INFORMATION GOVERNANCE

The State of Public Records

Introduction

Like the rest of the world, government has embraced technology. In order to meet the increasing demands for government to keep up and be responsive to the public's needs, there has been increased pressure on government to meet the expectations and demands of a technology-savvy public.

There have been some unintentional consequences in the rush to make things better and faster. One of the consequences of technology is the ability to generate unprecedented volumes of information and data – exebytes, anyone? What is new and cool in technology today changes rapidly and becomes obsolete in a fairly short period of time.

The business of government has NOT changed. Regardless of changes to leadership or to technology, it is business as usual for an agency's core mission. Names and programs may change, and different directors/leadership may cycle through, but the agency itself still carries on. What has changed is HOW we do business. Technology was supposed to make things easier and better, right?

The current state of public records is one of confusion and even some desperation. Work in the public sector requires compliance when dealing with public records. There are rules and requirements for access and disclosure, and rules on what to keep and what you don't have to keep and what to do. Agencies are to meet business needs and legal requirements, and there are other obligations such as accountability, transparency, making best use of resources and mandates to operate government effectively and efficiently.

Along with the increased volume, there has been an increase in the misunderstandings and misconceptions surrounding public records. There is an increased sense of something is not quite right, a lot of ideas on what the problem is, and conflicting approaches in how to "fix it".

Agencies must be aware of these misconceptions and myths and assess the current state of their public records and fully evaluate the situation, and *then* make informed and collaborative decisions on moving forward and "fixing it". The need to systematically organize, store, retrieve and properly disposition records is more critical than ever.

Technology has increased the volume, velocity and variety of records and this **requires** a multi-disciplinary, holistic approach in managing an agency's informational assets. Records management is the foundational piece of that multidisciplinary holistic approach known as "information governance".

The most common misconceptions/myths:

- Myth 1 - Only some records are public records (see page 4)
- Myth 2 - It's easier just to keep everything, and storage is cheap (see page 4)

- Myth 3 - We already have really good search tools, that's enough (see page 6)
- Myth 4 - Records management is old fashioned and doesn't apply today (see page 7)
- Myth 5 – I don't keep anything, no one told me to (see page 8)
- Myth 6 – So now I have to become an expert in records management? (see page 8)
- Myth 7 - I'll have to give up my favorite tablet/laptop/smartphone (see page 8)
- Myth 8 – This is someone else's problem (see page 9)
- Myth 9 – This is a technology problem, IT will fix it (see page 9)
- Myth 10 – IT'S TOO HARD (see page 10)

Continuing issues:

- Still generating a lot of paper
- Too much information and no one can find anything
- Public disclosure requests are increasing
- Silos of information keep increasing
- Serious lack of communication within organizations
- Fear and confusion surrounding the subject
- Fear and confusion surrounding change
- "Records management" is given a low priority, no respect and no budget

While there is no single "magic bullet" or one-size-fits-all solution (sorry about that), top level executives and management need a greater understanding of "how-did-this-happen?"

There needs to be increased support and dedication of resources to form the necessary partnerships/collaboration teams in order to build new strategies and solutions.

Lean principles involve making continuous improvements and eliminating waste from government processes. A solid records management program does exactly that! When you apply systematic management strategies to valuable informational assets, it naturally flows into improving business processes, which in turn reduces risks and costs, and agencies benefit from being in compliance with transparency and accountability.

Records management is the foundational part of this new strategy, known as Information Governance. No matter what you call it, it is a critically important strategy necessary to implement and successfully manage records in a technology-driven and digital-centric world.

BACKGROUND

There has been a paradigm shift in the workplace. The traditional office environment with four walls, paper documents, and regular business hours has been replaced with flexible and off-site work locations, the predominance of and dependence on electronic records and digital information, and doing business anywhere and anytime using mobile devices.

State and local governments did not anticipate the impact of modern technology on records proliferation (who knew?). As a result, agencies are now looking at massive amounts of digital information that has been generated without any real substantive strategies for managing it.

Traditional records management practices involved physical handling of information within a controlled environment, with a human gatekeeper (usually a secretary or file clerk – remember those?) tasked with filing, protecting and monitoring records, usually in a well-defined location and system (remember central files?) Ah yes, the good old days when someone else would take care of things for you.

This environment has given way to what can be best described as a "free-for-all" approach with few, if any controls in place, and very little defintion or structure in terms of locations or systems for storage.

While it is not always appreciated, good records management is and should be an integral part of any business process. Records and information are among an agency's most important and valuable assets and deserve focus and attention as such.

To elaborate on some of the common issues agencies face today:

- Records and information management has been or still is currently viewed as a low priority, with no respect and no budgetary assistance to support a program. Many agencies do not have adequate record management programs and policies in place (some never did in the first place)

- Difficulty in reconciling the hybrid paper-electronic record environments with many clinging to the old paper-centric practices and policies that haven't been updated to reflect current business practices

- Inability of users to easily locate and use agency information just to do their regular jobs. Nobody can find anything, and in lieu of any controls or procedures users make it up as they go.

- The sheer volume of records that has accumulated makes it difficult for agencies to locate and search records to meet business and legal needs because the framework and systems have not been put into place to do so efficiently and effectively

- An increasing number of public records requests and lawsuits, and increasingly large monetary penalties because of an inability to provide adequate asisstance and provide responsive records for disclosure and discovery

- The acquisition, development and implementation of technology (including devices) that do not consider records requirements and obligations. This has been accompanied by a proliferation of information silos, and many "solutions" continue to perpetuate those same silos

- Internal agency organizational silos with minimal communication between records specialists, disclosure specialists, IT, security, risk management and regular business units. This limits planning and development of records management systems, processes, and procedures

- Fear and confusion surrounding the need to do something and an urgency to do it now as opposed to a planned and well-thought out collaborative strategy. These problems did not happen overnight, and in the rush to "fix it" there have been errors in judgment with failed (and costly) attempts at "solutions".

- Failure to address change management. Resistance to change and insecurities about one's job can lead to failure faster than anything. Change of any kind requires taking into account for the human factor of implementing anything new – be it a new device, software, processes, policies or procedures, and do the appropriate planning and preparedness well ahead of introducing the new or different.

INTRODUCTION

There are a lot of myths and misconceptions about managing public records. Here are some of the most common myths that need to be debunked:

MYTH #1: Only *some* records are really public records, right?

A1: It's safest to assume that all records an agency or public employee creates and uses are in fact, "public records." Technology has enabled agencies to create massive amounts records and information, and trying to determine between what is or is not a public record can end up being a never ending debate.

It is safer and saves time and energy to operate under the assumption that everything *created or used in conducting the business of government is a public record* – regardless of it being a piece of paper, an email, social media, created on a device, or stored in SharePoint.

Format doesn't matter, location doesn't matter, what technology you're using doesn't matter. Even if it's a *copy* of a public record does not negate the fact you are dealing with public records.

You can read for yourself the definitions of a public record that exist in statute, they pretty much say the same thing: *A writing, regardless of physical form or characteristics, created by and used by any agency of the state of Washington in connection with the transaction of public business.*

- 40.14.010 RCW Preservation and Destruction of Public Records (1957)
- 42.56.010 RCW Public Records Act (1972)

MYTH #2: Well, we'll just keep everything, it's easier and cheaper too!

A2: **Not only no, but HECK NO!** Even in the days of paper an agency was not required to keep every scrap, note, doodle, Post-It note, draft, or every incarnation of a particular report or document. It didn't make sense back then to keep everything, and it doesn't make any more sense now. *In fact keeping everything compounds the problem, not making anything easier or cheaper.*

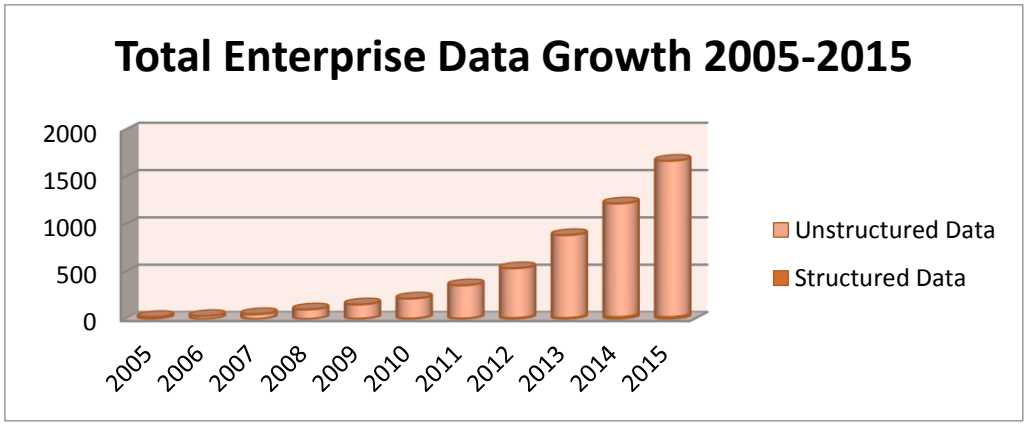
One of the best benefits of records management is getting rid of records – either by destruction or transfer to the Archives (in records speak it is referred to as "disposition"). It's a verb, which

means to do something!) Systematic and defensible disposition **decreases** costs when it comes to storage space, equipment and staff as well as lowering costs of production and defense for any lawsuits.

The costs for storage and maintenance **increase** substantially with each extra gigabyte of unneeded and unnecessary information lingering on your servers and in your databases. A smart business develops strategies and plans for the care of their informational assets. We don't hang onto surplus equipment, why hang onto surplus records?

Keeping things "just in case" because something *might happen* (just in case we get a records request) or you *think* you may want to refer to it distant future (just in case someone may want to see it in the next millennium, I'm going to keep that first draft) or it's "old" (just in case it might be valuable one day) are not valid reasons or grounds to keep hanging onto records. If the relevant business needs and legal requirements and obligations have come and gone and the agency has the authority to get rid of it, then don't keep it! Apply defensible disposition!

Another real benefit to records management is that if you are following best practices, you are covered "just in case" anyway.



IDC estimates the volume of digital data will grow 40% to 50% per year. By 2020, IDC predicts the number will have reached 40,000 EB, or 40 Zettabytes (ZB). The world's information is doubling every two years. By 2020 the world will generate 50 times the amount of information and 75 times the number of information containers.

There is a misconception that storage is cheap. Initial outlay, yes, it is cheap. Thumb drives are available that will hold 9 gigabytes for around 10 bucks. But there are other less obvious costs that are associated with use of technology since digital "storage" involves more than lingering on a server or sticking it on a 10 gig flash drive.

Hardware: You need the equipment to run the software, and you will likely have to replace that equipment regularly due to obsolescence or failure. Servers take up space, and require cooling, climate controls, and energy to run.

Software: You have to keep/maintain/upgrade the software so you can read, access, and retrieve it, and software fails or becomes obsolescent too.

Staff: Humans still are needed to maintain all of the above and respond as below.

Legal: There is an increased risk to keeping everything when it comes to disclosure and discovery. If you keep a record, you need to be able to locate and search it to respond to litigation or public records requests. This is expensive both in terms of staff time and technology required to search hundreds of locations and thousands of files/emails where relevant records might reasonably exist. Failure to do so can lead to expensive consequences.

If you are storing 9 gigabytes of emails, those 9 gigabytes are subject to searching and production, redactions, attorney review, not to mention showing up in the headlines. You may have the most robust key word feature/search app ever, it still takes time, money and humans to facilitate appropriate production going through those gigabytes. That's not easy *or* cheap.

Bottom line, we are spending ***more*** on storing our data than ever before and paying ***more*** for public disclosure requests lawsuits.

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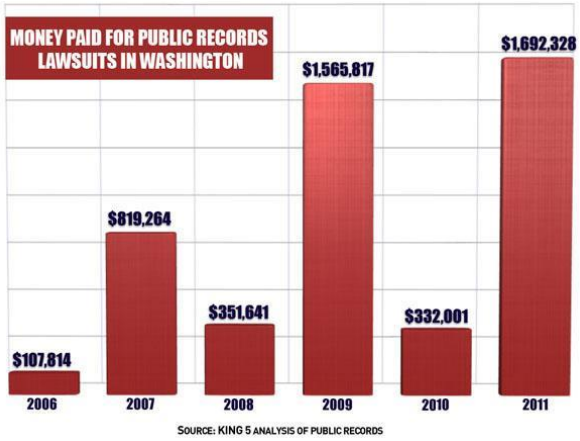


MYTH #3 We already have really good search tools for EDiscovery, that's all we need!

This myth comes in tandem with the keeping everything myth. You can have the most robust key word/context/OCR search tool on the planet, it still costs more and takes more time for it to search through massive piles of unstructured data than it would if the information has been organized, the ROT (redundant, outdated and trivial information) has been eliminated and the remaining business records managed as appropriate.

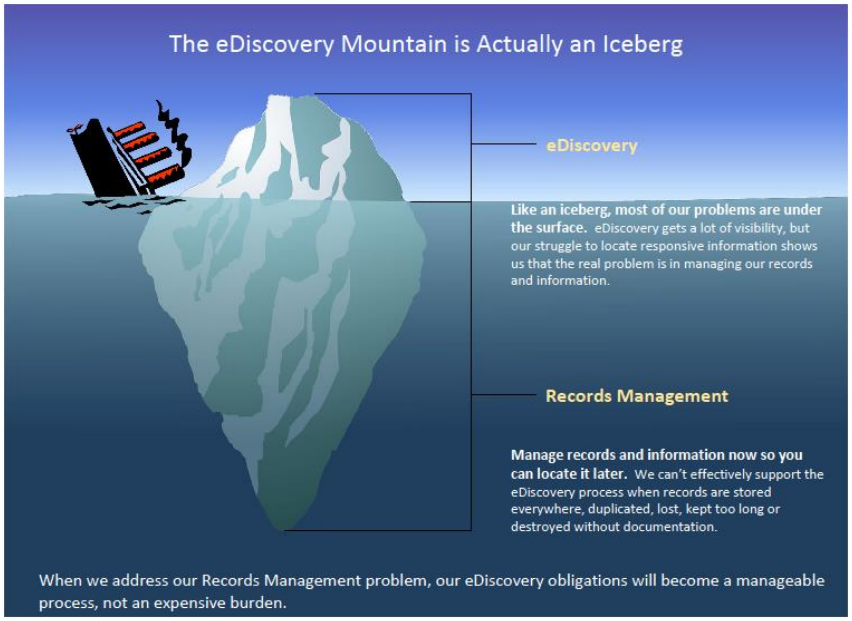
Without implementing any kind of records management strategies, doing what seems to be a simple search on the surface ends up being literally just the tip of the iceberg with massive amounts of data that have remained relatively unseen until you start looking underneath (there tends to be a lot of ROT underneath there!)

Reducing volume and organizing information *up front* and as part of an integral business process strategy avoids creating those icebergs in the first place, and audit and disclosure/discovery compliance happens with much less effort and expense.

Talk about process improvement!

Making more reactive decisions to implement e-discovery "solutions" without understanding and addressing the fundamental problem underneath the surface is akin to rearranging deck chairs on the Titanic. Unless you make the appropriate decisions and turn to avoid the iceberg you are going to hit it, it's just a matter of when. Changing course is much less expensive than an actual disaster, which tends to make the front page news and has costly consequences.

Besides, a really robust enterprise records and information management solution will eliminate the need for additional tools, and reduce costs in both storage and licensing/maintenance of multiple systems that only serve a single function.



MYTH #4: Records management is hopelessly old fashioned and only applies to paper anyway.

Granted, the term records management does cause blank looks and eye-rolling and brings to mind file cabinets, banker boxes and mountains of paper. It will sometimes induce moments of nostalgia for when file clerks aka "dragon ladies" (with no offense to either dragons or ladies) that served as guardians of the file cabinet or file room and helped you (or forced you) to get organized. On rare occasions, the term causes panic and widespread hysteria.

Oddly enough, there is still vast amounts of paper being generated. That combined with increasing volumes of digital information perpetuates a hybrid environment that adds to the challenge of managing informational assets.

Call it what you want, records management is alive and well and it still applicable and *even more relevant today*. Managing records used to be (and absolutely should be) an integral component of a business process and needs to be systematically and strategically applied to successfully manage information in a technology-driven and digital- centric world.

Records management is at the core of information governance, and needs to simply be put back into the integral business processes and not as an afterthought or an oh-by-the-way.

MYTH #5: I don't keep anything because I don't think it's important and besides, no one told me I had to.

Opposite of keeping everything is not keeping *anything*, and equally as bad. "No one told me" or "It's not important, I just delete everything" are not good excuses, and a judge will likely take a dim view of trying to use that as a defense in court.

While your particular part of a workflow or process may not require retention or at the very least a short term retention requirement, the critical point is to know what the actual business/legal needs are for the records you work with. Do not assume anything about the records you create and use, make sure you are holding up your end of the deal as a public employee to support agency requirements. When in doubt, ask!

Improper destruction or mutilation of a public record may be a Class B or Class C felony. It's rarely prosecuted, but you don't want to be the exception. Better to serve as an example and not a warning. It's not prosecuted very often, but you really don't want to be the cautionary tale we use for the next decade.

MYTH #6: So now I have to become an expert on records management?

Heck, no! As a public employee, you do have certain responsibilities inherent to being in public service. There are and will be particular requirements surrounding your business unit and agency. People come and go, but the mission of your agency carries on and has present and future needs for access and retrieval of information to meet business and legal obligations.

At a bare minimum, at least know where the file cabinets are/storage is for storing your paper and electronic records. Hopefully your agency will have some kind of records management program in place, or is on the way there to let you know what you need to do.

Talk with your records specialists to make sure you understand the ground rules, what you need to keep, what NOT to keep and how to manage it as part of your workflow processes. You don't have to be an expert, just know what the requirements are for your part of the world.

MYTH #7: So now I can't use the cool new tools for collaboration and mobility? I live for my technology!!

You can still use the cool stuff! Just use them as appropriate and you need to consider any public records implications, not just because you want to be first to use the cool stuff. The same thing applies to mobile devices - using these tools strategically can improve workflow and collaboration and be an effective means to work smarter, not harder. Assess the situation, make sure mobility will truly improve things and not add to the problem.

Know what needs to happen to any records if using mobile devices, sharing online or creating collaboration sites. **It's important to make sure the records officer know what's going on so they can appropriately manage agency records and keep disclosure specialists in the loop so they can appropriately deal with public records requests.**

Get permission from the agency **prior to** using any consumer level products or services to ensure compliance with business and legal requirements, security, and other issues surrounding using cloud resources.

MYTH #8: This is someone else's problem, I'm not a records manager.

While some employees may not have records management in their title or assigned job functions, EVERY employee has certain obligations and expectations regarding public records, it comes with being in public service. Records management is an integral part of every aspect of state government, and forgetting that is a good way to get yourself and your agency in trouble!

At a purely practical level, every employee needs to be able to access and use information as part of their normal business duties. Information governance is all about making it easier for you to do your job, but also to make life easier and less stressful for your colleagues, IT, legal, and the agency records professionals.

Your job will be easier if you maintain records in a predictable and defensible manner! Consult with your records specialist to get direction on what you need to keep, and what you can safely and lawfully NOT keep (that *is* their job, and are grateful you asked!)

MYTH #9: This is a technology problem, and IT will fix it.

This is not a "technology" problem, it's a human one - although using technology has certainly been a major contributor to some of the issues. The one thing everyone tends to agree on is to buy more technology!

To just throw more technology at the problem only compounds it (automating a bad process just makes it worse faster) unless thoughtful and deliberate choices are made at a collaborative level to research real solutions and then pick the appropriate tools to use.

We can't live without IT, and IT departments or divisions are dedicated to making sure your systems are running smoothly and that servers are humming along. There is a good chance that managing records are not even on their radar screen – until the server gets full and crashes due to volumes of ROT (redundant, outdated and trivial) taking up space.

Investing in technology isn't quite the same as buying a new IBM Selectric typewriter that you kept for years, and the only thing to install or upgrade was a new ribbon. You didn't need any licenses, no maintenance contracts, and no glitches, server failures, no databases or systems to migrate and maintain. Storage and management was a cinch – type a document, sign it signed, make one copy (unless you used carbon paper) send a copy off, file your copy in the drawer (or give it to the secretary or file clerk).

Technology has not yet proven to be a substitute for the “dragon ladies” of yore. There has yet to be an application developed with the mind-reading ability to organize your information by just thinking about it, nor can you just put it Outlook and have it magically sort by itself. There’s no app for that!

MYTH #10 IT’S TOO HARD! (Well, not really a myth – more of an excuse)

It’s not easy, if that was the case we wouldn’t be in this situation! Using that as an excuse will not save you money, make you more efficient, or make a judge more sympathetic.

It has taken some time for those icebergs to build up (although they are picking up speed and increasing more rapidly). It will take time and effort to chip it down to a more manageable size.

Some different *thought* processes are required as well as different strategies and tools to get the iceberg under control, and then ongoing strategies and processes have to be put into place to keep that iceberg from growing to such massive proportions ever again.

It’s not easy because the structures, controls and systems in place back in the day of paper have disappeared along with the “dragon ladies” and central files.

Not all records are created equal, nor will they have equal value as an asset to the organization when it comes to meeting the evidentiary needs of the business and legal obligations.

Say your agency is the business of granting permits. We’ve gone from typewriters to desktops to mobile devices in a very short period of time (not to mention adding databases/systems to the mix), but your *core mission is still to issue permits*. A permit may look and feel different than in days gone by, but the business needs and legal requirements surrounding that process have remained largely unchanged.

The reasons to keep records will generally fall under these categories:

Support of business processes and administrative operations:

Most importantly of all, staff needs to keep records and information to perform their jobs effectively and efficiently and provide for the continued operations of the agency.

Field staff may need to access information from the two previous permits they issued to an entity in order to approve a new one. Retention and business requirements will support keeping previous records only for as long as necessary, and then take the steps to get rid of the superseded record once the business need/obligation has been met. This is an effective business process, and no reason to reinvent the wheel each time a permit is issued, and no reason to keep the two prior ones to clutter things up once need has been met.

Legal needs/obligations or regulatory requirements:

A lot of rules, statutes and accountability requirements apply to local, state, and federal governments. Some records are evidence that an agency needs to keep to demonstrate that their business and legal obligations and requirements are met.

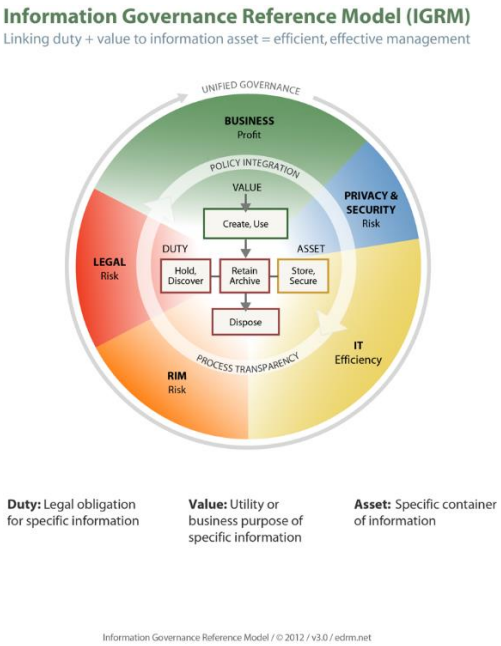
Ever go through an audit? What does the auditor look for? Proof and evidence in the form of records. Some records are required to defend or protect an agency's actions in court or some other legal process. While some of these records may have a fairly short internal business or legal need or statute of limitations involved, many may have other long-term or permanent external retention requirements.

Historic/cool stuff:

Every agency has a history of its establishment and development, and each undergoes changes. This history needs to be preserved for future generations. Sometimes a significant event occurs like the Mt. St. Helen's eruption that makes records historic when they might not otherwise be under normal business circumstances, and sometimes certain things are just plain "cool". What is "cool" is a subjective call to be made by an experienced archivist so ask, don't assume! If you think something meets the "cool" requirement, talk to your agency records officer *first*, and they can contact the State Archives for a final determination.

FINALLY

While records management is not the "magic bullet" that will solve *everything* or cure the common cold, but it sure helps and once implemented, the other problems (and those pesky icebergs) will diminish accordingly – and it will definitely improve business processes and reflect true "Lean" principles at work.

We will *always* have business and legal obligations, we will *always* have audits, we will *always* have the public wanting accountability and access to government information. Records management *always* supports compliance to all of the above, and then some.

Getting your records and informational house in order needs to be one of the top priorities as part of an overall information governance strategy. Records are at the core of the mission of the agency, and provide for continuity and link the other strategic functions of government.