.”

NOT THAT COSTLY

Highly organized and accessible records storage doesn’t have to be costly. According to Boston-based Iron Mountain, a company that specializes in paper and electronic records storage and management, a typical customer pays an average of \$1,000 per year for paper storage services that include electronic document tracking.

Paper files should be packed in cartons that include an index of what’s inside the carton. Companies like Iron Mountain will help manage your document retention program, including alerting you when it’s time for records to be destroyed. Iron Mountain offers its customers the option of bar-coding their paper storage cartons.

“You can access your index of contents via an online database, search for records by keyword and identify the box you need,” said Mike Dennison, Iron Mountain’s director of national accounts who is based in Addison. “We can then deliver it to your office by courier. If you need something quickly, we can have the document scanned for you.”

Finally, make it a priority to explain these policies and procedures to your staff, and create a schedule for reminding employees about the policy.

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This issue came up in the recent Andersen trial. When former Andersen accountant David B. Duncan testified about asking his team to destroy certain Enron-related documents, he claimed he was following Andersen's document-retention policy.

"In Andersen's case, had management been clear about its policies from the beginning, perhaps the outcome would have been different," said Kahn. "Instead of losing trust in the firm for failing to have adequate procedures and protections in place, the fingers would be pointed at the individual."

This might be the best example of what document-retention experts mean when they say that a company's policy is only as good as the people who practice it. Said Nimsiger, "At organizations large or small, it boils down to how people use the technology sitting on their desk."

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