

Records Retention Training

Purpose

- LSUHSC-NO must comply with state and federal records retention requirements in order to provide appropriate access to state information to the public and to limit the potential liability of the University in a legal proceeding.
- This tutorial will explain the requirements of the law and how to comply with LSUHSC-NO's records retention policy.

Objectives

- Purpose/Scope of Program
- Correct identification of records
- Proper disposal of records
- Appropriate “hold” procedures for litigation and audits
- Repercussions and potential legal liability if procedures are not followed correctly and consistently.

Background

- Louisiana's Public Records Act (LA R.S. 44.1 et seq.) requires that "...a statewide system of managing and preserving government records which will meet informational requirements and serve the rights and interest of government and its citizens..." be developed.
- This system is administered through the Louisiana Division of Archives, Records Management and History located in the Secretary of State's Office.

Background (cont.)

- The Division of Archives, Records Management and History is required to establish standards and guidelines to ensure the state's official records are created and maintained efficiently, economically, and in a manner that guarantees their public accessibility.

Background (cont.)

- Additionally, the law requires that each state agency designate a Records Officer to work with the Division of Archives, Records Management, and History regarding that agency's records management needs.
- LSUHSC-NO's Records Officer is designated by the Chancellor.

LSUHSC-NO's Records Retention Policy and Schedule

- In order to comply with the legal retention requirements, the University has created the LSUHSC-NO Records Retention and Disposition Policy and Retention Schedule.
- Both the policy and retention schedule can be found on the Office of Compliance Programs website at: (insert link)

What is considered a “record”?

- LA R.S. 44:402 defines a **record** as “all
 - documents,
 - papers,
 - letters,
 - books,
 - drawings,
 - maps,
 - plats,
 - photographs,
 - magnetic or optical media,
 - microfilm,
 - microphotograph,
 - motion picture film, or
 - other document or any other material,
- regardless of physical form or characteristic, generated or received under law or in connection with the transaction of official business, or preserved by an agency or political subdivision because of other informational or legal value.”

What is not considered a “record”?

- Record shall not be construed to include:
 - library and museum material developed or acquired and preserved solely for reference or exhibition purposes,
 - extra copies maintained for convenience in reference or
 - stocks of standard publications, or processed documents.

Content of the Record

- The content, or what the record is about, controls the length of time that the records must be maintained.
- For example, emails regarding patient care should be maintained for the same retention period as the retention period of paper patient care records.

Scope of LSUHSC-NO's Retention Policy

- This policy applies to all records (written, electronic or any other form) maintained by the LSUHSC-NO campus, including but not limited to:
 - Education Records
 - Clinical Records and Patient Communications
 - Human Resource Records
 - Research Records
 - Public Records

Identification of Records

- Appendix A of the LSUHSC-NO Records Retention Policy contains the definitions of major categories of records:
 - Education Records
 - Human Resource Records
 - Clinical Records and Patient Communications
 - Research Records
 - Public Records

Identification of Retention Period

- Once the major category of records has been identified, consult the LSUHSC-NO Records Retention Schedule.
- Under the major category designations, there are subcategories which determine the retention period for those types of records.

Identification of Retention Period (cont.)

- According to the Louisiana Public Records Act, all records the University maintains must be kept for the current year plus three years. However, longer federal or contractual retention periods may apply.
- If you are unsure what major category or subcategory to which a particular record set belongs, contact the Records Officer.

Consult with Records Officer

- Once the retention period has been determined, contact and receive verification from the Records Officer that:
 - No audit or litigation holds are currently in place on the records up for disposal.
 - Disposal request may be sent to State Archives for approval.

Approval from State Archives

- Submit the form: Request for Authority to Dispose of Records” to the LA State Archives Office.
- The form can be found on the Office of Compliance Programs website at: (insert link).
- Once approval has been granted to destroy the records, follow LSUHSC-NO Records Retention Policy requirements on disposal.

Disposal of Records--Paper

- If the records to be destroyed **contain no information considered confidential in nature**, a department may use any of the following acceptable methods:
 - Landfill
 - Recycling
 - Shredding
 - Incineration
 - Maceration
 - Pulverization

Disposal of Records—Paper (cont.)

- If the records to be destroyed **contain information considered confidential in nature**, a department may use any of the following methods :
 - Shredding
 - Incineration
 - Maceration
 - Pulverization

Disposal of Records--Electronic

- Electronic Records that **contain information considered confidential in nature must be disposed of in accordance with PM-36.**

Litigation and Audit Holds

- When there is actual or potential for litigation to arise out of an event, such as termination of employees, sexual harassment, discrimination, whistleblower claims, etc., the Department Records Liaison shall notify the Department Head.
- The Department Head will confer with Legal Counsel to determine what records need to be designated on hold for litigation or audit purposes.

Litigation and Audit Holds (cont.)

- The Records Officer will issue a hold notification, in writing, to the Department Liaison/Business Manager, indicating the effected information/records not to be destroyed.
- The Department Liaison/Business Manager is responsible to notify the department employees to cease destruction of any documents related to the pending matter.

Litigation and Audit Holds (cont.)

- Once the audit or litigation hold is no longer necessary, the Records Officer will notify the Department Liaison/Business Manager that the records may be destroyed.

Steps for Disposing LSUHSC-NO's records

1. Identify the category of records to be disposed from Appendix A of the LSUHSC-NO Retention Policy.
2. Identify the retention period of the record from the LSUHSC-NO Retention Schedule.
3. Ensure there are no contractually designated, federally mandated longer retention periods, or audit or litigation holds have been placed on the records.

Steps for Disposing LSUHSC-NO's records

5. Submit disposal request to Louisiana State Archives, with a copy of the request to the Records Officer.
6. Upon approval from State Archives, proceed with disposal in the appropriate manner as designated in the LSUHSC-NO Records Retention Policy.

Consequences of Non-compliance with Policy

- Failure to place a hold on records relevant to the litigation and those records are subsequently destroyed may cause a presumption in the litigation that those records would have been harmful to LSUHSC-NO's position.

Consequences of Non-compliance with Policy

- In the court case, Zubulake v. UBS Warburg, the defendant UBS was held accountable for the negligent destruction of emails and other documents, even though the employee was following the company's published records retention policy.
- The key failure the court found was that there was a "reasonable expectation" a lawsuit would be filed and therefore, normal retention procedures should have been suspended.

Consequences of Non-compliance with Policy

- While a litigation hold may have been in place, the employee was not trained in the proper procedures for suspending the normal destruction procedures.
- After the conclusion of this case, both the federal and state court systems amended the rules of procedure to prevent parties from destroying documents relevant to the litigation.

Recent Event involving Records Retention

- In February 2009, it was discovered pursuant to a public records request by the New Orleans Times Picayune that that every email sent and received by New Orleans Mayor Ray Nagin was apparently deleted.
- The courts have determined that this is an apparent violation of the state public records law and a violation of his own office's technology administration policy.

Nagin email's

- The mayor's office did not have a backup process for its electronic files, contrary to its own policy.
- Nagin asserts that only 15 of the email messages and half of his calendar for 2008 could be retrieved.
- In court documents, Nagin stated that he sent and received 50 to 100 email messages a day.

Nagin email's (cont.)

- State law defines “injuring of public records” as the intentional removal, mutilation, destruction or alteration, falsification or concealment of any record, document, or other thing filed or deposited... in any public office or with any public officer.”
- Violations of the law are punishable by as long as five years in prison and fines of as much as \$5,000.

Nagin's emails (cont.)

- As of June 2009, the final outcome of the events surrounding the deletion/destruction of Nagin's emails has not been determined.

Consequences of Non-compliance with Policy

- Failure to comply with the LSUHSC-NO Records Retention policy may place the University at risk of liability for not being able to properly respond to records requests in the following ways:
 - Public Records Requests
 - Audit Investigations, both internal and external
 - Litigation Proceedings

Questions?

- Contact: