

Document Retention Policies

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Overview

1. **Introduction**
2. **E-discovery**
3. **Document Retention Policies**
4. **Emails**

Why Should I Care?

- In litigation, disputes over e-discovery can end up costing a lot of time and \$\$
- Aside from litigation, wouldn't you like to be able to find a document or email if you need to?

E-discovery

- E-discovery – “electronic discovery” – the discovery of electronic data and documents in litigation
 - How many have heard of e-discovery?
- Federal Rules of Civil Procedure revised in 2006
- North Carolina Rules of Civil Procedure revised in 2011

ESI – What?

- Electronically stored information (“ESI”)
 - Emails
 - Word processing documents
 - Spreadsheets
 - PDFs
 - CAD files
 - Digital photographs
 - Others?

ESI – Where?

- ESI may reside on:
 - Servers
 - Hard drives of desktop and laptop computers
 - Backup tapes
 - Thumb drives
 - Smartphones
 - Others?

ESI – How much?

- Projects can create many gigabytes or even terabytes of data
- The cost of retrieving and producing ESI in a legal dispute can add up to thousands of dollars and in the very largest cases, into the millions of dollars.

Duty to Preserve ESI

- The duty to preserve ESI begins at the moment that litigation is reasonably anticipated.
 - What does this mean?
- Failure to preserve ESI once the duty attaches may result in sanctions by the court or even an adverse jury instruction.

Document Retention Policies

- Some firms or companies may have a routine document retention policy that governs what types of documents are retained and for how long.
 - May be formal or informal
 - May or may not be in writing
- How many of your employers have a document retention policy?

Legal Requirement?

- No legal requirement that there be a document retention policy, but you should. Why?
 - it can be helpful to the litigant in showing compliance with the duty to preserve once litigation is reasonably anticipated.
 - If your client calls you with a question years after the project is complete, you may need to refer to an email or earlier CAD file to answer the question.
 - And if you are involved in litigation years down the road, for instance, you may need to refer to an email to help prosecute or defend against a claim.

What files/documents?

- Should be in place to address all documents – electronic and non-electronic
- Types of documents that may be retained include:
 - Correspondence (letters and email)
 - Drawings (including CAD files)
 - Photographs
 - Time and billing records
 - Word processing documents, spreadsheets
 - What are some others?

Length of Retention?

- How long?
- Most types of litigation will commence within three years after the alleged negligent act or breach of contract (statute of limitations)
- But in certain instances, that time can expand to six years or longer (statute of repose)

Retention Format

- Format
 - Retain on servers (server capacity is cheap)
 - Back-up tapes

Emails

- Why important?
 - Oftentimes, emails provide the best chronology of facts and events which are so important to most construction disputes.
 - Engineers, in my experience, typically do not keep detailed time records of what they worked on a given day.
 - For questions of who did what when, email may be the best source of an answer.

Using Outlook

- Using Outlook to retain emails
 - Create project folders in a “public folder” that everyone can access
 - If large number of projects, can use “categories”
 - Use the project # in the folder/category description
- Why?
 - Puts all emails in one location that everyone can access

If No Central Location for Emails

- If no public folders you'll have to search personal mailbox folders
 - some do a good job of maintaining personal project folders, but may be on both network and laptop hard drive
- Beware the employee who keeps everything in one inbox (Keyword search)

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