

“Ask the CRM”



- Bob Dalton, CRM

Question:

Is there a legal requirement to have a records management program?

This is a question that has to be examined as two distinct groups; the private and public sectors.

Private Sector

As far as I know there is not a specific law stating that a private company must have a formal records management program. Laws, both Federal and state, may have a legal requirement to maintain specific types of records (FERC, HIPPA, EPA, OSHA, SEC, etc.) and the legal retention periods for each type of record maintained by private sector entities. However, with some exceptions, each private sector company can decide how they are going to manage records with the legal requirements established by federal or state law.

However, with the changes to the Federal Rules of Civil Procedure, that became effective 1 December 2008, it would seem prudent to have an established records management program as some Federal courts have specifically penalized companies for the failure to have a document management system. Under Federal Rule 16, Rule 26(a) and (f), and Rule 35, parties in a litigation are required to include electronically stored information in their initial disclosure and discuss electronic discovery in their Rule 26 conference. In essence the court addresses the handling of electronic stored information. In reality, this means that an organization must have a system in place to be able to pull together the requested electronic within specific time limits or they could face sanctions.

Public Sector

In the public sector it is a much different story. Federal employees are guided by the National Archives Records Administration (NARA), who is responsibility for Federal records as the Nation's record keepers. Agencies within the government are required by law to have a designated records officer as required by 44 U.S.C. Chapter 31, Records Management by Federal Agencies (<http://www.archives.gov/about/laws/fed-agencies.html>).

In the State of Washington, each state government agency must designate a Records Officer to manage their records management program and to represent the agency in all contacts with the Records Management Office and State Records Committee as required by RCW 40.14.040, (<http://apps.leg.wa.gov/RCW/default.aspx?cite=40.14.040>). However, once you drop below the state level of government, there does not appear a legal requirement to have a formal records management program. But local government agencies, boards, etc., still must follow the guidelines established in RCW 40.14.XX.

The Records Management function of the Washington State Archives provides records management training at locations throughout the state and guidance on disaster recovery, vital records, etc., for all public employees. Their training calendar and other useful information can be found on their web site at <http://www.secstate.wa.gov/archives/RecordsManagement/>. A fee will be charged for some of the training provided at the Department of Personnel in Olympia and a small fee for cost recovery for lunch at their road show seminars.

Outside of Washington other state governments may provide the same type of records management training and guidance. The Council of State Archivists (CoSA) provides a directory of State and Territorial Archives and Records Programs at their web site that may provide additional information in developing a records management program (<http://www.statearchivists.org/states.htm#hi>).

If your organization has business in Canada, you might check out the Canadian ARMA web site (www.armacanada.org) that provides links to some records management resources.

I highly recommend that my clients, public and private, review and use the information developed by Federal and State government records management in the creation of their records management program. It is free and they provide excellent guidance.

The establishment of an effective document management policy, including a litigation hold policy, should help in the management of your business records, electronic or paper. The policy should be simple to follow, accessible and communicated to your staff. The policy should meet your company's needs and legal obligations, address both your paper and electronic data, and state why the company has established the policy, and to include the retention schedules to be followed by the staff. The effective management of the organization's records must be an ongoing endeavor. Once you have established a formal records management policy you must follow it as a regular course of business. The courts frown on organizations that do not follow their own document management policy (Arthur Anderson LLP v. United States, 544 U.S. 696, 125 S. Ct. 2129, 2135 (2005)).

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Note: My thanks to Barbara Werelius, Records Manager and Guru at Tacoma Public Utilities, and the Puget Sound Chapter of ARMA for her assistance in the development of this article. Other articles by Mr. Dalton can be reviewed and copied at his BLOG site: askthecrm.blogspot.com