

Document, Document, Document (sign it, date it)



Presenter: Catherine Burgett

Presented To: Ohio Association
of Public Treasurers

Agenda

- What are Documents
- Types of Documents Created by You
- Who Wants your Documents
- Document Management and Retention
- How to Mitigate Risk
- Examples of Sticky Situations



What are documents?

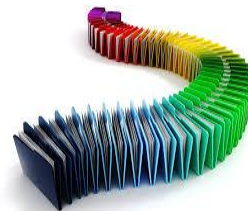
- Anything written down in any form, using any medium
 - Paper
 - Social Media
 - Reviews
 - Spreadsheets
 - Cocktail Napkins
 - Texts
 - Emails
 - E-docs
 - Mad scribbles of a deranged mind



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Types of Documents Created by You

- Financial Records (the stuff you are really good at)
- Contracts
- Official Memorandums
- Official Letters
- Official and Unofficial Emails
- Informal Notes
- Texts
- Photographs
- Payroll
- HR Documents (the stuff that keeps me up at night)
- FMLA/ADA (that which gives me heartburn)



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Who Wants Documentation?

- Citizens
- Media
- Employees
- Unions
- Other Government Bureaucracies
- Plaintiff's Attorneys
- Juries
- Medical Professionals
- **THE STATE OF OHIO**



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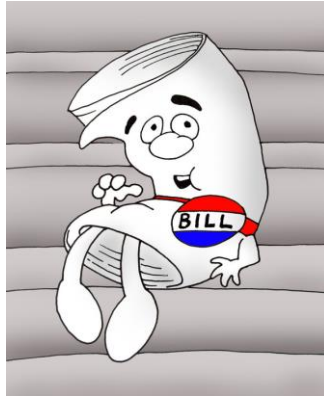
What do they ALL have in common?

- (1) They thrive on paper;
- (2) they believe that if something was important, you wrote it down
 - If you didn't write it down, it must not have been important



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What Happens to it when you Write it Down?



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Know what happens to your paper – be purposeful

- Think about what happens to each document you create before you create it
- Know where it is going
- Know who is going to see it
- Know how long it will be kept
- Know where it will be kept and how
- Know how it will be destroyed and when
- Know whether it is a public record



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Develop a Paper Plan

- Tell each member of your team what documents to create, how to create them, how to store them, and how long to keep them



- Your plan should also consider who is responsible for making sure the right paper comes in the door

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Ohio's Public Records Law

Definitions

R.C. 149.43 (A)

"Public record" means records kept by any public office, including state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school...that "documents" the function of the Office.

"Public record" does NOT mean any of the following:

- (a) Medical records;
- (b) Records pertaining to probation and parole proceedings or to proceedings related to the imposition of community control sanctions and post-release control sanctions;
- (c) Records pertaining to actions of an unmarried, un-emancipated minor seeking an abortion;

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- (d) Records pertaining to adoption proceedings;
- (e) Information in a record contained in the putative father registry;
- (f) Adoption records on file with the Ohio Department of Health;
- (g) Trial preparation records;
- (h) Confidential law enforcement investigatory records;
- (i) Records containing information that is confidential and part of a Mediation or a complaint filed with the Ohio Civil Rights Commission alleging discrimination;
- (j) DNA records stored in the DNA database of the Ohio Attorney General;
- (k) Inmate records released by the Ohio Department of Rehabilitation and Correction to the Ohio Department of Youth Services;
- (l) Records maintained by the department of youth services pertaining to children in its custody;
- (m) Intellectual property records;



Ohio's Public Records Law

- (n) Donor profile records;
- (o) Child support records maintained by the Ohio Department of Job and Family Services;
- (p) Peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation residential and familial information;
- (q) Trade secrets of a county hospital or municipal hospital;
- (r) Information pertaining to the recreational activities of a person under the age of eighteen;
- (s) records of a County Child Fatality Review Board;
- (t) Records of a Public Children Services Agency



Ohio's Public Records Law

- (u) Test materials, examinations, or evaluation tools used in an examination for licensure as a nursing home administrator that the board of executives of long-term services;
- (v) Records the release of which is prohibited by state or federal law;
- (w) Proprietary information related to the Venture Capital Authority;
- (x) Financial statements associated with the Ohio housing finance agency or the controlling board in connection with applying for, receiving, or accounting for financial assistance from the agency, and information that identifies any individual who benefits directly or indirectly from financial assistance from the agency;
- (y) certain Day Care Records;
- (z) certain military discharge records filed with a County Recorder;
- (aa) Names and addresses of specific residential and commercial customers of a municipally owned or operated public utility;
- (bb) certain records associated with the Ohio Development Services Agency sent to Jobs Ohio;
- (cc) records regarding the manufacturers and suppliers of drugs used for lethal injections.



Public Records: Electronic Documents

- Records are analyzed based on their **content**, rather than their storage medium
- **Electronic records** (e-mails, text messages, IM chat messages) are treated no differently than any other tangible record
- **Databases:** if an existing program can perform a search and produce a compilation or summary as described by the requester, that output is deemed to "exist" as a record for the purposes of the Public Records Act



Public Records and Public Records/Open Meetings Issues



- Social media as records:
 - Definition of the term “records” includes any document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in section 1306.01 of the Revised Code, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.



Private E-mail/Social Media Considerations

- A private e-mail/social media account **can** be subject to the Public Record Act if the content of the account serves to document the organization, functions, policies, procedures, operations, or other activities of the public entity
- Hillary Clinton’s e-mail controversy highlights the danger of using personal online accounts for work
 - Clinton told reporters that she set up the private email server because she did not want to carry two devices with her
 - She was in the habit of deleting emails she considered personal and keeping emails she considered work-related



The Ohio Electronic Records Committee

- Identifies best practices and develops resources concerning the creation, maintenance, long-term preservation and access to the electronic records of Ohio's public entities
- Advocates for implementation of best practices



Records Management Challenges

- Capturing content – how to access and search
- Ownership and control of data – third-party administration
- Application of records retention policy
- Management of non-record content
- Management of posted information
- Public records requests
- Employee use and access



Schedule Contents

- A retention schedule consists of the following:
 1. Record title and description;
 2. Length of time the record must be retained; and
 3. The media type of the records series (paper, microfiche, digital, film or videotape)
- Retention schedules are designed for people who have no knowledge of the records
- An efficient retention policy is one that refrains from using legal jargon and acronyms



Sample Schedule

Suggested Records Retention Periods for OHIO MUNICIPAL RECORDS		
Section 1 – General Administrative Records		
Records listed in this section are generally found in most municipal offices. These General Administrative and General Financial records retention schedules (Section 7) apply to every municipal department, board commission or other municipal related entities unless superseded by a specific schedule.		
Records Series Title	Suggested Retention Period	Media Type
1 Accident Reports/Files Employee Injury Report Bodily injury to non-employee Damage to Municipal Vehicle or Property	Place in personnel file 6 years provide no action pending 6 years provide no action pending	Paper and/or Digital Paper and/or Digital Paper and/or Digital
2 Activity Reports – All types	2 years	Paper and/or Digital
3 Agendas	6 years	Paper and/or Digital
4 Annual Departmental Budget	5 years	Paper and/or Digital
5 Annual Departmental Report	Permanent – at 50 years appraise for historical value	Paper and/or Digital
6 Annual Municipal Budget	Permanent – at 50 years appraise for historical value	Paper and/or Digital
7 Annual Municipal Report	Permanent – at 50 years appraise for historical value	Paper and/or Digital
8 Attendance Reports/Records	3 years	Paper and/or Digital
9 Audiovisual, PR & Training Materials	Until information is superseded, obsolete, or replaced; then appraise for historical value	Paper and/or Digital
10 Badges and IDs	Turn in upon termination	Paper and/or Digital
11 Blank Forms	Until obsolete or superseded	Paper and/or Digital
12 Blueprints/Vellums	Until information is superseded, obsolete, or replaced; then appraise for historical value	Digital



Retention Periods



- A record retention period can be:
 - A set period of time with subsequent instructions
 - Routine e-mail correspondence must be kept for 6 months, then destroyed
 - Executive e-mail correspondence must be kept for 2 years, then transferred to State Archives.
 - An event-driven period
 - Mailing lists shall be kept until superseded or obsolete
 - A set period of time and an event driven period
 - Contracts shall be retained for 15 years after expirations



A Note About FMLA Document Retention (3 Years)



- Covered employers who have eligible employees must maintain records that disclose the following:
 - Basic payroll and identifying employee data;
 - Dates FMLA leave is taken by FMLA-eligible employees (leave must be designated in records as FMLA leave), including the hours of the leave, if FMLA leave is taken in increments of less than one full day;
 - Copies of employee notices of leave provided to the employer under the FMLA, if in writing, and copies of all eligibility notices given to employees as required under the FMLA (copies may be maintained in employee personnel files).
 - Any documents (including written and electronic records) describing employee benefits or employer policies and practices regarding the taking of paid and unpaid leave.
 - Premium payments of employee benefits.
 - Records of any dispute between the employer and an eligible employee regarding designation of leave as FMLA leave, including any written statement from the employer or employee of the reasons for designation and for the disagreement.



Guidelines for Managing Email



- Categories of Email Retention:
 - Non-Record Materials – can be deleted at any time. May include personal correspondence and publications and promotions from vendors
 - Official Records:
 - Transient Retention – includes telephone messages, drafts and other limited documents that serve to convey information of temporary importance in lieu of oral communication
 - Retain until no longer of administrative value, then destroy



Guidelines for Managing Email



- Intermediate Retention – documents that have more significant administrative, legal and/or fiscal value but are not scheduled as transient or permanent should be categorized as appropriate, which may include:
 - General correspondence – letters/memos. Retain for 1 year then destroy
 - Routine correspondence – requests for routine information. Retain for 6 months, then destroy
 - Monthly and weekly reports. Retain for 1 year, then destroy



Guidelines for Managing Email

- Permanent Retention – documents that have significant administrative, legal and/or fiscal value should be categorized as appropriate, which may include:
 - Departmental Policies and Procedures – retain until superseded, obsolete, or replaced



Best Practices for Managing Email

- Record and copy email – generally speaking, the individual who sends an email message should maintain the record copy of the message
- File email – create other folders to facilitate ease of retention
- Subject lines – fill in the subject line to both help your recipient identify and file messages, and to help you file your messages that must be retained for some period. Should be as descriptive as possible

Poor or confusing subject lines	Better, descriptive subject lines
"helpful info"	"contact info"
"report"	"quarterly financial report"
"minutes"	"Jan 99 board minutes"
"important"	"revised admin. procedures"
"today?"	"lunch plans today?"
"news"	"new agency head appointed"



Managing Personnel Documents

- What goes in a personnel file
 - Application
 - Offer
 - Acknowledgements
 - Resume
 - Reviews
 - Training
 - Job Description
 - Exit Interview
 - Discipline
 - Awards and Kudos
 - Benefit forms



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Managing Personnel Documents

- What doesn't go in personnel files
 - Medical Information
 - FMLA
 - ADA
 - I9s
 - Work restrictions
 - Investigation documents
 - Background check information
- Where does it go?
 - Where are the documents stored?
 - Who has access?
 - How is it secured



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SO – HOW DO YOU DOCUMENT?



Proper Documentation Has a Purpose

- You must first determine the purpose of the document to determine what and how to document
 - If it's a government function, do you simply need to record the events that occurred?
 - Is it to assign follow-up tasks?
 - Is it to document discipline in an effort to change behavior?
 - Is it to tell somebody to do something?



Creating a Paper Trail

- In “government” functions, you often need documents to, essentially, create a paper trail
 - Who you talked to
 - When you talked to them
 - What was said
 - What are the follow-up steps required
 - Were those follow-up steps completed
 - *Be careful of the contracts you have and those you may make or alter mistakenly*



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Creating a Paper Trail

- In other areas which deal with employees, the opposite is true, and documentation should have a purpose *other* than to create a paper trail
 - Convey to the employee, this is important!
 - Tell them what to do! (Or not to do)
 - Develop a plan
 - Document an infraction
 - Give credit where it is due

following my paper trail

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Papering the File

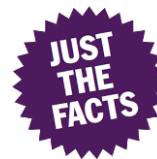
- The correct purpose is NEVER to paper the file
- A plaintiff's lawyer, union official, or outraged individual will sniff that out in a heartbeat



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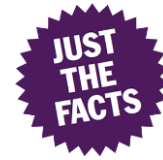
Be Objective

- Regardless of the purpose:
 - Be objective – don't editorialize or speculate
 - Don't use buzz words "discrimination, harassment, disability claim, citizen safety concern"
 - Don't concede any points
 - "Wrong" does not equal "unlawful"
 - Don't offer opinions as to a citizen's or employee's past or future conduct
 - Don't be dramatic – if someone's life wasn't at risk, don't say it was



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Be Objective



- Be specific – even if it hurts or causes embarrassment
 - Don't say poor attitude – say how the attitude manifested itself
 - Don't just say "he allegedly harassed her" – say how he allegedly harassed her
 - Don't just say "he touched her" – say how, where, and when
 - Sometimes you can't be nice – honesty is more important
 - BUT - focus on the behavior, not the person



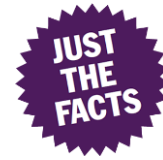
Tips for Proper Documentation

- Be consistent – do the same thing every time
- Consider making "how to" cards for common situations
- Make it legible
- Date it
- Sign it
- If possible and applicable, let the employee review and sign

*PO
Pelloni 4/10/11 x 1/10/11
M... MD KID
K... Plan to B
Nov 9/10 M.../A...
E... out > 75% ...*



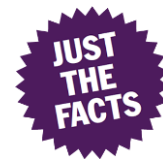
Tips for Proper Documentation



- Don't speculate on possible legal claims
- Make sure your "facts" are facts
- Don't use shorthand or code
- Be mindful of your personal notes
- Be complete - you may know what you know but others will not



Tips for Proper Documentation



- Keep your documents filed and organized
- Follow the document retention policy
- Be careful about what you throw away
- If you don't want to see it on the nightly news –don't write it down



Confidentiality

- Keep it safe and confidential
 - Don't let your hard work disappear
 - Don't feed the rumor mill
 - Don't ever be in the position to attempt to explain how and why it happened
 - If it can't go in the regular personnel file, it's REALLY confidential



And While We're on the Subject...



- Mind your e-mails!
 - E-mails are not informal notes – they are Company documents that are stored just like contracts
 - E-mails have no tone – a good plaintiff's lawyer will present your words in the worst light possible
 - E-mail is an extremely easy form of communication, which makes it a very dangerous means of communication



And While We're on the Subject...

- Mind your e-mails!
 - Remember – every one of your e-mails (even the deleted ones) may be read by a third party
 - Think before you type and re-read your entire message (including addresses) before you send.
 - Do not e-mail when angry - Ever
 - Do not discuss sensitive personnel matters in an e-mail, even with a “confidential” recipient like HR or another manager
 - When in doubt, don't put it in an e-mail – pick up the phone or walk down the hall



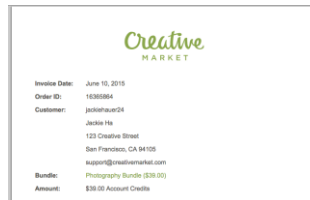
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STICKY SITUATIONS

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Situation 1

- You are reviewing an invoice from a City approved vendor and you notice that the employee has put in an order for both the City and for personal use. You note a 10% discount applied to each.
- Do you have any concerns?
- How do you handle those concerns?
- What sort of documents get created?
- What should you think about in creating those documents?



Situation 2

- Emmy Sue Suesalot comes into your office in tears claiming that Knucklehead Ned touched her whatnots.
- Any concerns?
- Do you get a statement from Emmy?
- Ned?
- Do you call anyone?
- What if you have to do the investigation? What do you do and how?
- What do you need to remember in documenting things?



Situation 3

- You get an email from a citizen angry that her son didn't make the City's soccer team. She is certain it is because the practice fields are subpar and thinks you should allocate more funds for better fields. You forward her email to your friendly attorney. In the course of the email exchange back and forth, you may or may not use some Scottish curse words to describe the citizen. The attorney wisely ignores your tomfoolery and offers you advice on how to handle the situation. You both develop a plan. You then forward that email on to a number of other people – including the consultant who is working with the City on new soccer fields.
 - What did you do to cause me to die inside a little?
 - What could happen?
 - What should you have done?



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Situation 4

- You just got promoted (yay, you!) and have a new direct report, Dolly Doesnothing. While the former person in your position seemed happy with Dolly, you can't image why. She is often late. She doesn't keep track of her time. She wears yoga pants to work. She chews with her mouth open. She makes mistakes in public documents. She takes naps at work. Then, one day, she mouths off at a vendor and jeopardizes the relationship. You want her fired – AND NOW. But, you wisely call your favorite attorney.
 - What questions does she ask you?
 - What will she expect to see?
 - What will make her heart hurt?
 - What could you have done from the beginning?



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Situation 5

- Hoarder City has been a bit lax about document retention and management. All supervisors maintain their own records and files and no one has ever destroyed anything (on purpose). Malcontent Malory, a former employee, sues the City when she gets fired for engaging in shenanigans at work. Her clever attorney serves both discovery requests and a public records request on the City.
 - What issues might the City have?
 - What does the City have to do?
 - What happens if the City doesn't find everything?



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THANK YOU!
Catherine F. Burgett
(614) 559-7287
cburgett@fbtlaw.com

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