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SI 655

Management of Electronic Records

Week 10 - March 30, 2009

Electronic Recordkeeping Environments:
Government; International Organizations
and Human Rights

Plan for the Remainder of the Term

- Classified documents...declassification
- Electronic Recordkeeping Environments
 - Government
 - Human Rights
 - Corporate
 - Health Care
 - Wrap-up (Towards Transparency, Accountability, Governance)

Overflow from Week 9

- Classification and Declassification

Contentious Issues

- Unwarranted invasion of privacy
- Classified Documents

<http://www.pbs.org/wgbh/nova/spyfactory/>

Classified Documents

- Justification: to protect information from being used to damage or endanger national security.
- Levels of Classification:
 - Top Secret (exceptionally grave damage)
 - Secret (serious damage)
 - Confidential (damage)

Allowable categories

- (a) military plans, weapons systems, or operations
- (b) foreign government information
- (c) intelligence activities (including special activities), intelligence sources or methods, or cryptology;
- (d) foreign relations or foreign activities of the United States, including confidential sources
- (e) scientific, technological, or economic matters relating to the national security
- (f) programs for safeguarding nuclear materials or facilities
- (g) vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to the national security
- (h) weapons of mass destruction

Authority to Classify Documents

- Classification and Declassification is governed by Executive Order
 - EO 13292 (March 2003)
 - Amends EO 12958 (1995)
- Clinton Administration 19 offices and agencies were authorized to classify documents
- Bush Administration added HHS, EPA, & Agriculture; OSTP upgraded to Top Secret

Declassification

- Automatic Declassification
 - Clinton EO: Documents more than 25 years old are automatically declassified unless the classification authority can demonstrate need to retain classification
 - Bush EO: Extended deadline for systematic review to Dec. 2006
- FOIA Request
- Mandatory Declassification Review Requests

Patriot Act

- Passed in wake of 9/11
- Break down historical barriers between domestic law enforcement and foreign intelligence
- Impact on government collection of PII via ELSUR
 - Altered 4th amendment protections (probable cause search warrants; unreasonable search and seizure)
 - “significant” to purpose of investigation
 - Records = any tangible information object
 - Secrecy clause = gag order
 - Changes to scope of wiretaps
 - Email and vmail surveillance
 - Increased sharing of information between agencies
- Implementation opaque but some indicators arising
(Jaeger, Bertot, McClure)

Concluding thought ala Alan Westin

- Totalitarian governments:
 - collect a lot of information on citizens with no/limited access rights
- Democratic governments:
 - limits on collection of personal information and broad access to information on government actions
- Access and privacy [and security] intertwined in democratic accountability and transparency

Week 10 - March 30, 2009

Electronic Recordkeeping
Environments:

- Government
- International Organizations
- Human Rights

Specific Recordkeeping Environments

- Where do recordkeeping and accountability requirements come from?
- How does one locate them?
- What are the specific challenges in the environment?
- How is electronic records management being implemented
- How are requirements enforced?

Government: sources of requirements 1...

- Public Records Laws / Acts
 - Define the scope of information that falls under the definition of a record
 - Define recordkeeping responsibilities of government entities
 - Define authority for retention and disposal of records covered by the law/act.

Government: sources of requirements 2...

- Laws and rules of evidence: Define the types of records and circumstances where the records can be used as evidence
 - Legal proceedings
 - Other due process proceedings
 - Appeals
 - Hearings, etc.
 - Rights of citizens
 - Evidence acceptable to prove citizenship
 - Evidence acceptable to prove eligibility to vote

Government: sources of requirements 3...

- Access and dissemination requirements: define records that government entities must make available or may withhold
 - FOIA
 - Privacy
 - National Security
 - Public Notices (FR)
 - Federal Depository Library Program
 - Web dissemination

Government: sources of requirements 4...

- Specific Requirements: Establish requirements for documentation and recordkeeping around specific programs and functions
- Tens of thousands of laws and regulations that define which records have to be kept and for how long
- Retention and disposition schedules

Where / how to find recordkeeping requirements

- Enabling legislation for a program or agency
- Regulations
 - US:
 - Federal Register: <http://www.gpoaccess.gov/fr/index.html>
 - Code of Federal Regulations
<http://www.gpoaccess.gov/cfr/index.html>
 - States: Official compilation of codes
 - Local:
 - Statewide guidelines
 - Local ordinances
- Retention and disposition schedules
 - US: NARA (mostly only paper)
 - States: Most states (paper), but some on-line

Example

NATIONAL ARCHIVES AND RECORDS

ADMINISTRATION 36 CFR Part 1234.24 Electronic
Records Management; Standards for managing
electronic mail records

METADATA: Transmission data; codes, nicknames,
distribution lists; receipt acknowledgement;
preservation in RK system; drafts

MAINTENANCE IN RK SYSTEM: grouping; easy and
timely retrieval; usable format; accessible to
necessary individuals; transmission and receipt data;
transfer to NARA

EXAMPLE

22 CFR Parts 97 and 98

Intercountry Adoption--Preservation of Convention Records

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule finalizes the proposed rule published on September 15, 2003 to implement the records preservation requirements of the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the Convention) and the Intercountry Adoption Act of 2000 (the IAA). The IAA requires that the Department of State (the Department) issue rules to govern the preservation of Convention Records held by the Department and the Department of Homeland Security (DHS). This final rule is the same as the proposed rule, except for non-substantive technical corrections. **It requires the Department and DHS to maintain Convention records for 75 years and defines the term Convention record.**

DATES: This rule is effective March 17, 2006. Information about the date the Convention will enter into force is indicated in the text of the final rule.

EXAMPLE

16 CFR Part 1633

Final Rule: Standard for the Flammability (Open Flame) of Mattress Sets

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

Cost of Information Collection and Record Keeping. In addition to prototype testing, the standard requires detailed documentation of all tests performed and their results including video or pictures; prototype or production identification number; date and time of test; and name and location of testing facility; test room conditions; and test data for as long as the prototype is in production and for three years after its production ceases. Manufacturers are also required to keep records of a unique identification number for the qualified prototype and a list of the unique identification numbers of each prototype based on the qualified prototype and a description of the materials substituted. Moreover, they are required to document the name and supplier of each material used in construction of a prototype.

Additionally, they are required to identify the details of the application of any fire retardant treatments and/or inherently fire resistant fibers employed relative to mattress components.

Records Retention Schedules

- Define existing records
- Establish requirements for how long each set of records must be retained
- Establish final disposition (destroy, reformat, transfer to archives, etc.)

Examples

- General Schedules for State Records (US)

www.statearchivists.org/arc/states/res_sch_genlst.htm

- New York State: General Schedule for School Districts http://www.archives.nysed.gov/a/records/mr_pub_ed1.shtml

- Kansas State Historical Society

www.kshs.org/government/records/stategovt/stateretentionschedules.htm

ER Challenges

- Slow start-up; lots of legacy systems
- Multiple, complex requirements
- Frequent changes and updates
- Difficulty distinguishing record and non-record material
- Widely varying retention periods
- Transfer from system to system or agency system to archives
- Access, security, privacy

How are ER Requirements Being Implemented?

- Legislation
 - Revisions to public records and evidence acts)
- Policy: E-government
 - Access and service driven
- Standards
- Systems and Practice

U.S. Government

- DoD Standard for RM Applications
(see week 6 slides)
- OMB Office of E-Government and Information Technology
<http://www.whitehouse.gov/omb/e-gov/>
- Electronic Records Management Initiative
<http://www.archives.gov/records-mgmt/initiatives/erm-overview.html>
- ERA (electronic records archive)
<http://www.archives.gov/era/>

Issues

- Volume and scale
 - System incompatibilities
 - Incentives
 - Compliance
 - Access and Demand
 - NARA AAD
- <http://aad.archives.gov/aad/>

Accountability and Human Rights

- Where do recordkeeping and accountability requirements come from?
- How does one locate them?
- What are the specific challenges in the environment?
- How is electronic records management being implemented?
- How are requirements enforced?

What are the specific challenges in the environment?

- Dynamic environment
- Absence of jurisdiction
- Language and Semantics
- Priorities / Money
- Enforcement / Compliance

Where do Recordkeeping Requirements Come From?

- International Organizations
- Standards Organizations
- Professional Organizations
 - http://www.benetech.org/human_rights/index.shtml
- Legislation
- Projects

How is electronic records management being implemented

- Unevenly
- Where is it being implemented well?
- Where is it not working well?
- What factors influence the adoption of requirements?

How are requirements enforced?

- Oversight and accountability
- What you can measure
- What society demands
- There are consequences

Truth Commissions

- Peterson, "Final Acts"
 - Diversity of Truth Commissions and their records (administrative, program, investigative)
 - Legal, political, archival dimensions
 - Identifies archival role vis a vis disposition. custody, access

Useful Resources

- Project DIANA - Online Human Rights Archive http://avalon.law.yale.edu/subject_menus/diana.asp
- University of Minnesota Human Rights Library <http://www1.umn.edu/humanrts/>
- University of Texas Rapoport Center for Human Rights and Justice <http://www.utexas.edu/law/academics/centers/humanrights/>