

Records Retention: Establishing a Policy

Q: Does our association need a records retention policy and, if so, what should it cover?

A: Records retention is an important aspect of meeting an association's legal obligations, and every association should adopt and follow a formal, written records retention policy. By doing so, associations can minimize their exposure to liability and their members' expense, as well as reduce costs.

Rather than serving as a helpful historical record, unnecessarily saved documents more often than not can be and are used against associations and their members. Association records can be a treasure trove of information for plaintiffs. Those same documents rarely are necessary for the association to defend itself. And if records are not regularly maintained (and destroyed) according to a set policy but, instead, are never destroyed or, worse, destroyed selectively or after an issue arises, associations could be exposed to substantial liability.

The first element of a good records retention policy is to implement good records' development practices. In other words, staff and members should be educated on appropriate means to document actions and on how to avoid inadvertently creating material that could be used as a "smoking gun." For example, minutes should record actions taken, not who says what. Similarly, staff and volunteers

should be reminded that email messages are written records that can be and are preserved. Email messages should not be treated like casual conversations for which there are no records to preserve. Another way to ensure that only appropriate records are created in the first place is to have certain documents—such as minutes, standards and technical publications—reviewed by legal counsel prior to their publication.

The records retention policy itself should be in writing, be distributed widely within the organization, be applied uniformly and consistently, and include a schedule identifying retention periods and a framework for the administration of the policy. While certain records are required to be maintained by law or are necessary for the organization to carry out its purposes and activities, not all records need to be maintained, and few need to be kept forever. Articles of incorporation, bylaws, minutes of board meetings, annual information and income tax returns, and copyright and trademark registrations are a few examples of documents that should be kept permanently. Some records need only be kept for certain specified lengths of time (such as contracts for 10 years after their termination, employee files for six years after the employee leaves employment or bank statements for seven years). The association's records retention policy should specify the appropriate length of time for every type of document the association might develop or acquire

and should be determined by considering applicable laws and regulations and statutes of limitation, contractual obligations and intellectual property requirements as well as the association's business considerations, which may extend the "legal" retention period.

Just as important as adopting a policy is ensuring that it is followed in practice. Records that have passed their retention period and records that the policy doesn't require to be kept must regularly be destroyed. A records retention policy is as much about the appropriate destruction of records as it is their retention. Generally, it is a good idea for an association to designate one person as the "records administrator," responsible for ensuring that the policy is regularly and appropriately implemented. The records administrator, in conjunction with the association's chief staff officer or legal counsel, can also be responsible for interpreting and applying the policy to specific situations.

In carrying out the policy, it is extremely important that all copies of the association's records scheduled for destruction are destroyed, including paper files, electronic data and all of the copies kept by members. The policy is of little use if association staff are diligent in destroying paper and electronic files in the office but members separately maintain those same records. The organization should develop a system for reminding staff, board and committee members, and other volunteers with access to association records

when and which records should be destroyed. Some associations have adopted an annual "record destruction day" in which regular work is stopped while the past year's accumulation of unnecessary files and documents is cleaned out.

While the overall goal is to rid the organization of unnecessary records, normal record destruction procedures should be suspended immediately if a request to produce documents is received, if a government inquiry is underway, or if there is even a likelihood of litigation or government inquiry. Failure to prevent the destruction of documents could result in criminal obstruction of justice charges or contempt of court proceedings against the association or individual members or staff.

Finally, it is a good idea to periodically review and update the records retention policy in light of new laws, regulations or other considerations.

The benefits of a records retention policy are several: it can reduce costs associated with record storage and management, responding to third party subpoenas, and even litigation. A good policy that is consistently put into practice also reduces the likelihood of liability for the association and its members. 

The answers provided here should not be construed as legal advice or a legal opinion. Consult a lawyer concerning your specific situation or legal questions.

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