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SI 655
Management of Electronic Records

Week 13 – April 20, 2009
Wrap Up: Towards Transparency, Accountability, and Governance
Course Themes

• Recordkeeping Requirements
• Trust
• Evidence
• Promoting Accountability
  – Standards and Best Practices
  – Tools and Technology
  – Compliance and Audit
  – Social Demand & Incentives
• Contradictions:
  – FOIA, Privacy, Secrecy
• Records and Accountability Environments
  – Government Accountability
  – International Organizations and Human Rights
  – Corporate Accountability
  – Health Care
Scope of Recordkeeping Requirements

- Creation/Capture
- Content
- Quality
- Structure/Organization
- Retention/Disposition
- Disclosure/Accessibility/Protection
Trust in Electronic Commerce

- Reducing risk
  - Transfer of risk
  - Reduction of liability
- Trustworthy processes
- Traceability
- Intermediaries and Trusted Third Parties
- Endorsements
- Formal Testing and Certification
- Legal Underpinnings and Remedies
Tests for Authenticity

- Forensics
- Diplomatics
- Intellectual Analysis of Consistency and Plausibility
- Evaluation of Truthfulness and Accuracy
Testing for Integrity

- Compare to a known “true” copy
- Check digital signature
- Establish integrity of the digital signature
Trust and Authenticity

• What should technology do?

• What should people do?
Attributes of Trusted Repositories

- Compliance with OAIS Reference Model
- Administrative responsibility
- Organizational viability
- Financial sustainability
- Technological and procedural suitability
- System security
- Procedural accountability
Legal Evidence
(Giordano, 2004)

- Computer Evidence issues
  - Admissibility
  - Authenticity
  - Completeness
  - Reliability
  - Believability
Discovery

• Request by a party to inspect and copy any pertinent records
• E-discovery covers electronic documents and data (email, web pages, word processing files, databases, etc.)

• Preparation
  - Records retention program
  - Employee education (recordness, retention; retrievability after “destruction”; personal emails; spoliation)
  - Format conversion of critical records
  - Catalogs
  - “Persons with knowledge” identified (deposition; interrogatory value)
Sedona Guidelines 1...

• Preserve records in anticipation of litigation
• Proportionality. Balance costs, burden, and need
• Confer early in discovery process
• Discovery requests should be clear and focused
• “Reasonable and good faith effort” does not mean taking “every conceivable step”
Sedona Guidelines 2...

- Responding parties are best able to determine how to comply with requests
- Burden of demonstrating (in)adequacy of production on requesting party
- Access beyond active systems must demonstrate relevancy that “outweigh(s) cost, burden, and disruption”
- Absent demonstrated special need or relevance, respondent not required to “preserve, review or produce deleted, shadowed, fragmented, or residual” ESI
- Respondent to follow “reasonable procedures to protect privileges and objections to production”
Sedona Guidelines 3...

- Electronic tools and processes (sampling, searching, identification criteria) can serve “good faith” obligations
- Production to be in forms/format ordinarily maintained, including metadata to search, retrieve and display
- Review and production costs borne by either requester or respondent depending on “special circumstances”
- Spoliation sanctions mandated only upon finding of “intentional or reckless failure to preserve and produce relevant” information and that such information material to ruling
Federal Rules of Civil Procedure 1...

• Updated and effected December 1, 2006

• Formally align legal process with business reality

• “Electronically Stored Information” (ESI) category. Provides ESI as subject to discovery and production.
Federal Rules of Civil Procedure 2...

• Changes / Issues confronted:
  - Requirement to meet in advance of trial (preserving discoverable information; scheduling discovery)
  - Provide names of holders of relevant information and description of data prior to receipt of discovery request
  - Discovery of information not reasonably accessible (undue burden and cost)
  - Destruction under routine, good faith operations (retention management; safe harbor v. spoliation)
  - Protecting attorney-client / work-product (quick peek; clawback)
  - Subpoenas for ESI

(Spiro; www.axsone.com/pdf/FRCP_V8_2007.pdf)
Federal Rules of Civil Procedure 3...

• Implications
  - ERM policies and procedures (legal, IT, RM perspectives) essential
  - Need to be able to demonstrate suitability and enforcement of policies, procedures, and management of ESI
  - IT infrastructure will impact discoverability
  - Where and how ESI stored and managed
  - Who has ESI and where and how retained
  - Abilities to access, search, retrieve ESI in event of litigation

(Spiro; www.axsone.com/pdf/FRCP_V8_2007.pdf)
Standards & Best Practices

- Provide guidance for programs, functions, systems
- Promote interchange, interoperability, longevity
- Provide a basis for monitoring and compliance auditing

SEE:
Types of Standards

- Formal vs. De facto
- Open vs. Proprietary
- International, National, Industry, Professional
- Scope: Global process to minute parts
- Abstraction: Model to detailed specification
- Compliance: Mandatory to Voluntary
Electronic Records and Records Management Standards

• System standards
• Software standards
• Metadata Standards
• Process Standards
Some notable (E)RM standards

• OAIS Reference Model
• ISO Records Management Standard
• Various Metadata Standards
• Best ("Good") Practices
OAIS Reference Model

Type
• Formal
• Open
• International
• Model
• Voluntary
Functions

• Ingest
• Archival Storage
• Data Management
• Administration
• Access
• Preservation Planning

SEE: OCLC Digital Archive
- http://www.oclc.org/digitalarchive/
SIP = Submission Information Package
AIP = Archival Information Package
DIP = Dissemination Information Package
Records Management Standards

- International Records Management Standard ISO 15489

- Type
  - Formal
  - Open
  - International
  - Program and Processes
  - Voluntary
ISO 15489 Content

- Scope of the Standard
- Benefits of Records Management
- Regulatory Environment (specific to each organization)
- Policies and Procedures (of RM Program)
- Requirements
- Design and Implementation
- Processes & Controls
- Monitoring & Auditing
Requirements

- Determining records needed for each business process
- Formatting and media selection
- Establishing metadata and links
- Managing records retrieval and distribution
- Managing risks (business continuity)
- Managing preservation of records
- Managing security of records
- Managing retention of records
Design and Implementation Methodology

- Preliminary investigation
- Analyze business activity
- Identify recordkeeping requirements
- Assessment of existing systems
- Identify strategies for satisfying records requirements
- Design recordkeeping system
- Implement recordkeeping system
- Post-implementation review
CMS (Content Management Systems)

• E-CMS: Enterprise-wide
• Web Content Management Systems
• Digital Asset Management Systems (DAMS)
• Document Imaging Systems
• Document Management Systems (EDMS)
• Records Management Systems (ERMS/ERKS/RMA)
Records Management Applications

- Separate application that manages paper and electronic records
- Focus on records integrity, retention and disposition
- Records repository (read-only) separate from live applications
- Case Study: Hummingbird in an NGO
DoD: 5015.2-STD RMA DESIGN CRITERIA STANDARD

• requirements based on operational, legislative and legal needs that must be met by records management application (RMA) products

• Compliance testing and evaluation program

• “2. The DoD standard and commercial RMA software packages are not "out-of-the box" easy or quick solutions for managing your electronic records. RMA software only operates in the context of an agency's records management program, policies, and procedures.” (NARA memo to agencies - www.archives.gov/records-mgmt/memos/nwm03-99.html)

• www.dtic.mil/whs/directives/corres/pdf/501502std.pdf

• Compliance Testing: http://jitc.fhu.disa.mil/recmgt/
Sedona Guidelines

- Develop sound and defensible processes to manage ER via law, IT and RM lenses
- Voluntary
- Best Practices
- General
- Scope
  - Creation/Capture
  - Content
  - Quality
  - Structure/Organization
  - Retention/Disposition*
  - Disclosure/Accessibility/Protection*
Risk Assessment & Management

• identifying risks
• assessing magnitude and probability of occurrence
• deciding on an appropriate response (risk avoidance, acceptance, reduction...)

(Gable 2005)
2007: Sea change (2005: The tide is turning)

- **Retention**
  - Inadequate programs (consideration; performance; record creating technologies; backups; responsibilities) irregularly followed; ignore ER

- **Litigation/Regulation**
  - Increases in hold orders responsiveness but many ignore ER; difficulty complying w/ discovery requests

- **Preservation**
  - Inadequate/absent migration plans; IS/IT unaware of eventual migrations

- **Life Cycle Management**
  - Inadequate RM responsibility for ER; IS/IT unaware of “lifecycle”; heightened awareness over meeting litigation challenges; heightened belief in accuracy, reliability and trustworthiness over time

(Cohasset/AIIM/ARMA 2007)
## Risk Impact Scale

<table>
<thead>
<tr>
<th>Label</th>
<th>Value</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Catastrophic</td>
<td>E</td>
<td>Complete, irreversible loss of data. Data cannot be drawn from other sources—print, artifact, or digital.</td>
</tr>
<tr>
<td>Very Serious</td>
<td>D</td>
<td>Partial, irreversible loss of data. Data cannot be drawn from other sources.</td>
</tr>
<tr>
<td>Serious</td>
<td>C</td>
<td>Complete loss of data. Data can be fully reconstructed from other sources.</td>
</tr>
<tr>
<td>Significant</td>
<td>B</td>
<td>Partial loss of data. Data can be fully reconstructed from other sources.</td>
</tr>
<tr>
<td>Minor</td>
<td>A</td>
<td>Complete or partial loss of data. Data can be copied from other data files.</td>
</tr>
</tbody>
</table>

Compliance

• Compliance generally consists of three activities:
  - persuasion
  - monitoring
  - enforcement (Archives New Zealand 2001)

• Performance of policies, procedures, RK, technologies, training, audit

• RM outcomes?: more automated record declaration, classification; retention (Gable 2005)
Compliance Tools

• Performance Reporting
• Incident Reports (failures that lead to remedies)
• Self-Assessment
• External Audits
• Inspections
Transparency/Accountability 1...

• Re-establishing legitimacy of institutions following series of scandals and malfeasance

• Globalization and the ineffectiveness of national sovereignty mechanisms

• Pressure from consumers and some investors for socially responsible policies and practices
Transparency/Accountability 2...

- Who is held accountable? For what?
- How do we create/enforce effective mechanisms for accountability?
- What are the limits on transparency?
Panopticon revisited: accountability through transparency? technotyranny?

[Image of the Panopticon]

http://www.searchsystems.net/
http://www.choicepoint.com/

Jeremy Bentham (Wikimedia Commons)
Emerging Accountability Mechanisms

• Market-oriented
  – Contract and purchasing requirements
  – Labeling and certification
  – Boycotts

• Regulatory & Legal
  – Standards and Protocols (Koyoto Protocol)
  – Inspections and Treaties (IAEA)

• Voluntary
  – Open reporting movement
  – Self regulation / persuasion
  – Codes of conduct / certification / peer accountability
  – Reputational orientation (brand)
Accountability Enhancers

- Voluntary Reporting
  - Global Reporting Initiative
  - Voluntary Posting of Information

- 3rd Party Reviews (e.g. Consumer Reports)

- Posting or dissemination of information required by law (adverse drug reactions, truth in advertising, “this call may be monitored”)

- Rights and procedures to request access to information (investor profiles, FOIA)

- Technological, organizational, and institutional safeguards (Meijer)
Government Information

- Freedom of Information Act (FOIA)
- Privacy Act
- Federal Register (Administrative Procedures Act)
- Open Meetings Laws (FACA; Sunshine in the Government Act)
- Conflict of Interest Statements
- Financial Disclosures for Political Appointees and some Civil Servants (Ethics in Government Act)
- Whistleblower Protection Act of 2007
- Classification – Declassification
- Patriot Act
Government: sources of requirements

- 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
Accountability and Human Rights

- Dynamic environment
- Absence of jurisdiction
- Language and Semantics
- Priorities / Money
- Enforcement / Compliance
Corporate Accountability: U.S. Legal and Political Context

- Goal: restore faith (trust) in financial markets
- Means: Act of Congress (easy to change / revoke)
- Methods: Record-based compliance
- US Accounting RK issues – SOX
  - Incident reporting; improper destruction; mismanaged retention; falsification...
Healthcare Accountability:
Where do recordkeeping and accountability requirements come from?

• HIPAA
• Long standing practice
  - Information need for medical practice
    • Tracking interventions
    • Protocols for best practice
    • Division of labor and hand-offs
    • Research
    • Cumulative record
Special Challenges

- Complexity (language, volume, multiplicity of actors)
- Conflicts of interest
- Mobility of patients
- Privacy
- Integration with practice
Healthcare Accountability: Multiple Uses

• Diagnosis and patient care
• Communication among specializations
• Hand offs
• Eligibility and billing
• Performance monitoring and improvement
Long-term retention of healthcare records

- Medical history
- Prior conditions
- Adverse reactions
- Delayed reactions
Summary

• Accountability
  – Is real and can be measured
  – Is a social “glue” holding society together
  – Is increasing in importance in social, organizational, and governing contexts
  – RK a cornerstone locus of accountability
  – ESI increasingly a locus of accountability
  – ERK/ERM provides tools, methods, processes, standards, best practices for enhancing, enabling, and ensuring accountability
Course Project discussion

- Investigate environment for accountability
  - laws, rules, regulations, and/or policies that were broken or are alleged to have been broken.

- Identify consequences of inadequate rk for
  - Principals directly involved in the case,
  - Victims of the failure of recordkeeping systems
  - Public at large.

- Identify potentiality for rk mitigation via
  - Policies
  - Technologies
  - Tools
  - Best practices