Just tell me which records we must retain in paper!

This is a common frustration among records managers and information governance (IG) professionals. Those responsible for maintaining and producing records want to retain or transfer their records using the most efficient method of storage, but do not want to break the law by retaining the information in an illegal format.

The purpose of this article is to provide records managers and IG professionals with guidance on determining which records they should retain in paper and which records may be retained electronically. This process involves understanding how the records are used alongside relevant laws and regulations associated with records management.

Therefore, when faced with the question regarding paper or electronic retention of global records, this article encourages organizations to consider the following three factors when determining whether to retain the records or documents in electronic or paper media:

1. Legal acceptance of electronic records
2. Specific location requirements for the records
3. Country limitations on the transfer of data

In addition to explaining this process of determining which records an organization should retain in paper, and which records may be retained electronically, this article provides a high level regulatory overview of the United States and over 80 countries addressing legal requirements associated with media, location, and transfer compliance.

Research Methodology

The information presented here is from a global analysis of the records management laws and regulations of 80 countries. Within those 80 countries, the research focused on the primary laws and regulations that address record retention for accounting, labor, tax, and contracts records. The analysis determined whether there was language that addresses the media that may or must be used and requirements associated with location or inspection of those records. The research also looked at the ability to transfer the data within those laws and examined the transfer requirements and limitations from data privacy and protection laws. The research for all 80 countries was conducted in 2020.

Retaining Paper or Electronic Records in the United States

In the United States, electronic creation and retention of information is generally accepted, so long as the integrity of the information is maintained. Integrity generally implies that the information on the record cannot be altered or the contents changed after creation or receipt. There are a few implied exceptions where the records should be retained in the original paper format, such as probate documents (wills or trusts), notarized contracts with raised seals, documents that convey property ownership (titles), and negotiable instruments (e.g., checks and assignable promissory notes). These exceptions do not explicitly require retention in paper copies. Instead, it is understood how these records and documents are used and understood that there is additional value in retaining them in paper or their original form. One rule to follow in the United States is if the value of the document is in the possession of the document, then you must retain the original document; a scanned or electronic copy will not suffice.

Global Analysis — Are Electronic Records Accepted?

International laws rarely explicitly state that the record must be retained in paper form. Instead, if electronic records are permitted, the law will affirmatively approve their use or the use of any media (including electronic or paper). In almost every case where electronic records are accepted, the law or regulation requires that (1) the integrity of the information is preserved, and (2) the organization is able to print the information.

Accounting Records

General accounting records are most likely to address the issue of electronic recordkeeping. Below is a breakdown of how the 80 countries' laws apply to whether accounting documents may be retained in electronic format.

Countries that generally allow retention of accounting documents / records in electronic format include:
Albania, Algeria, Argentina, Armenia, Australia, Brazil, Canada, China (PRC), Colombia,

Czech Republic, Denmark, Finland, Gabon, Ghana, Greece, Guatemala, India, Indonesia, Ireland, Italy, Japan, Jordan Kazakhstan, Kenya, Kosovo, Lithuania, Luxembourg, Madagascar, Malaysia, Norway, Panama, Philippines, Poland, Portugal, Romania, Russia, Saudi Arabia, Singapore, Slovakia, South Africa, South Korea, Spain, Sri Lanka, Sweden, Switzerland, Taiwan, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom, Uzbekistan, and Vietnam.

Countries that allow retention of accounting documents / records in electronic form, but mandate that the form must be the "original" form in which the record or document was created include:
Bosnia, Dominican Republic, France, Georgia, Germany, Mexico, Montenegro, and Serbia.

Countries with unique electronic requirements for accounting documents / records include:
El Salvador which requires prior approval before retaining in electronic format; and Netherlands which requires paper retention of the Balance Sheet and the Profit and Loss Account Income Statements but allows electronic retention of all other accounting documents.

Countries that do not allow electronic retention of accounting documents / records, or specifically require hard copy retention include:
Chile, Egypt, Ethiopia, Mongolia, Morocco, Thailand, and Tunisia.

Countries that do not address media requirements in their accounting laws include:
Cambodia, Costa Rica, Guyana, Jamaica, Lebanon, Nigeria, Peru, Sierra Leone, Suriname, and Tanzania.

The 80-country review shows that most countries allow electronic retention of accounting documents. Ten countries do not address the issue, and seven countries require the information be retained in hard copy (i.e., "bound book") and do not accept the retention of electronic accounting records.

Eight countries allow electronic retention of accounting documents, but only in the electronic format in which the document was originally created. This essentially requires organizations to retain accounting information in their original form, which may include retaining it in its original software format (i.e., Germany).

Tax Records:

Although tax-related records for these same countries may have different retention requirements and may be used for a different purpose, they have media requirements similar to those of the accounting documents. In fact, many times the tax law or regulation will refer to the accounting law for media instructions.

European value-added tax invoices may require short-term retention of the original hard copies for the purpose of obtaining a tax refund. Under the Thirteenth Council Directive 86/560/EEC, refunds are available for value-added tax payments made by taxable persons not established within the European Union territory. Many of the European Union (EU) countries require the submission of original invoices to obtain the eligible refund.

Contracts:

With few exceptions, laws or regulations do not require the retention of contracts. Although it makes good sense to retain contracts in order to review obligations and mitigate litigation risks, the retention of the information is solely a business decision.

As such, retention of the hard copy or scanned copy is also a business decision. Some original / hard copy versions have additional value. Examples of this may include contracts with seals, annotations or hand-written notes, or contracts that are assignable. Other contracts, like purchase orders or most statements of work, have little value in their hard copy / original form as long as the integrity of the document is preserved.

Labor / Employment Records:

While the use of electronic storage for accounting and tax records is generally clear, the use of electronic records for labor records (e.g., payroll, personnel files, health and safety / accident) is more ambiguous. For example, with accident records, the law is more likely to call out the format rather than call out the media. If a form is available and fillable in electronic form, then it is reasonable to assume you may retain it in electronic format. However, if the forms are all paper based, then it is reasonable to assume you must retain the accident information in paper form.

Below is a breakdown of whether the 80 countries have laws recognizing the electronic retention of payroll documents.

Countries that generally allow retention of payroll documents / records in electronic format include:
Albania, Armenia, Australia, Bosnia, Canada, China (PRC), Czech Republic, Denmark, El Salvador, France, Germany, Greece, Ireland, Italy, Kazakhstan, Kenya, Kosovo, Lithuania, Madagascar, Malaysia, Mexico, Montenegro, Morocco, Netherlands, Peru, Poland, Romania, Serbia, Sierra Leone, Singapore, South Africa, South Korea, Spain, Switzerland, Taiwan, United Araba Emirates, United Kingdom, and Vietnam.

Countries that allow retention of payroll documents / records in electronic form, but that mandate that the form must be the "original" form in which the record or document was created include:
Argentina, Georgia, and India.

Countries with unique electronic requirements for payroll documents / records include:
Luxembourg which requires the retention of payroll records in a "Special Register," and Norway which requires retention of information in both paper and electronic form.

Countries that do not allow electronic retention of payroll documents / records, or specify a preference for hard copy documents / records include:
Brazil, Cambodia, Colombia, Costa Rica, Dominican Republic, Philippines, Russia, Slovakia, Sri Lanka, Ukraine, and Uzbekistan.

Countries that do not address media requirements in their payroll laws include:
Algeria, Chile, Egypt, Ethiopia, Finland, Gabon, Ghana, Guatemala, Guyana, Indonesia, Jamaica, Japan, Jordan, Lebanon, Mongolia, Nigeria, Panama, Portugal, Saudi Arabia, Sweden, Suriname, Tanzania, Thailand, Tunisia, Turkey, and Uganda.

The 80-country review of payroll records shows that many countries either allow electronic retention of payroll documents or do not address the issue in their labor laws and regulations. However, sixteen of the 80 countries require paper retention of payroll records, or have specific requirements requiring retention in the original format, special registers, or in both paper and electronic formats.

Location Requirements

Some records have explicit location requirements, and others have implicit location requirements. Examples of explicit location requirements include requirements that the records or documents be located in the principal place of business or employment. An example of an implicit location requirement is a requirement that the record must be available for immediate inspection. Reviewing these requirements will impact the decision on retaining the information in electronic or hard copy format.

Accounting Records:

Generally, the purpose of accounting records is to protect investors and owners of the company. As a result, the location of the accounting records is based on the company bylaws or on the easiest way to get that information to owners / shareholders. Electronic records do not typically hinder this purpose, so long as the information is accessible.

Tax Records:

Authorities review tax records for purposes of audit and to ensure they are consistent with information submitted in tax returns. These are not “spot” or “surprise” inspections. Organizations generally have notice and time provided to pull together information and print that information from their original sources. The one exception to this may be customs records, which are related to taxes associated with duties.

Contracts:

Contracts are not generally inspected by authorities. They are private agreements. However, since they are private agreements, they are sometimes subject to personal data protection laws. Some countries, such as China and Russia, have strict restrictions on the location of personal data. Most other countries, following the example of the EU, have restrictions on the transfer of personal data. These restrictions are addressed later in this article.

Labor and Employment, Including Health and Safety:

These are the records most likely to be needed for immediate inspection. This would include payroll, personnel, accident, and other health and safety information related to employment. It is common for labor laws and regulations to require the information to be available for immediate inspection. If the record is not available because it is in an electronic system and cannot be printed or produced in a timely fashion, the organization will be fined or suffer other consequences. As a result, organizations may determine that it is more efficient to retain these records in hard copy format at the place of employment.

Transfer Restrictions

Under EU regulations, and in countries adopting similar requirements, personal data may not be transferred to other countries unless those countries provide the same level protection for it. The United States does not provide those levels of protection, making the transfer of personal data to the United States from many countries illegal unless certain actions or precautions are taken (i.e., submitting Binding Corporate Rules or adopting Standard Contract Clauses). This position was reinforced in July 2020 when the European Court of Justice declared that the Privacy Shield program, used by many U.S. organizations to transfer personal information of EU citizens to the United States, was inadequate at protecting the information of EU citizens, and therefore unlawful to use in order to comply with the General Data Protection Regulations (GDPR). (Data Protection Commissioner v Facebook Ireland and Maximillian Schrems, Case C-311/18, July 16, 2020).

Therefore, if a company is retaining personal data on an enterprise content system in the cloud, and that personal data is accessible in the United States, the organization may be violating some personal data laws. This may impact the decision to use those electronic systems for the retention of personal data.

Another issue associated with transferring data is migrating data from one system to another or scanning hard copies into electronic versions. As we have demonstrated, many laws and regulations allow for either electronic or paper versions of the records, but they require the retention of the original version. This means if the document is generated in paper form, it must remain in the original paper form. Or, if the document is created in an electronic system, it must remain in that same electronic system.

Conclusion

Most countries are accepting of electronic records, but whatever method of retention is used, the method must preserve the integrity of the information and be accessible and printable when needed. Organizations should be especially cautious with labor records, personal data, and documents where the value is in the possession of the original version. There may be situations where organizations keep the information in two systems: one in an enterprise system for internal purposes, and a paper version in-house or at locations for inspections or compliance. This is not the same as duplicate paper versions held in offsite storage locations. Duplicate paper records at offsite storage locations do not serve the purpose of providing documents for immediate inspection. Therefore, this practice should be discouraged.

In conclusion, by examining the laws associated with allowing electronic retention, the explicit and implicit location requirements, and the restrictions on the transfer of records, an organization is able to make an informed decision on which records should be retained in electronic and / or paper format.

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About the Author

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Tom Corey is a Director with HBR Consulting's Information Governance Team. Much of Tom's work involves assisting organizations in developing information governance policies and records retention schedules that are compliant with domestic and international laws, regulations, and data privacy requirements. Tom is an attorney, licensed in North Carolina, and a Certified Records Manager (CRM) and Certified Information Privacy Professional (CIPP / US). In 2021, Tom received the Britt Literary Award for an article published in IM Magazine. Tom has served as an ARMA Chapter President for the Charlotte – Piedmont Group and is a frequent speaker at international and local ARMA events.

Data 2022.04.18 The Impact of Data Protection Laws on Your Records Retention Schedule

Compliance 2021.01.20 Which Records Should We Retain in Paper? A Global Guide to Media, Location, and Transfer Compliance