

**RECORDS RETENTION AND
DESTRUCTION
THROUGH CONSENSUS:
How your team can stop zombie
records from biting you and
prevent a
ZOMBIE RECORDS APOCALYPSE**

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Where Zombies Lie Dormant And Replicate: How did we get to the brink of apocalypse?

Where in the picture of Al Gore (the rumored “inventor” of the internet), do you see the possible places where Zombie records may lie and replicate?

HIDING AND WAITING

- Book shelves
- On top and inside of desks
- Emails, Email Attachments
- The Personal Drive, C drives off network
- Network Drives in Server
- The “Cloud”
- Social media: Facebook, Twitter
- Websites
- Mobile phone: texts
- Chats: Slack, Wechat

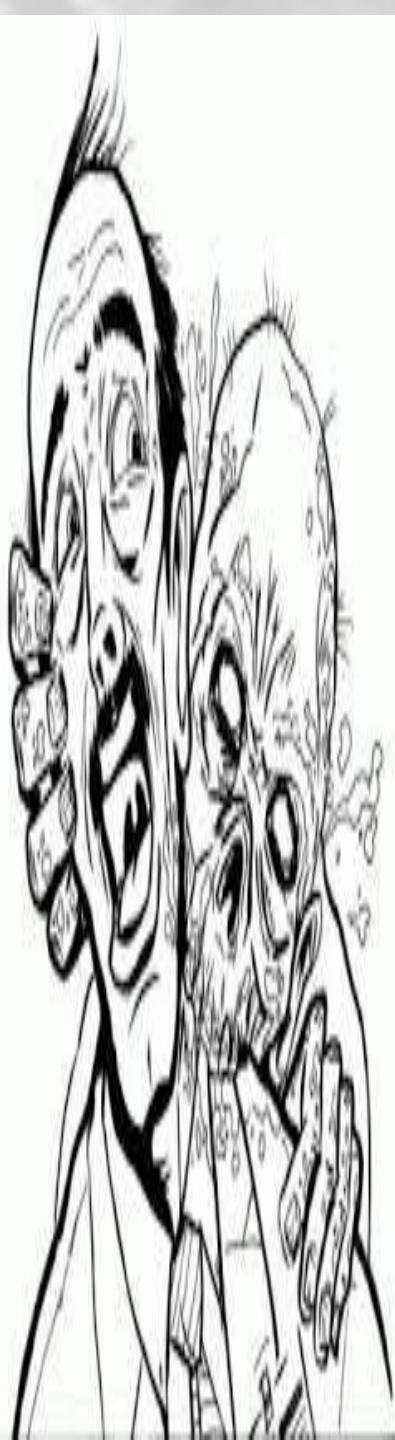
REPLICATING and VARIANTS

- Copies
- Drafts
- Email replies, forwards, replies to all
- “Personal Copies” and “Unofficial Versions”

When Zombie Records Bite!

Examples of liability when records are retained too long or destroyed on an ad hoc basis:

- **Judge imposed an adverse inference on the defendant City after finding City “failed to preserve and intentionally wiped data on hard drives” of six former employees. City contended that it needed to review 2.6 million documents, but the Judge found there were *only* 78,702 documents that hit on the agreed-upon search terms.**
- **Records request demanded “all records, including communications between any and all Port employees and Board Members” referring to key words. Response process took over 8 months, including gathering and searching all paper and electronic document and emails on the Port server, personal hard drives of 20+ employees, emails and communications of Board members, and page by page review of over 5,000 documents, many of which were duplicates and, finally producing unprivileged documents including emails over 6 years old.**
- **The Port stores approximately 14,377 boxes over 21,213 cubic feet of space at a cost approximately \$2,800 a month. The legal department alone has over 1900 boxes with documents dating back to 1911. Port legal staff has devoted 55 hours per weeks for the last few months to review, retain and destroy stored records according to the retention schedule.**



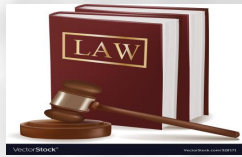
Keeping Record Zombies in Check: five way to inoculate



Five Takeaways



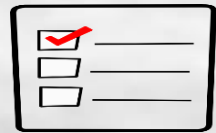
No. 1: Buy-In



No. 2: Know the Law



No. 3: Only Keep the Nuggets



No. 4: Apply Retention Schedules



No. 5: Wean Off Email

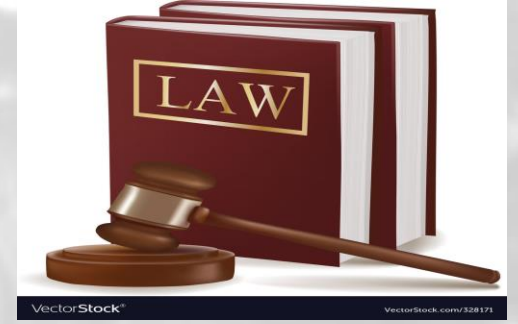
TAKEAWAY NO. 1: BUY IN



Records retention/destruction rules and procedures are only as good as your employees are willing to follow and enforce

- Survey your employees current records management and retention practices and their document flow
- Draft rules and retention schedule in consultation departments keeping the records and IT staff
- Avoid “ivory tower” approach
- Retention Schedule and rules should be a living document that is reviewed and revised periodically.

TAKEAWAY NO. 2: KNOW THE LAW



California law requires:

“Unless otherwise provided by law, *with the approval of the legislative body by resolution and the written consent of the city attorney the head of a city department* may destroy any city record, document, instrument, book or paper, under his charge, without making a copy thereof, after the same is no longer required. This section *does not authorize the destruction of:* (a) Records affecting the title to real property or liens thereon. (b) Court records. (c) Records required to be kept by statute. (d) *Records less than two years old.* (e) The minutes, ordinances, or resolutions of the legislative body or of a city board or commission.” Destruction, theft or alteration of public records, including emails, is subject to statutory penalties including imprisonment and fines. Public officers with custody of records, maps, books, or court papers or proceedings who willfully steal, remove, secrete, destroy, mutilate, deface, alter or falsify any part of such records or permit any other person to do so are subject to imprisonment pursuant to section 1170(h) of the Penal Code for two, three or four years.

TAKEAWAY NO. 3: ONLY KEEP THE NUGGETS

Train Staff to recognize “RECORDS” subject to retention. The Majority of emails, drafts, notes, and documents are **NOT** records.

- Keep only “Records”: Anything containing information with operational, legal or archival value to the Port.
- Public Records Act definition: “any writing containing information relating to the conduct of the public’s business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.”

• **NON-RECORDS**

- **Convenience Copies** = items not on your schedule kept for convenience.
- Duplicates
- Anything not on the retention schedule



Which of these don't belong in a Retention Schedule?

DRAFT AGENDA REPORT WITH REDLINES

EXECUTED LEASE

PRINTOUT FROM ACCOUNTING PROGRAM FOR THE PURPOSE OF PREPARING FINANCIAL REPORT

VIDEO OF BOARD MEETING FOR THE PURPOSE OF PREPARING MINUTES

EMAIL FROM VENDOR SAYING: "SEE ATTACHED INVOICE"

EMAIL FROM STATE REGULATORY AGENCY SCHEDULING PHONE CONFERENCE

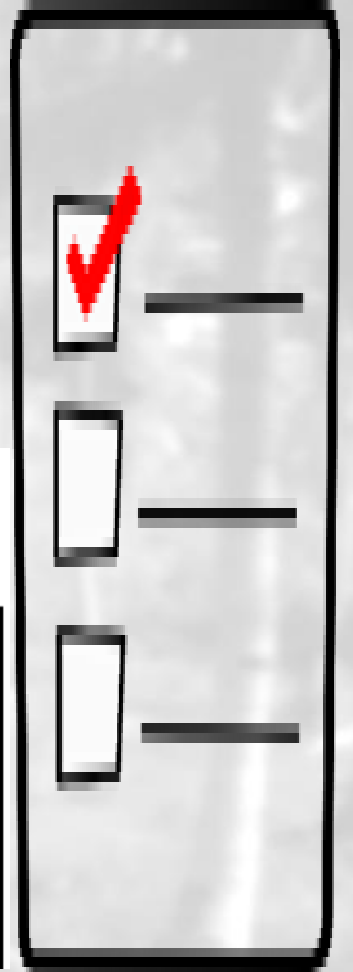
TAKEAWAY NO. 4: APPLY THE RETENTION SCHEDULE FAITHFULLY

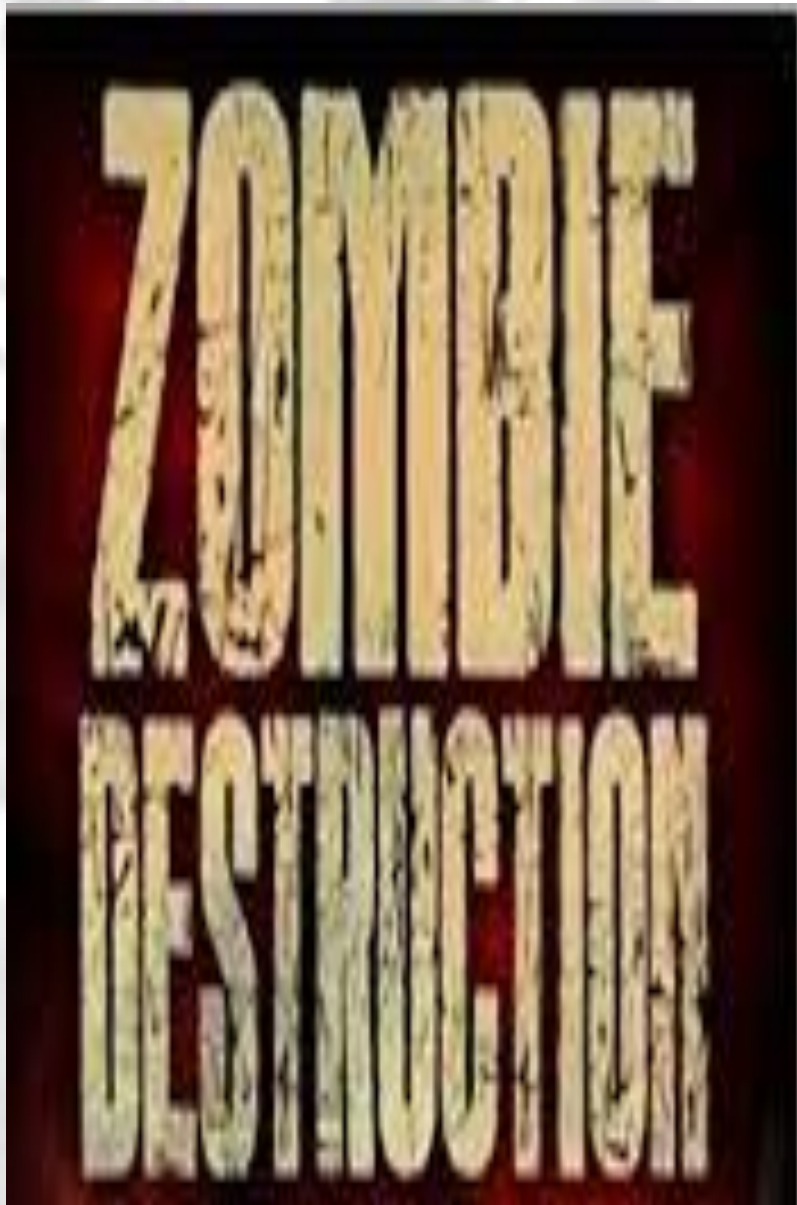
Retention Period = trigger + years



HUMAN RESOURCES: SERIES 4000

Series	Description	Retain	HC	ELEC
4100	<i>Personnel</i>			
4101	Active Personnel File <u>Filed by:</u> Employee name <u>Can include:</u> Personnel action; forms; performance evaluations; disciplinary records	S+7	X	NA





- **Destruction Procedure**
 - Records destructions according to the schedules.
 - Destroy all zombies and their replicants.
 - **Approval Process:**
 - Division Head; Port Attorney; Executive Director
 - Supp: Environmental (historical); Manager

TAKEAWAY NO. 5: WEAN OFF OF EMAILS

Problems with Email

- Multiple messages/document embedded (some may be records and others not)
- Multiplies geometrically (one forward or reply to all is 1 email x the number of recipients...so forth...so on.
- Can be “saved” to unknowable or uncontrolled locations.
- Infests multiple devices, both official and personal.



ZOMBIE APOCALYPSE SURVIVAL RULES

- **Use Technology that helps to organize and SHARE source document stored and managed centrally without duplications (shared network drives)**
- **Share documents by link to source document (not attach or copy)**
- **Automatic deletion of non-records (i.e. emails after being scrubbed for RECORDS that are transferred to shared drive).**
- **Continuous training, updating retention schedule, and reward compliance.**

