

PUBLICATION

Where did that document go?

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March 20, 2012**

You must be able to find documents when you need them.

Each of you at one time or another has not been able to find that piece of paper you were looking for. It might have been someone's business card or contact information. It might have been some instructions concerning where to deliver materials on the project site. It might have been where you wrote the time, date and circumstances of the oral change order approval. Why you need each of these documents is clear, but the bottom line is: can you find that piece of paper when you need it?

Construction projects are very paper intensive. There are daily reports, job logs, invoices, payroll applications, purchase orders, contractor meeting minutes, superintendent's diaries, plans and drawings, RFIs, change orders, contracts and many more categories of documents. With the increasing extent to which we communicate by electronic means, many of the things we historically had as documents are not in paper format anymore. They are sent as emails or text messages and saved on the computer server rather than printed out for the filing cabinet.

What does all of this mean for you as a contractor? There are a variety of reasons why finding documents when you need them is important. The most obvious one is that documents help you run your business in a profitable and efficient matter. From the legal perspective, however, some are regulatory and administrative requirements, others are contractual obligations and still others are prudent business practices, for example:

- Some agency of the government, like OSHA or the Department of Labor may require certain documents to be retained.
- Your contract may obligate you to give the owner access to your books and records.
- The change order was approved, and you accelerated your work schedule, but all of this occurred on site in a face-to-face meeting that you noted in your job notebook.

Over the course of the next three installments of Bricks in the Wall, I am going to outline for you some big picture issues about document retention policies, records management practices and "legal holds" in the context of litigation. We are going to look at these issues by focusing on the following topics:

1. What is a records retention policy?
2. Why is it prudent to have (and follow) a records retention policy?
3. What are some practical, real world things to consider about your records retention policy?
4. What is a "legal hold," how does it differ from a records retention policy, and why is it important?

The first thing to keep in mind is this: while some of the policies and requirements we are going to talk about relate specifically to "documents," another way to approach the substance of this series of articles is to use the term "information." A "document" is no longer just what you may find on a piece of paper. It can be an email. It can be a text message. It can be something never printed but capable of being printed. When you start using "information" to describe what you are looking for, however, it clearly becomes a broader search. It

can be a voice mail left on your office telephone. It can be the image of a letter preserved on a copying machine or a fax machine. It can be a video-recording or photograph saved on your cell phone.

There can be multiple layers of sophistication and complexity associated with many of the topics to be discussed. The purpose of this series is not to address all of the potential scenarios, but to get you thinking, to get you asking questions, and to get you prepared for handling business and legal issues involving the retention of documents.

Topic One: What is a records retention policy?

A records retention policy or document management policy is a formalized, structured method of retaining, finding, and disposing of information and documents. It is thought out in advance. It is not something haphazardly done on the spur of the moment -- or at least not done well. And it is not just about keeping information and documents already in existence. It can relate to who creates the documents and how they are created. It involves giving some thought to what documents you want to be the officially recognized documents of the company.

One of the primary issues companies face is how long they must keep documents. There is no easy answer to this question. It can vary by state, by the government agency that may be interested in the information or even the format in which the document, or information, is generated and kept. Moreover, all information and documents are not created equal – your information management policy must recognize the differences that can exist based on the type of document in question.

The flip-side to how long the documents must be kept is what to do with them when you no longer need them. A records retention policy answers that question for you – after a given period of time, the documents are destroyed. It is helpful for your policy to determine who will destroy the records, how they will be destroyed and other destruction related issues such as documenting the destruction as complying with the policies of the company.

Keep this in mind: it is perfectly legal to destroy documents that you are not required to preserve. We will talk more about what documents must be preserved in a later article.

A key to the success of a records retention policy is honoring it once it is established. If your policy establishes the retention of certain categories of documents for seven years and other categories of documents for five years after the conclusion of a project, follow it. Varying from the existing policy can be just as damaging and costly in some instances as not having a policy at all.