



# THE INFORMATION MANAGEMENT DIGEST

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## CALIFORNIA MODEL LEGISLATION FOR RECORDS ABANDONMENT

The state of California has validated the importance of confidential destruction of abandoned records by passing legislation that provides safe harbor to those who inherit abandoned records. The legislation underscores shredding as a critical component to safeguarding custodians of private information.

Under AB 1094, landlords and certain companies, such as storage facility owners, are shielded from civil liability in their destruction and disposal of personal information abandoned by clients or former tenants when the custodians properly dispose of the records.

The new statute also outlines an improved, simplified process for transferring ownership of the abandoned property and promotes procedures to purge and destroy the records, dismantling the information into "unreadable and undecipherable" forms. Secure destruction services, that provide the means for shredding paper records or shredding computer hard drives, are recognized in the new law as critical components that are central to the battle against identity theft.

Developed by the California Office of Information Security and Privacy Protection and sponsored by Assembly member Connie Conway, the provisions were signed into law by Governor Arnold Schwarzenegger on August 5, 2009. The directive stands as model legislation to help any person or organization who inherits abandoned records. The law is especially aimed at unsuspecting landlords saddled with sensitive, fraud-prone property like employee records left by owners and operators of failed companies who increasingly adopted a dump-and-dash approach to closing shop; it also applies to commercial records centers or other storage companies who may find themselves as the sole remaining entity in charge of records when a former client abruptly ceases operations. The law provides "that a cause of action shall not lie against a business that disposes of abandoned records containing personal information in accordance with these provisions."



AB 1094 also establishes ownership of the abandoned records, stating "if property remains on the premises after a tenancy has terminated and the premises have been vacated by the tenant, the landlord shall give written notice to the tenant and to any other person the landlord reasonably believes to be the owner of the property. If the property consists of records, the tenant shall be presumed to be the owner."

The law exempts information that is made available to the general public from federal, state or local government records. Information lists gleaned from phone books, for example, could simply be tossed in the trash.

"California is proud to be a leader in the information technology field, and our innovative individuals and companies play a key role in shaping the digital world of today," said Schwarzenegger at the state's 2010 privacy day celebration held in late January. "While their terrific advancements have improved our lives, they also can potentially threaten our security if used improperly. In response, our state has worked hard to make safeguarding our citizens a priority."

Industry partners serving as advocates for information confidentiality applaud the proactive efforts highlighted within the new legislation. Representatives from government, industry and support organizations are working together to encourage participation and acceptance of the regulations.

The information economy creates both new opportunities and new challenges. Our personal profiles are increasingly stored and shared by multiple organizations, online and offline," says Richard Purcell, executive director of The Privacy Projects, a nonprofit research institute and the coordinating sponsor of Data Privacy Day 2010. "Ensuring organizations from various industries are on board to understand and address these challenges is an important step forward."

The Federal Trade Commission states that the law covering credit reports "requires that persons over which the FTC has jurisdiction who maintain or otherwise possess consumer information for a business purpose properly dispose of such information by taking reasonable measures to protect against unauthorized access or use of information in connection with its disposal." These provisions were articulated in the 2005 Fair and Accurate Credit and Transaction (FACT) Act.

The rules, broad in scope, apply to "any employer, regardless of industry or size that obtains a consumer report (whether a full credit report or a pre-employment check of public records)," meaning anyone who retains or holds consumer information for business purposes. The act defines consumer information as "any record about an individual, whether in paper, electronic or other form that is a consumer report or derived from a consumer report."

In addition, California's AB 1094 allows for administrative enforcement, detailing that "The notice shall advise the person to be notified that reasonable costs of storage may be charged before the property is returned, where the property may be claimed, and the date before which the claim must be made." Custodians such as landlords may now charge security deposits and disposal fees to defer expenses should the tenants skip town and leave behind boxes of consumer records and old computers.

A non-scientific survey to support the passage of AB 1094, spearheaded by PRISM International, an industry trade association, noted that in 2008 California records storage companies managed an average of 29,110 cubic feet of abandoned records. The survey documented that these companies spent \$94,000 to store the records and \$72,775 to confidentially destroy them.

RIM industry leaders noted that while there's no prevalent client type or size that tops the list, the businesses which have vanished are numerous and varied. Surveys revealed that law firms, construction companies, including builders and developers, as well as financial service operations, notably title companies and mortgage brokers, healthcare businesses, even small manufacturing enterprises, are the primary culprits.

The likelihood of consumer fraud related to identity theft from unscrupulous practices like dumpster diving remains a threat; California government and RIM industry leaders are optimistic that the measures specified in AB 1094 provide a basic framework of legally acceptable procedures for replication throughout the nation. They believe the legisla-

tion outlines and encourages reasonable steps to prevent, combat and protect consumers and businesses from unauthorized access and use of private information.

California's AB 1094 protects landlords and business owners from civil litigation when they exercise due diligence in executing reasonable efforts to eliminate and dispose of personal information left in their possession by clients or former tenants. The law requires the custodians of the abandoned private information "to shred, erase or otherwise modify the personal information when disposing of customer records under their control." The Federal Trade Commission outlines "proper" disposal methods below:

#### **What is 'proper' disposal?**

The Disposal Rule requires disposal practices that are reasonable and appropriate to prevent the unauthorized access to – or use of – information in a consumer report. For example, reasonable measures for disposing of consumer report information could include establishing and complying with policies to:

- burn, pulverize, or shred papers containing consumer report information so that the information cannot be read or reconstructed;
- destroy or erase electronic files or media containing consumer report information so that the information cannot be read or reconstructed;
- conduct due diligence and hire a document destruction contractor to dispose of material specifically identified as consumer report information consistent with the Rule. Due diligence could include:
  - reviewing an independent audit of a disposal company's operations and/or its compliance with the Rule;
  - obtaining information about the disposal company from several references;
  - requiring that the disposal company be certified by a recognized trade association;
  - reviewing and evaluating the disposal company's information security policies or procedures.

The FTC says that financial institutions that are subject to both the Disposal Rule and the Gramm-Leach-Bliley (GLB) Safeguards Rule should incorporate practices dealing with the proper disposal of consumer information into the information security program that the Safeguards Rule requires ([ftc.gov/privacy/privacyinitiatives/safeguards.html](http://ftc.gov/privacy/privacyinitiatives/safeguards.html)).

The Fair and Accurate Credit Transactions Act, which was enacted in 2003, directed the FTC, the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, and the Securities and Exchange Commission to adopt comparable and consistent rules regarding the disposal of sensitive consumer report information. The FTC's Disposal Rule became effective June 1, 2005. It was published in the Federal Register on November 24, 2004 [69 Fed. Reg. 68,690], and is available at [ftc.gov/os/2004/11/041118disposalfrn.pdf](http://ftc.gov/os/2004/11/041118disposalfrn.pdf).

## HOUSE MARKS SUNSHINE WEEK WITH OPEN GOV LEGISLATION

In honor of Sunshine Week in Congress, the House of Representatives passed legislation designed to make the government more accountable, transparent, and responsive to the American people. House Committee on Oversight and Government Reform Chairman Edolphus "Ed" Towns (D-NY), who strongly supports an open and transparent government, recently shepherded the bills through the committee he chairs. The measures have been received in the Senate for consideration.

By a vote of 386 to 33, the House passed H.R. 946, the Plain Language Act of 2009, and by voice vote, the House passed H.R. 1387, the Electronic Message Preservation Act. Both bills are in step with the purpose of Sunshine Week, which promotes the public's right to know what its government is doing; empowers the American people to play an active role in their government; and provides the American people access to information that makes their lives better and their communities stronger.

"Congress is taking action this week to make the government more accountable, transparent and responsive to the American people," said Towns. "President Obama has stated that his Administration is committed to creating an unprecedented level of openness in Government. Congress today passed legislation that will help the president meet this critical goal."

H.R. 1387, the Electronic Message Preservation Act amends both the Federal Records Act and the Presidential Records Act to ensure that agencies and the White House preserve e-mail records. It was introduced by Rep. Paul Hodes (R-NH).

H.R. 946, the Plain Language Act of 2009, requires federal agencies to use plain writing in certain government documents. The bill defines plain language as writing that is clear, concise, and well-organized. Requiring government documents to be written clearly will make it easier for Americans to communicate with their government, and it will make the federal government more accountable. H.R. 946 was introduced by Rep. Bruce Braley (D-IA).

"There is no reason why the federal government can't write these forms and other public documents in a way all Americans can understand," said Braley. "Writing government documents in plain language will increase government accountability and will save Americans time and money. Plain, straightforward language makes it easy for taxpayers to understand what the federal government is doing and what services it is offering."

"I urge my colleagues in the Senate to expedite passage of these important reforms and get them to the president's desk for signature," added Towns.

Archivist of the United States David S. Ferriero applauded the goals that are embodied in the passage of H.R. 1387, the Electronic Message Preservation Act. In testimony to Congress in April 2008, the National Archives stressed the importance of this issue, noting that the National Archives "is supportive of the goals of [H.R. 1387, the Electronic Message Preservation Act] to ensure that electronic communications that constitute records are effectively managed and accessible throughout their life cycle."

"Effective records management, in our view, constitutes the backbone of the Administration's Open Government Initiative", said Ferriero. "The Government cannot be open and accountable if it does not preserve – and cannot find – its records. I applaud the leadership of Chairman Towns and Representatives Hodes, Issa, Clay, and McHenry on this important issue of managing and protecting the records of our Government."

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## DIGITAL COPIERS PROVIDE UNINTENDED PORTAL FOR IDENTITY THEFT

At the moment your company trades in its old copier, you may have just released 10-15,000 pages of sensitive documents to the next owner of the machine. CBS news and other news outlets have created a firestorm of public concern after airing stories identifying digital office copiers as a major source of potential identity theft.

Articles highlighting the risks inherent in trading in copiers have evidently been known for some time by copier companies, but are only now making their way into mainstream news. In reporting their story, CBS spoke with the President of Sharp Imaging, a digital copier company, who was asked whether the industry had failed to adequately warn consumers and businesses about the dangers of digital copiers. "Yes," was his response.

"It's falling on deaf ears," McLaughlin said. "Or people don't feel it's important, or 'we'll take care of it later.'"

Even though the copier industry may not have been successful in getting the word out, according to the McLaughlin there have been substantial efforts to spread the word. CBS news reported that Sharp commissioned a survey in 2008 that found that 60% of Americans were completely unaware that digital copiers stored images on their hard drive. They are, in fact computers – a fact noted by Toronto computer science professor Graeme Hirst as reported on the blog Rich's Random Walks.

"Modern, large, office-type photocopiers are computers. The whole system is controlled by a computer, it has a hard disk. It scans images and they are stored on the disc," said Hirst. "They are also networked computers, and they have all the same security issues that a computer does, so all the same security issues arise," he said. The article concludes

by noting "It really makes no sense to have a strict security policy for your office computers, if the photocopier is down the hall passing out information to anyone who asks. These machines, like PBX equipment, need to be secured with the same care that the computers get."

Even though office machines may not fall in the records management department or under the control of information management, a complete review of the information system of the organization should include any digital office machine which is capable of storing information. Some issues of compliance with HIPAA, Sarbanes Oxley, Red Flag Rules or FACTA, are sure to require the inclusion of digital copy machines in any audit or system review.

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## THE NATIONAL CONFERENCE ON MANAGING ELECTRONIC RECORDS (MER 2010)

Travel to Chicago's Magnificent Mile for the 2010 National Conference on Managing Electronic Records (MER) May 17-19 at the Westin Hotel downtown. Cohasset Associates will provide industry updates on key issues, trends and solutions for the life-cycle management of electronic records. In addition, the conference features a diverse slate of speakers, cutting-edge curriculum, networking opportunities and an industry exposition.

Industry professionals who regularly attend MER advocate that the conference is a top quality venue for ERM management. A 2009 survey of attendees revealed 97 percent would recommend the conference to colleagues.

The conference offers cutting-edge content. With a diverse slate of speakers on board, MER sessions are renowned for being informative, innovative, insightful and practical. The MER can bring professional solutions needs to meet an organization's compliance, legal and business objectives.

Staying true to its mission, MER offers a focused curriculum. It is the national conference that presents realistic and cost-effective ways to address life-cycle requirements for electronic records. Pre-conference tutorials are an optional benefit for attendees.

MER aims to be a trusted information source. Participants learn from insightful, real-world case studies led by those who lead the implementations and integrations. Experts impart cutting-edge knowledge and wisdom that comes from experience. These leading practitioners share success stories and lessons learned, especially what to avoid.

MER values the knowledge power of its unique industry. Conference offerings are personalized for RIM industry participants to encourage meaningful information exchange.

Connect with RIM colleagues from across the globe at MER. The conference provides a unique opportunity to interact with 400+ peer professionals and the leading solution providers.

**Exposition:**  
The MER is a unique educational forum. It is recognized globally as the best single resource for both understanding the many issues and also acquiring the needed information to manage your organization's electronic records successfully. For details and to register online visit, <http://www.merconference.com/index.php>.



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