

IT'S TIME TO ADDRESS YOUR COMPANY'S
INFORMATION MANAGEMENT
POLICIES IN LIGHT OF THE NEW
FEDERAL RULES

Companies are striving for more efficiency than ever before, using e-mail, voicemail, instant messaging, PDAs and other electronic media, to compete in the global economy. These technological advances, necessary as they are in today's business environment, present businesses with significant challenges, especially when it comes to the production and preservation of information and documents. As courts and regulators place increased focus on information preservation issues in the post-Enron era, it is vital for companies to have strict information retention policies in place. These policies must be carefully balanced to ensure that information is retained and accessible, while limiting the amount of expense and disruption a company may incur if it finds itself the subject of litigation. This information is no longer limited to paper documents, but now includes e-mail, instant messages, voice mail and a host of electronic data files.

Why is an Information Retention Policy Important?

With more than 93 percent of documents being created electronically, along with email, voicemail and instant messaging, information, not documents, must be managed for the following reasons:

To comply with regulatory agencies. Most companies are subject to federal and state regulations which require the retention and/or disclosure of certain types of information: Sarbanes-Oxley, Hart-Scott Rodino, HIPAA, Graham-Leach-Bliley and the Securities and Exchange Commission Rules are just a handful of laws which require the retention of information.

To avoid legal sanctions. The preservation and production of electronically stored information is one of the hottest topics facing the courts at the moment. On December 1, 2006, the Federal Rules of Civil Procedure were amended to require counsel to deal specifically with the preservation and production of electronically stored information. Moreover, recent case law illustrates the importance of electronic information preservation and the disastrous consequences that can befall a company should it ignore its information preservation obligations. Indeed, fines as high as \$1.4 billion have been levied against companies that have failed to properly preserve electronic information.

To stay organized. Your business will benefit from the improved organization of your company's information. Additionally, a good information retention policy can be used as a litigation preparedness tool in the event your business is ever involved in a lawsuit.

INFORMATION MANAGEMENT UPDATE

This Update is published by our Litigation Department. Please feel free to contact any of our authors for more information.

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What are the Elements of a Good Information Retention Policy For Your Business?

One that is prepared by the right team: Your team should include legal counsel, information officers, IT personnel, records managers, department/business unit heads and auditors, among others.

One that addresses the four key items: A good policy addresses document creation, document retention, document storage and document destruction.

One that applies to a broad spectrum of media: A good policy addresses conventional electronic media (e.g. servers, desktops, email and hard drives) as well as less conventional electronic media (e.g. PDAs, instant messaging, voicemail and thumb drives).

How does a Company Ensure Compliance with its Information Retention Policy During Litigation?

Develop a litigation response team: This team, like that which helps develop or update the information retention policy, should be comprised of legal counsel, key IT personnel, records managers and information/compliance officers. These will be the “go-to” people who will address and follow up to ensure that proper preservation protocols are followed whenever the company is subject to litigation.

Train employees: Meetings and training sessions are great ways to familiarize your staff with the information retention policy and establish a culture which has an awareness of information preservation issues.

Make the information retention policy accessible: The policy, as well as any manuals or a list of F.A.Q.s which concern it, should be readily available on the company’s intranet or electronic bulletin board. The company also may want to designate an email address specifically designed for employees to email questions about the policy; the address inbox would be held by a person on the litigation response team.

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