

Exploring electronic records retention

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Once upon a time, in a public office somewhere, an administrator sent an e-mail discussing the intended actions of the public office with regard to a public construction project. The e-mail addressed the public office's actions in the matter and detailed the rationale behind the decisions made. It was sent to four administrators and the board of the public body.

Fast forward in this somewhat unusual story to a few pages later — the public office is now embroiled in litigation over the construction project. A newspaper reporter makes a public records request for documents specifically related to the construction project during a certain time period. The e-mail fits the definition of a public record, it relates to the project and is within the time frame requested. But where is it and who has it? Where is it kept? Did anyone, in fact, keep it? If so, where would it be? If not, can it be retrieved? Finally, what happens if the public body fails to produce it?

Now for the multiple choice — select which answer represents the best-case scenario for the public body:

A. The document has been deleted by everyone, because each person thought someone else was keeping track of it, and the system has not been backed up for weeks. Not to worry; a data recovery specialist will be hired to retrieve the document.

B. Good news! The system is backed up every night and there are two tapes. The tapes are interchanged every other week and recorded over. The document requested was deleted by everyone who received it four months ago.

C. The administrator who sent the memo dutifully kept a copy of it on his computer. However, the records

custodian responding to the request has no way of knowing that it is there.

D. The district has a policy on electronic records management. It states whose responsibility it is to retain documents, and when and how they are processed into the appropriate file. The documents are maintained in a system that can catalogue, access, search and retrieve them when requested.

The answer lies in understanding how public records law and electronic records management coalesce. It is easy to see that “D” represents the best practice for public offices. But why? Do you know what is wrong with the other answers?

This article helps outline the issues of electronic records management and offers best practice suggestions for implementation that school districts can use.

About electronic records

Electronic documents can be public records. Perhaps this seems like an oversimplification; however, it appears that the perception of the need to retain electronic documents sometimes varies from paper or other forms of records. The fact that the document is electronic in form says nothing about what it contains as subject matter, where it should be kept or how long it should be kept there.

Just like a piece of paper, the importance of the document and how it should be stored (if at all) is revealed by its contents. Therefore, electronic documents that serve to document the “... organization, functions, policies, decisions, procedures, operations or

other activities of the office” are records, which must be retained for the requisite time periods (Ohio Revised Code (RC) 149.011(G)). Electronic records not

meeting the definition of a record may be deleted at will.

Nothing in the law delineates how the records must be retained. Districts may choose not to electronically retain documents that initially were generated or transmitted in that manner. They may choose to take paper records and convert them onto electronic media for storage.

The law does mention how records must be produced, however, and a requestor may ask that the record be produced on paper, on the same medium in which it is stored or any other medium on which the public office can reasonably reproduce it (RC 149.43(B)(2)).

The duty to retain public records

School districts have a duty to retain and safeguard public records (RC 149.43). The records of the school district belong to the public, and the school district is the steward of those records. The only exceptions to this duty are those records the school district keeps in the course of its duties to manage and control public schools that



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are specifically designated by law as confidential documents. This duty includes keeping even these confidential documents for the requisite time period as outlined in the records retention schedule adopted by the district's records commission.

The length of time different types of records must be maintained and proper disposal of them is the essence of records retention. The records retention schedule lists the types of documents retained by the public office in question and details how long the office will maintain each type of document. This schedule is called the RC-2, which is the name of the sample form produced by the Auditor of State. Each district's records commission must adopt a schedule of records retention, which must be approved by the Ohio Historical Society and the Auditor of State's Office.

For example, schools maintain student records. Some student records are scheduled to be retained permanently, such as enrollment and withdrawal information, grades and transcripts, and attendance records. These are the usual contents of what is commonly referred to as a student's cumulative record. Other student records, however, need not be retained permanently. Disciplinary letters to parents or office discipline are scheduled for retention until one year after graduation.

The records commission

In exempted village and city school districts, RC 149.41 creates a records retention commission. For local school districts, the educational service center serves as the records commission. The members of the records commission are designated by the statute and include the superintendent, treasurer and board president. The commission meets annually, and its functions are to review all applications for disposal of records submitted by district employees; review and revise the records retention schedule, if necessary; and forward completed certificates of disposal (RC-3) and applications for one-time records disposal (RC-1) to the Ohio Historical Society. The commission also should

keep a master file of the records retention schedule and any and all submitted requests to dispose of records.

Roles of other state agencies

In discharging the duties of the public office to maintain and retain public documents, the Auditor of State's Office and the Ohio Historical Society have a role. Both entities must approve the schedule of records retention adopted by each public office's records retention commission. These state offices also approve requests to dispose of public records that have been retained for the amount of time required by the records retention schedule.

When a public office determines it has records it may dispose of pursuant to the records retention schedule, the public body files an application for disposal by filling out a form (RC-3) listing the records ready for disposal. The use of this form is preferred over the use of the RC-1. This is because the RC-3 serves as the routine way of addressing disposal of records that have reached the end of their retention period. The Ohio Historical Society may select any of the scheduled records (with the exception of some student records) to be retained during that time period. School districts must wait 15 days after mailing before disposing of any of the records scheduled for disposal.

Records audit

A public office that has not devoted the required time to identify obsolete records and apply for proper disposal may wish to conduct a records audit. This entails taking an inventory of records currently kept and comparing that inventory to the records retention schedule. Records long past the expiration date may be scheduled and disposed of by using the RC-1 form.

This could clear out a large amount of space in your file system. The benefits beyond that include less staff time spent locating records, and improving the efficiency of the file system, since it is less burdened by obsolete records. Some consideration should be paid to ensuring the records are properly disposed of; there are numerous firms that specialize in shredding or burning

records. Information on how to conduct a records audit is available on the Ohio Historical Society's Web site, www.ohiohistory.com.

The problem of data migration

One issue school districts must take into account when considering converting paper records to electronic storage is the stability of the electronic medium chosen and the ability to migrate the data — that is, update and preserve the records when technology advances. Consider the record album, which was followed by 8-track tapes, cassettes and CDs, and now, digitized recordings. Can you put your record albums into your computer? (There is a way to do this, but it isn't as if there is an "album drive.")

The point here is that the records commission needs to be able to move records into succeeding technological formats so that the records that must be retained can continue to be accessed and produced. After all, the duty to retain permanently is not met when the records are trapped on a medium that cannot be accessed by anyone's computer 25 years later.

Think about the fact that just 10 years ago, the floppy disk was the primary method of storing data created electronically. Now, CDs, flash drives and DVDs are the most common ways to store data electronically. It's not easy to find new computers with floppy disk drives any more. This surely will be the case with CDs in the not-too-distant future. What if a public office had decided 10 years ago to catalog all its electronic records on floppies? Floppy disks degrade, too. Has provision been made to make sure that even 30 years from now, those disks will still have the information?

A more complex example involves computer languages. Operating system programs run on change, and advances in technology may evolve or generate entirely new systems. Will the new programs talk to and understand the old ones? There are already examples of new versions of platforms not reading the older versions. Have you considered this issue with the data now on your systems?

The Ohio Historical Society has an electronic records commission that is considering many of these issues as they relate to the need to retain records for long periods of time. The State Archives and the Local Government Records Program are studying the issue now.

School districts should devote some consideration when selecting a data medium to convert paper records. There also should be a review process to ensure that the data is not degrading on the medium chosen and whether the data needs to be upgraded onto a subsequent medium. The time period that the selected medium is generally stable also should be considered — nothing lasts forever, and you may be surprised by the recommended shelf life of some electronic media.

Storage of the data medium chosen should be according to manufacturer's recommendations and industry standards. For example, a district could keep boxes of paper in a hot warehouse for years and years with few problems (any archivist will tell you that paper also degrades, eventually). Floppy disks, CDs and DVDs, which after all, are only plastic, could melt if stored in the same way.

Electronic records management: System and process

The other major category when considering electronic records management is records that already exist in an electronic format, including those created electronically that exist only in that format. How are these records integrated into the district's file storage system, how will they be stored and how are they accessed? (The answers to these critical questions determine how your district might fare in the multiple-choice question at the beginning of this article.) School districts seeking to establish such a system can create electronic folders and begin filing electronic documents in the searchable file system created for that purpose. This way, when a request is made, the filing system can be searched and records produced. There are many choices of database systems that the district could purchase and customize for specific uses.

Here is what should *not* happen: public offices should not maintain records in an electronic format when there is no searchable file system in which records may be found and produced. This system, or more appropriately, lack of a system, does not give a public office the capability to find, catalogue, search and produce records.

If a public office is not prepared to integrate electronic records management into its daily operations, it should instead use the "traditional method" — its existing file system. This simply means the office prints or otherwise produces the record that needs to be retained from the electronic format and stores it in its existing file system. The district may use this approach while it develops an electronic records management system and trains staff to use it. This method also provides the best assurance that records will be retained and placed in a format in which they can be recovered. The public office can incorporate electronic records storage when it converts existing records that must be kept for long periods of time onto other media, such as DVDs.

In fact, due to the challenges of migrating data — making sure that documents created now can be kept and accessed as technology evolves — the traditional method may be preferable at this time. Many school district offices in Ohio do not have an entirely separate, efficient system of electronic sorting and

storing that takes into account the data migration problem.

Conclusion

This is not to say that districts should not concern themselves with creating a system of electronic records management; there are many advantages to doing so. These include the ability to easily locate and produce records, along with probable cost savings. While the district develops and trains its staff to use the system, however, it may be more prudent to adhere to the system people already know and understand. This reduces the chances of lost data and inconsistent filing or storing of data as outlined in the example at the beginning of the article.

The Local Government Records Program and Electronic Records Commission, under the auspices of the Ohio Historical Society, continue to study the issues related to public records and technology. School districts are urged to visit the Web site at www.ohiohistory.org/resource/lgr. The site contains forms and instructions for filling them out, information on electronic records, sample policies and other resources. □

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