



Finding the Needles in a Haystack: An Approach to Legal Research for Recordkeeping



Nicholas Berenato, Esq., IGP
Information Governance
Principal
Cozen O'Connor/CODISCOVR



Disclaimer



- This presentation reflects the author's own opinions and not those of his organization. It does not provide legal advice. Please consult with a licensed attorney prior to implementing a document retention schedule.

- Legal Research
- Organizational Research
- Putting it all Together



Legal Research

Retention Research Challenges

Complex Legal Requirements

Document retention requires legal research across federal, state, and local jurisdictions.

Policy Development Challenges

Interpreting laws and crafting retention policies that meet legal and business needs requires balancing competing interests and institutional risk.

Collaborative Compliance

Ensuring compliance requires engaging stakeholders that will have to live with the policy.



WHERE DO I BEGIN?



Secondary Sources



Role of Secondary Sources

Secondary sources offer compilations and interpretations vital for understanding recordkeeping laws and regulations.

Treatises

Treatises on recordkeeping are good places to start, e.g., the Guide to Records Retention.

Industry and Professional Resources

Model retention schedules and bar association resources provide industry-specific guidance for records management.

Assisted Research Tools

Assisted research tools aid in research but must be verified and can be costly.

Secondary Sources Align the Research

Secondary sources provide important context and prevent nervous flipping through statutes.



Primary Sources



Statutes

Statutes are laws enacted by the federal or state legislature.

Regulations

Regulations are rules issued by federal or state agencies to enforce statutes and have the effect of law.

Importance in Retention Schedules

Understanding all governing statutes and regulations is an essential starting point for creating legally compliant and comprehensive retention schedules.



Examples of Recordkeeping Laws and Regulations



Industry and Jurisdiction Specific Compliance

Legal obligations vary by industry and federal, state and local jurisdiction; organizations must comply with relevant regulations and laws to avoid legal exposure.

Personnel Files

29 CFR § 1602.14 requires retaining personnel files for a certain period of time.

Insurance Document Retention

The Pennsylvania Insurance Code mandates long-term retention of specific policy documents.

Privacy Law Compliance

The California Consumer Privacy Act limits retention of unsuccessful job applications to two years to protect privacy rights.

- Search and AI Prompt Strategies

Keyword and Boolean Searches

Strategic Search Techniques

Use keyword, wildcard, proximity and Boolean searches to locate specific record retention statutes efficiently.

Common Retention Keywords

Keywords like 'shall,' 'retain,' and 'preserve' and 'years' appear frequently in retention statutes for targeted searching.

§ 516.5 Records to be preserved 3 years.

Each employer shall preserve for at least 3 years:

(a) *Payroll records*. From the last date of entry, all payroll or other records containing the employee information and data required under any of the applicable sections of this part...



AI Prompts



Generative AI Delivers Exactly What You Ask For

If you ask narrow prompts, you will receive narrow responses.

No Compound Questions

Your prompt should look for the answer to one question.

Provide Context

Explain the who, what, where and why or the information you are seeking.

VALIDATE YOUR RESULTS

- FILLING IN THE GAPS



Legal Reasoning



Legal Perspective

Lawyers should evaluate all information a company retains even if there is no express requirement to retain certain files.

Think like a litigator...

Statutes of repose and limitations guide decisions on document retention for lawsuit documents that assist in defense/prosecution of lawsuits. Think of documents that support the litigation your company finds itself in, e.g. warranties or design drawings.

Think like a transactional lawyer...

What documents are mission critical for transactions? What documents make transactions more streamlined and efficient? Make sure your retention schedule considers these documents.

Be Practical

Understanding company legal needs and ability to comply with them is essential. Do not create a policy that no one will follow and be mindful of key legal issues when drafting retention policies.

- Navigating Conflicting Recordkeeping Laws

Resolving Conflicting Recordkeeping Laws

Identify Governing Laws

Determine which jurisdictions' laws apply to the specific record type to address conflicting requirements.

Create Legal Exceptions

Develop exceptions or retention periods to satisfy all applicable laws and resolve conflicts between jurisdictions.

Be Concise as Possible

Balance legal obligations and minimize organizational risk by clearly and concisely setting forth the applicable retention period for a record category.

- Organizational Research

Interview & Survey

It's important to learn what and how information is being retained.

Learn what records the business units regard as valuable.

Learn from IT how records are stored and maintained. Learn what, if any, security measures are in place.

Why is the information valuable/dangerous?

Learn why records are valuable to determine an appropriate retention period beyond legal requirements. On the flip side, consider the risk of retaining such information, i.e., cybersecurity, privacy regulations, eDiscovery etc.

Collaborative Development

Collaborate with the business units and IT on retention periods and practices. As long as you are addressing legal risk, consider the stakeholder needs as much as possible.



Pulling it all Together



Research Completion

Ran all primary and secondary sources to the ground. Benchmark peer practices helps validate the thoroughness of your own research.

Stakeholder Collaboration

Make sure stakeholder concerns are considered when crafting retention policies.

Research is Iterative

Ongoing research is essential to maintain compliance within a changing legal environment, especially if you are doing business in a new jurisdiction or privacy and AI laws are enacted.



- Questions?



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