



# THE INFORMATION MANAGEMENT DIGEST

*Our Business, Is Keeping Your Business - Your Business!*

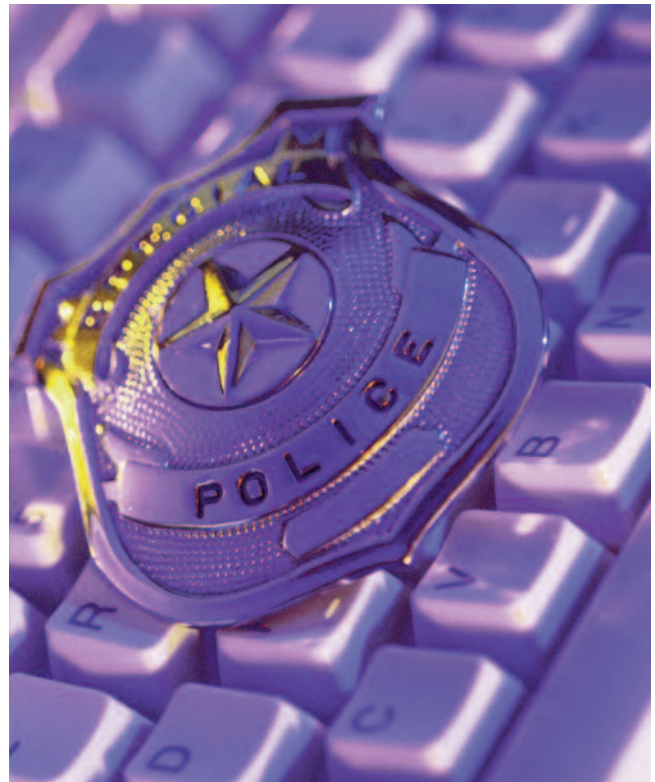
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## SARBANES OXLEY AND ELECTRONIC RECORDS

**T**he Sarbanes-Oxley Act (SOX) was passed by the United States Congress and signed into law by President Bush in 2002. This law was passed in response to Enron, World Com and other corporate governance and financial scandals. The Act established a Public Company Accounting Oversight Board (PCAOB) whose responsibilities include the quarterly review of certified financials from public companies. Another provision impacting records managers is a new seven year retention period for memoranda, correspondence, communications, other documents, and records (including electronic records), that are created, sent or received in connection with the audit or review and contain conclusions, opinions, analyses, or financial data related to the audit or review.

SOX creates criminal penalties including fines and up to 20 years in jail for altering, destroying, mutilating or concealing a record, document or other object with the intent to impair the object's integrity or availability for use in an official proceeding or for otherwise obstructing, influencing or impeding any official proceeding or attempting to do so. In addition, a failure to abide by minimum retention requirements can result in fines and up to 10 years in jail. These penalties have already been used. A June, 2004 article in CFO.com reports "In March the SEC fined Banc of America Securities \$10 million for stalling on providing evidence in an investigation: the company had claimed it would take too much effort to produce the required archived E-mails. In December 2002, the commission fined Wall Street brokerage firms Deutsche Bank Securities, Goldman Sachs, Morgan Stanley, Salomon Smith Barney, and U.S. Bancorp Piper Jaffray more than \$8 million for failing to retain E-mails for the proper SEC-mandated retention period." Clearly SOX provi-



sions, like other SEC information management provisions that predated them, (e.g., Proctor and Gamble was fined \$10,000 in 1998 for failing to retain e-mail to the disposition date required by statute,) mean business and will be enforced.

Electronic records such as correspondence, contracts, CAD drawings, etc., that are born digital and remain digital through their retention period, can be categorized in records series that govern their paper or film-based counterparts. While this may call for the alteration of file structures and close cooperation with the IT department, the method of information organization will be intuitive to a records manager currently administering records in other media; however, there are other types of electronic records that are not so simple to administer.

## E-mail

One of the trickiest areas of electronic records management is e-mail. Some records managers suffer confusion when they consider e-mail a records series of its own. E-mail is NOT a records series (like accounts payable records) rather it is a communication channel (like snail mail or a telephone) which yields a record (like a paper letter or contract or an audio recording). A 2003 study by the ePolicy Institute, American Management Association and Clearswift of 1,100 U.S. companies showed that 14% of respondents had been ordered by a court or regulatory body to produce employee e-mail. A subsequent 2004 study by ePolicy and the AMA indicated that while 79 percent of companies surveyed reported having an e-mail policy, only half trained employees regarding the policy. As with other records and information management policy implementation, employees can only comply when they understand the policy and how to comply. For employees, or companies, adopting a “keep everything” or a “delete everything” policy, carry a box of snail mail into a staff meeting and dump it on the table in order to demonstrate how the subject matter of the e-mail should determine its value as a record.

## Instant Messaging

Another serious electronic records challenge is Instant Messaging. This type of real-time chat client has grown to very wide use and, while the SEC has not directly addressed retention related to IM, companies are already preparing as though retention were required. In 2001, more than 100 million people were using Instant Messenger. By 2003, it was reported that more than 90 percent of companies have Instant Messenger users (sometimes without the cooperation of IT). In most cases, the IM client was a consumer-type client. So, within a single company, there could be three or more IM clients (though AOL Instant Messenger is the most common). Some companies are implementing commercial IM solutions, such as Lotus Sametime™. Software developers are also introducing hosted IM solutions which provide automatic capture. In the short-term, electronic records policies should recognize the need to capture and retain transcripts of IM sessions where business-related communication has taken place.

## Conclusion

Many companies are now reacting with fear to records issues raised in Sarbanes Oxley. Like HIPAA and Gramm Leach Bliley, there are some vendors who will seek to take advantage of this climate. In a March, 2004 article in Transform magazine, author Bruce Silver states “SOX today provides the ideal vehicle for

justifying the purchase of virtually any type of enterprise software. And that is what we have witnessed. Each vendor narrowly frames the SOX challenge in terms of its particular software capabilities, but in many cases those are tangential to the real problem. Despite the blizzard of webinars, white papers and magazine stories to the contrary, SOX compliance is not fundamentally a problem of records management. Yes, the Act specifically requires documents to be retained, but so does the IRS in the case of income tax records, and no one would suggest that tax preparation is at heart a records management problem.”

## THE TEN COMMANDMENTS OF ELECTRONIC RECORDS

- Let thy management support thy electronic records initiatives—for it shall go hard with thee if thy CEO should blindside thy program implementation.
- Know thy hardware and software, that the versions thereof may be migrated and thy legacy systems might be maintained if needs be.
- Remember thy data backup tapes, that thy retention and destruction schedules and policies should include them in their fullness, thereof.
- Thine employees shall knowest the technology use and security protocols, and shall abide by them, even unto the ends of their employment.
- Consider electronic records in thy policy statements, since thou knowest a record is a record, regardless of thy media type.
- Thou shalt establish for thy data every means of coming in and going forth, that protection shall be granted for thy importing and exporting and the fullness thereof..
- Thou shalt teach thy employees the electronic records policy.
- Thou shalt gird thy organization with a litigation response team, so that litigation shall not vex thee, nor electronic discovery make thee weary.
- Beware the remembrances of thy keystrokes and spirits in thy data; be thou mindful that when thou deletest files, they shall not disappear until overwritten.
- Thou shalt not shred or destroy thy scheduled records, even thy scheduled electronic records and backup tapes, when a lawsuit doth press hard upon thee.

## Reason for PG&E's Record-Keeping Delay? 1.25 Million Documents Need to be Reviewed

PG&E revealed today that it is scouring through more than a million documents to find records needed to set safe operating pressures on thousands of miles of gas transmission pipelines throughout the state.

The effort is so massive, PG&E said, that the utility has enlisted the help of a document management company and leased a new space just to house the records.

Brian Cherry, Pacific Gas & Electric Co.'s vice president of regulatory relations, spelled out the effort in a letter sent to the CPUC as an update on the utility's progress toward complying with several urgent recommendations made by the NTSB about a record-keeping discrepancy discovered following the deadly Sept. 9 gas pipeline explosion in the Crestmoor neighborhood. The CPUC gave PG&E until March 15 to produce reliable records for its gas transmission lines.

In examining its records to identify the pipelines that haven't undergone proper testing, however, PG&E—citing federal regulations—has already determined that not all of its 1,800 miles of gas transmission lines will require the recommended high-pressure water test that pipeline experts say is the best evidence of a gas pipe's strength.

Congresswoman Jackie Speier was disturbed by that information and said she believes the California Public Utilities Commission will indeed require PG&E to test those lines if proper records can't be found. Last week, Speier told reporters that the utility said it couldn't find records on nearly a third of its natural gas transmission lines.

"I am troubled that PG&E's letter to the PUC contains a statement that some lines don't require a pressure test under federal rules," Speier said in a statement. "If PG&E can't find testing records, the public should be assured that pressure testing will occur under the PUC directive."

To review the records, which so far total about 1.25 million documents, PG&E is working with a staff of 230 people from document management company Iron Mountain to help with collecting, scanning and indexing the documents.

PG&E also has leased a new space for the operation, which will house hundreds of boxes of records from more than 20 field offices throughout the state.

The investigation of the fire, which is being handled by the NTSB, is still ongoing.

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## Historian Accused of Altering Lincoln Archives

The National Archives says that Thomas P. Lowry, Abraham Lincoln researcher tampered with historical Lincoln documents. According to an article on NPR, Lowry changed the date of the presidential pardon issued by Lincoln to a military deserter. Lowry was accused of changing the date on the pardon from April 14, 1864, to April 14, 1865 the date of Lincoln's assassination.

The National Archives said the change made it look like Lowry had discovered Lincoln's final official act before his assassination at the Ford's Theatre. According to the NPR article, the document was hailed by historians when Lowry presented it in 1998 and the National Archives even gave the document prominent display by adding it to the tour of Lincoln documents.

Archivist, Thomas Plante became suspicious after noticing that the color of ink in the "5" appeared to be darker than the other numbers. Plante checked the document against an authoritative collection of Lincoln's writings and found that the presidential pardon had, in fact, occurred in 1864.

According to the National Archives, Lowry initially refused to speak with them on the matter, but later admitted to altering the document so it would appear that he had uncovered a historically significant document. Lowry has said he was pressured to confess by federal agents.

A spokeswoman for the Archives, Susan Cooper said that tampering with a document is a federal crime and that the archives referred the case earlier this month to the Justice Department for prosecution. According to the NPR article, officials were told that the statute of limitations had expired so Lowry cannot be prosecuted. However, the Archives has banned Lowry from its facilities.

# Texas Information Disposal Act 2005

## What Is It?

The Texas Business & Commerce Code added retention and disposal rules to the state law in 2005 that requires business records containing personal identifying information be shredded, erased or destroyed by other means prior to disposal. The law applies to business records created before, on, or after September 1, 2005.

## Why Should I Care?

For one thing, personal identity theft is the major financial crime in our country and impacts each and every one of us, whether we fall victim or not, as the costs are passed along to us all.

The Act addressed the problem facing us all by requiring those we trust with protecting our private information are in fact disposing of it in a manner to prevent it being used to commit identify theft or other purposes we did not agree to by forcing businesses to dispose of the information properly by destruction and not just throwing it away.

Finally, because for each record improperly disposed of there is the potential of a civil penalty of up to \$500 per record, along with other remedies sought by the Texas Attorney General for violations.

## What does the law say?

*698(3)(d) When a business disposes of a business record that contains personal identifying information of a customer of the business, the business shall modify, by shredding, erasing or other means, the personal identifying information to make it unreadable or undecipherable.*

*698(3)(e) A business is in compliance with the Subsection (d) if the business contracts with a person engaged in the business of disposing of records for the modification of personal identifying information on behalf of the business in accordance with Subsection (e)*



## WesTex Document, Inc.

“Our Business, Is Keeping Your Business –  
Your Business!”

### Full Professional Records Management:

- Two facilities: Lubbock and Amarillo
- Destroyed on-site or at our plant
- Climate controlled records storage archive
- Fireproof secure vault for permanent records
- Digital Imaging of files
- Microfilming of files.
- Convert old microfilm to new or digital.
- Disk-to-disk backup services
- Disaster recovery



This will get you in trouble