



MML 2018
SUMMER CONFERENCE

Document Retention

Can't I just throw that document away?

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What is document retention?

- It refers to documents and data
 - Includes anything written or electronic
- Retention requirements mean the document or data can't be discarded UNLESS
 - There is a process and
 - An approved “retention schedule” listing when categories of documents can be discarded

So, do you need to worry about document retention?

YES!

State law generally requires state agencies to retain any record (State Government Article, Title 10)

- But State Government §10-616(a) requires **any public official** to offer any public record to the State Archives if not needed
- Public official is not defined in a limited way, and thus **includes any state or local official**
- And §8-606 of the Criminal Law Article makes it a misdemeanor to destroy any public record without proper authority

State law specifically requires retention

- §10-619(a) of the State Government article specifies that “the head of a unit” of State government or a county or municipality
 - *May only destroy original material after offered to the Archives and they refuse*
- Maryland Regulations at C.O.M.A.R. §14.18.02.05(a) requires all officials and employees to retain records

And state law also requires a record retention schedule

- State Government Article §10-616(a) specifies that
 - Any document destruction
 - Any offer to State Archives
- May only be undertaken **in accordance with record retention schedules**

State law also specifies certain documents not subject to destruction

- State Government Article §10-615 specifies the retention laws do not authorize destruction of:
 - Any permanent book of record
 - Land record or public record
 - Record relating to financial operation of State agency
 - Public record
 - Court record

For specific retention timelines, other laws may also require retention

- Specific federal or State law requirements, such (for example) as documents related to housing programs or grants
- Personnel records
- Property records – deeds, easements, mortgages
- Cases or matters in litigation (or anticipating litigation)
- Public records may have other requirements
- Public Information Act requirements may add to retention timeframes

Additional requirements prior to any destruction

- State Archives must approve preservation of any copies (if the original is destroyed)
- Under §10-619(b) of the State Government article, after destruction a list must be sent to the Archives

Retention Schedules

- A schedule specifies when a specific category of document may be discarded
- That schedule must be approved by the State Archives
 - Identifying document types
 - Categorized by department
 - Identifying length of minimum retention

Record Retention Schedule Approval

- A schedule allowing a document to be discarded is only effective
 - After approval by State Archives, which usually requires changes based on their comment
 - Note that even with a schedule, State Archives must be notified prior to (and after) discarding a document

Can documents be discarded without a schedule?

- Multiple copies can be
- The originals (individually or as a group) can't be except per a retention schedule
- Without an approved schedule, there is no timeline and documents can't legally be discarded
- *Sample schedules are on the Archives website to provide guidance on timelines and format*

Regulatory Requirements

- Code of Maryland Regulations (C.O.M.A.R.) at §14.18.02.07 requires
 - An inventory
 - A schedule for transfer to Archives and destruction
 - Approval by the Archives of any such schedule

Are Local Archives Possible?

- Code of Maryland Regulations (C.O.M.A.R.) at §14.18.03.01 establishes authority for a local archivist
 - Would be controlled locally
 - Only effective upon approval by State Archives, per their authority to set record retention standards (State Government Article §10-609(3))

If local archives are approved

- Must still follow all applicable State laws and regulations
- Must preserve records in acid-neutral folders
- Must adopt and enforce security procedures
- Must allow public access to records

What about electronic/computerized data?

- Such records are covered by the same requirements
 - Record means “any documentary material in any form.” State Govt Article, §10-614(e)
 - And thus includes any record which is stored in any way, including the “cloud” or any other electronic/intangible manner

Electronic storage of paper documents is an option

The Maryland Uniform Electronic Transactions Act

The Maryland Commercial Law Article
(§21-101 et seq)

- Generally refers to commercial transactions
- Generally authorizes electronic transactions, including electronic signatures

Electronic retention option

The Uniform Electronic Transactions Act defines “Government agency” is defined to include:

- Any county, municipality or political subdivision

And the law applies to document retention

Electronic Retention Requirements

§21-111(a) of the Md. Commercial Law Article specifies that:

- If a law requires that a record be retained, the requirement is satisfied
 - ***By retaining an electronic record of the information in the record which:***
 - (1) Accurately reflects the information
 - (2) Remains accessible for later reference.

Other document retention requirements will still apply

Maryland Commercial Law Article §21-111(g) states that a government agency may:

- Specify additional retention requirements
- And State Archives has done so

Approval of electronic retention process

- Retention schedule must be approved by State Archives
- This includes approving the manner of retention – such as transferring paper documents to electronic or “cloud” storage
- Before destruction, State Archives must be informed in advance (and receive a copy)
- After destruction, State Archives must receive a list

Questions?