

To Store or Not to Store: Records Storage Cost-cutting Tips

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As the volume of client and administrative records stored in warehouses and on firm computer systems increases exponentially each year, so do the costs of storing and retrieving those records. What can you do to control these costs and improve your firm's bottom line? The answer is to establish and implement a policy that prescribes **what to store and for how long**. These elements are specified in a records retention schedule. It identifies what records you have, how long you need to keep them to meet operational and regulatory requirements, which department or group needs to keep them and why.

Where to Begin

At first glance, the notion of a records retention schedule may seem so overwhelming that it is to be avoided at all costs. Indeed, schedule development can be a complex, time-consuming and controversial process. Before you decide whether to start down that road, however, let me point out that you can realize substantial savings by deciding **what your firm will not store**.

Ground Rules

Although paper records are the focus of this discussion, for illustrative purposes, the issues discussed here apply to electronic records and any other formats you may have. Keep in mind that the retention policy your firm develops should be applied to all records, regardless of format.

What's in Those Boxes?

Before you can decide what will not be stored at firm expense, you need to assess what you are currently storing. The easiest place to begin is your commercial records centre, because you can review paper records more easily than your electronic records. Take a look at your current inventory – you may be surprised.

Firm Business?

In addition to old client and administrative files, you will undoubtedly find an array of some or all of the following items:

- books, journals and other printed publications;
- office furniture, equipment and supplies;
- desk accessories such as coffee mugs; and
- blank forms.

These items can account for a significant portion of your firm's off-site inventory, but they do not contain information related to firm business. From a records management point of view, these items should not be stored at firm expense. Determining what is and what is not related to firm business, then, is a reasonable first step in setting your policy.

Are All Client Files Storage-worthy?

Back at the commercial records centre among the boxes that contain client files, you will likely find a significant volume of material that should not have been sent there in the first place. Although all client files obviously relate to firm business, two additional criteria should dictate which matter-related records are retained and stored after a matter is closed:

- ownership of the item; and
- whether the record is an *official record* or a *reference copy*. (In records management terms, an official record is the original or official copy that provides information or evidence of the organization's transactions, decisions, procedures or policies. In contrast, a reference copy is a duplicate that is maintained for ease of reference.)

Who owns each document belonging to a client file – the client or the firm – is a complex issue that is discussed in detail in the Law Society's "File Retention" article that is referenced in the "Practice Management Guidelines" on their website (<http://mrc.lsuc.on.ca/jsp/pmg/fileManagement.jsp>) and will not be covered here. However, your firm's policy needs to specify which records are the firm's and which are to be delivered to the client when a matter is closed. Records belonging to a client should never be sent to storage at this time. Clients must retain control over their own records, to apply their internal business rules for retention and destruction.

Because only *official records* should be sent to storage when a matter is closed, your retention policy needs to specify what constitutes an official record. The "File Retention" article cited above states the following: "Lawyers should retain copies of documents that evidence the client's instructions, change in instructions, solicitor-client communications and work performed on behalf of the client". That statement is followed by a list of documents that a lawyer should consider retaining from the client file. This list is an excellent starting place for deciding what components of a client file are official records.

Listed below are some of the document types your firm may wish to consider when defining *non-records* (that is, records that should be destroyed when a matter is closed):

- Legal research. Printouts of LexisNexis searches and copies of cases, regulations, periodical articles and the like can be very bulky. Because the search itself as well as the source material can be reconstructed, these items can be considered non-records. A compromise is to retain only the list of cases and other references.
- Drafts. Although the above-referenced Law Society article states: “Copies of drafts of agreements or other documents to evidence or support changed instructions” should be retained, nothing is said about other types of drafts. The decision regarding retention of drafts may vary among practice groups.
- Extra copies of documents. An *extra copy* is an exact duplicate. Therefore, a marked-up document is not a duplicate of a clean copy, but only one copy of any marked-up version needs to be retained.
- Working files (also called *Holding Files*). By definition, these files contain duplicates of records and documents that are maintained for ease of reference by various lawyers working on a matter.
- Chronological files (aka *Letter Books*). These are copies of all of a lawyer's correspondence, regardless of matter, filed in date order and/or handwritten notes initially recorded in a notebook in date order, regardless of matter. The material in these files should be considered reference copies. The official correspondence and/or notes are contained in the client files.
- Handwritten notes. Although the retention of a “lawyer’s personal notes” is suggested by the Law Society, keep in mind that notes can be easily misconstrued or taken out of context. For this reason, many firms prescribe that only notes transcribed into a memorandum to file are official records.

What About Administrative Records?

Administrative records are those that pertain to the firm’s business operations. Included in this category are records that are maintained by staff in administrative departments and the non-client-related records maintained by the legal staff.

Although the ownership issue does not apply to administrative records, the *official record vs. non-record* distinction does. The following types of records held by staff in administrative departments should be considered for possible non-record status:

- Drafts;
- Extra copies of documents;
- Superseded promotional materials produced by the firm. (Note: One copy of every promotional piece should be retained as part of the firm’s archives.)

The following types of non-client records maintained by legal staff should be considered when defining non-records:

- Paper copies of time/billing and expense records. The data entered in the time/billing system is the official record.
- Outdated/unused precedent files. If precedent files maintained by individual lawyers are sent to storage, those files are not being used. Outdated material has no value and should not be sent to storage.
- Firm committee records. Only the records of the committee chairperson should be considered official records. Duplicate copies held by committee members are non-records.

Conclusion

Development and implementation of a records retention schedule is the best way to control the growth of firm records and reduce costs associated with records storage and retrieval. If your firm cannot undertake this complex process right now, you can still save money by deciding what will not be stored at firm expense. Once this decision has been made, document and communicate the policy to all firm members. Be prepared to enforce the policy across all levels of the firm. The effect on your firm's bottom line could be significant.

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