

RECORD RETENTION STRATEGIES FOR EVERYBODY: STAYING LEGAL WITH PAPER & MEETINGS

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INTRODUCTION

SARAH: Thank you so much for having us to speak today. My name is Sarah Norman, I am the document support staff person for the Cuyahoga County Land Bank. I manage our paper records and respond to public records requests. With me is Jacqui Knettel, Executive Assistant to our president, Gus Frangos, and the person responsible for organizing our board of directors' meetings and managing all of its records. Today, I will be explaining the basic logistics and experiences we have had related to paper documents and public records requests. Jacqui will discuss Board of Directors' meetings, notice, and management of their records. You are here because your land bank will make paper; your papers are public records; you have to deal with it, so you must care, by law, about records management and retention in all of these arenas. You are also here because your board will meet to discuss business and the public is entitled to know what, when, and where; you must, by law, provide notice to the public in advance. Now, we promised in the program description that this would not be a boring session to attend, so let's jump right in with a demonstration of the full spectrum of the issue related to records and public requests for them:

VIGNETTE

JACQUI: [sets up phone, "New Co. Land Bank" sign and hangs "open" sign on it] What an exciting day! It's the first day of business as a county land bank. I can't wait until we get our first property! [phone rings] Good afternoon, New County Land Bank; this is Jacqui, how may I help you?

S: [personifying a "stereotypical" prosecutor] Hi, this is Suzie Q. Justice, New County Assistant Prosecutor, foreclosure division. We've got a property for you; can I send the deed over?

J: Sure! [Paper airplane the "deed" from Sarah to Jacqui.]

S: There you go! Have a nice day!

J: Um, OK. Thanks. [Hangs up phone, unfolds paper] Alright! We have our first property and our first document. That means we have our first public record. I think I have time to file this right now. [Takes out accordion folder, sticks the deed into it. Phone rings.] Good afternoon, New County Land Bank; this is Jacqui, how may I help you?

S: [personifying a stereotypical irritated and suspicious citizen] New County Land Bank, eh? Yeah, I know all about you people. This is lotta Knowbetter, public office watchdog, self-appointed defender against government fraud, busybody, "just-enough-time-on-my-hands," NIMBY citizen and I want to come over to inspect all of your records!"

J: That would be great, Ms. Knowbetter. We are open Monday through Friday, 8:30 a.m. to 4:30 p.m. What time would you like an appointment for?

S: Good thing! You know if you didn't help me out on this, I would have to call my attorney! You public offices have to let us citizens see those public records upon demand!

J: Yes, yes; I am quite aware of that. We are always striving to meet the letter of the law.

S: OK, fine, how about tomorrow at 9 a.m.?

J: That would be great. I have you down in our appointment book for 9 a.m. tomorrow morning to inspect all of our public records.

S: Good! And while you're at it, I want copies of all of them too!

J: Oh, well, OK, we can do that.

S: Yeah! You better--or else!

J: I'm sure you are aware to be prepared to pay for the actual cost of those copies [eyes her 1 document]...which looks it will be about 7 cents.

VIDEO

MEANWHILE, IN ANOTHER PART OF OHIO...

S: [at her desk; phone rings] Cuyahoga County Land Bank, this is Sarah; how may I help you? [writing] ...Ms. Iotta Knowbetter...inspect all of our documents? And copies too? Wow, OK. I'll get right back to you when I have the copies ready. [hangs up: to camera] I better get started.

[time lapse of a tour of all of our file drawers; at the last one] Just kidding. Any public records request by any person cannot be overbroad. It has to be specific and your document custodian needs to know what constitutes a valid request, needs to know where those documents are, and needs to know how to provide those records when requested. Let's do it right this time...

IN A WORLD OF SECOND CHANCES WITHOUT CONSEQUENCES....

S: [phone rings] Cuyahoga County Land Bank, this is Sarah; how may I help you? [writing; insert a flashing sign with arrow that indicates "filling out a public records request info sheet"] ...Ms. Iotta Knowbetter...inspecting all of our public records is an overbroad request, but I'd like to help you to be more specific; is there a specific issue or parcel that you are interested in?...OK great, the 3 houses that we own on your street? Yes, I have those pulled up on my computer now....So, did you specifically wish to see the actual documents or could we open up a dropbox account for you, scan the documents, and give you access to them in that way?... No, no, you are free to choose whichever suits your needs and convenience better—we are open Monday through Friday, 8:30 a.m. to 4:30 p.m. or I can open up the dropbox account in short order....Great, a dropbox account it is! No, there is no charge for the dropbox account. It's true that we would charge you for the actual cost of paper copies but the electronic scans cost us nothing to produce....Excellent! Well, have a very nice day and don't hesitate to call if there are other ways I can help you. [fade out]

STARTING POINTS

S: I hope these vignettes made something really clear for you: there is a very broad spectrum of needs in records management. It starts small, with one document, but in the space of 6 years, it can grow to a level beyond the initial imagination, encompassing thousands of files with documents in the tens of thousands. I want you to be ready to manage your paper from start to finish and I hope to equip you

with some practical information for making that happen. This will help you, also, not to be afraid when the first public records request arrives.

Let's start with some Records Retentions Truisms. These statements are all true; most of them come the Ohio Revised Code directly, but no matter—if you question any of these truisms, we have citations and supporting documents for you at the conclusion of the presentation. For the purposes of the rest of our time together, please accept that:

- Your land bank is a “public office,” and the “sunshine laws” apply to you.
- Your board of directors and its committees must meet openly and with adequate notice, and maintain records of its actions. Jacqui, as promised, will expound upon this topic later.
- The concept of “public records” is broad and includes any electronic or paper documents or communications, including text messages, that deal with the business of your land bank. If you are doing anything that you are afraid to disclose, fix those actions now/blow the whistle. This is about damage control because it is more forgivable for you to identify and correct a problem than for you to ignore it and have someone else discover it.
- Because you have public records, they are subject to the records retention process of the Ohio Historical Society and State Archives. You will be audited, so be aware and be prepared. This means, in part, that your records must be orderly and accessible.

If you have any questions about these truisms, get a “yellow book” from the Auditor of State’s office for more information. I want to focus on how you make “orderly and accessible” happen. To do that, I am going to describe the system we use at CCLRC and then tell you what I would keep and what I would change.

ORGANIZING THE PAPER

At the Cuyahoga Land Bank, we have 4 sets of files where we keep paper documents:

- Programs/property files
- Demolition contract files
- Prequalified contractor files, and
- Financial files

We also have the obvious electronic documents, including emails, which are backed-up in some way that is not my specific responsibility. While being somewhat self-explanatory, the 4 kinds of paper files deserve some detailed examination, for clarity and context:

Programs/property—we divide these file folders in to 3 separate sets of drawers: acquired properties, disposed/rejected properties, and purged files. Your land bank could probably keep all of them in the same file drawers, but we are managing over 7,000 individual file folders. Our organization takes in and sells off between 100 and 125 properties each way, each month. That’s a lot of motion and we have found it beneficial to separate them because different staff needs for access vary depending on the status of the file. We arrange these files by parcel number, which, in Cuyahoga County, makes a great deal of sense. There are over 60 municipalities in the county, so arranging by city would be cumbersome. Moreover, our parcel numbering system makes it visually very easy to put the files in numerical order. We are managing, just for perspective, this many documents every 2 weeks, well over

1000 documents a month and something around 20,000 documents in a year. That is a massive amount of paper! Most documents will go into these files: deeds, assessments, asbestos reports, etc.

Demolition Contract—we keep these records in a separate file because we rarely bid out the demolition of one structure at a time. Our demo contracts are batched with an average of 10 properties per contract. There is just no practical way—without making a lot of copies—to file that information in each property folder. Your land bank may never bid out the demolition of more than one property at a time and it might make great sense for you to keep all of the demo documents in a property folder. We arrange these files in chronological order with a batch number that begins with the year and date.

Prequalified Contractor—because we are not shopping for a contractor for individual properties at any time, we maintain a set of files on contractors who have submitted information to be prequalified to bid on different services we need: demolition, general contracting, field services (mowing, etc.), and many other specialized services. Similar to the demolition contract files, if you are operating on a smaller scale and completing one demolition or restoration at a time, these kinds of documents can be filed with other parcel documents. We organize these files in alphabetical order by contractor name.

Financial Files—obviously, these files contain all of the paper financial records, such as check requests, invoices, payments, etc. They are organized in chronological order and boxed up by year. There are some important reasons for keeping the financial records this way which I will come back to later.

The majority of the paperwork that we generate and that I handle goes into the Programs/Property Files, so I want to highlight some of the tools that have proven to be essential in managing the volume of documents which we create:

- I keep a master list of all of the property files we have made. If the property is on the list, I file it away. If it is not, I make a new accordion folder for it. I maintain several versions of this list. The first is in “real time,” as the folders are made which is sometimes helpful in tracking down a folder that has gone AWOL. The second list is by parcel number and also includes whether the file has been purged. The third list is organized alphabetically by municipality and the fourth is alphabetically by property source.
- Records Retention Numbering System (RRNS, a/k/a RC-2). When a new kind of document is generated or received, I add it to our record retention schedule with a new number and an assigned retention period. We will talk details about RRNS a bit later.
- Each property accordion file has a set of “skeleton” file folders inserted for keeping the documents organized within. Our chosen titles direct different staff members to the documents that they most frequently need to access.
- Labels: for the file folders to identify the parcel and the status of the property (rejected, disposed, purged). Colored labels communicate faster than just the typed word.
- Pre-inked stamps for marking documents with their retention periods. Permanently retained documents are marked “Retain permanently” through the purging process; documents which can be destroyed at a future time are marked “dispose after ____”. The whole purged file is marked with any re-purging dates and moved into a 3rd set of cabinets. There it will live forever.
- Lists, lists, lists: Disposed lists are created monthly and those files checked off as they are labelled and moved from the “acquired” to the “disposed” filing drawers. Monthly lists of files

to purge based on our RRNS are created 3 years after the transfer out date. From that list, files are pulled, contents sorted, and then relocated to our “purged” file cabinets.

Let’s talk in some detail about the filing system that the Cuyahoga Land Bank. Take notes if you do not have a filing system established yet or if you have less than 100 properties (you can change)! Still not sure if you should take notes? Then ask yourself: “If I multiply my current filing system by 500 or by 5,000, will it still serve our purposes well and be self-evident to a new employee?” So, here are the “best practices” according to Sarah:

WHAT WE HAVE	WHAT I RECOMMEND
3 identifying stickers--2 on the front/back of file folder, one on the “parcel folder”—in 12-point font	The redundancy is important for accurate filing. Put ID stickers on the right side of the accordion folder so that they “read” from left to right in the drawer. Use a big enough label to accommodate 16-point font.
Skeleton folder: parcel/address	Keep it—it’s the catch-all for documents that don’t go in any other skeleton folder.
Skeleton folder: “Contracts”	Incorporates “Agreements, contracts and other transfer/payment/application documents including demo and contractor agreements.”
Skeleton folder: “Title work”	Keep it—this is where all of the title research, insurance, policies, policy commitments are filed.
Skeleton folder: “Deed”	Also means “Recorded Instruments and documents affecting the fee interest.”
Skeleton folder: “Demolition/Rehabilitation”	“Demolition/ Rehabilitation” because every property goes one way or the other, so the folder can be flexible because those options are mutually exclusive.
Skeleton folder: “Utilities”	Usually not necessary to have a separate folder, but might become useful the longer a land bank owns a property.
Skeleton folder: “HUD compliance”	Keep it.
Acquired, Disposed, and Purged filing cabinets	This could be one unified set of cabinets, but the need to access disposed and purged documents is usually far less than active properties.
OUT cards	Keep and use! Very important for creating a paper trail of where a folder has gone if it is not in the drawer.

Each of the skeleton folder labels were created based on who needs to access those documents while a property is on our “active” list. For example, our asbestos abatement coordinator often needs to refer back to a survey or notice to proceed; she knows that those documents will always be filed in “Demo/Rehab” and can find them without sorting through the whole file. Our acquisitions specialist may need to refer to a title report to determine if a title defect has been corrected and a property ready to be taken; she can find the reports because they are always in the “Title work” skeleton folder.

So, why deal with all of this paper? Why not just scan it all? While we are eyeing methods for moving to more electronic document storage, for the moment we must all embrace the antiquity! Signed original documents will continue to exist until we have created another acceptable way of imprinting your unique existence onto a piece of paper to authenticate it. Until that day arrives, there will be at least a few paper documents that you must keep, keep organized, and keep available as public records.

THE NATURE OF RECORDS

I want to make a quick footnote here about the nature of public records. If you create, receive, or send a document—that is, information or communication or data—which relates to the regular operations of your land bank, it is a publicly accessible document, inspect-able and copy-able. Most of the time that information is going to be—shall we say—politically neutral. It will be an address, a photo, a building assessment, or a scientific analysis of the plaster. However, to the extent that you must communicate with others on potentially politically “hot” properties, you may be creating not-so-neutral documents. Here is my word of caution as you communicate: be poetically and communicatively descriptive, no matter what good and understanding relationship you have with the other parties you are writing to. Here are some examples:

WHAT YOU’D LIKE TO TYPE	THE MORE POLITE AND DESCRIPTIVE VERSION
Councilman Smith is a blistering idiot.	The councilman holds a contrary opinion to the land bank which we cannot endorse.
That house is a lost cause.	The project in question does not appear to be a financially worthwhile endeavor for the land bank at this time.
Who forgot to request the asbestos survey?	We cannot determine why an asbestos survey was not requested on the usual schedule; please correct this situation will all due haste.

Do you remember Miss Manners from a couple of decades ago? You need to pretend like she is your chief editor when you create records! Filter everything through the “politeness test” so that your records represent, to the extent possible, an honest and clear explanation of what is actually going on and do not create awkward situations for your organization in the event Councilman Smith makes a public records request...or just as bad, Ms. Knowbetter makes a request and shares awkward communications with your local leaders with whom you took issue in a non-eloquent manner.

Does this “politeness test” apply only to letters, reports, and emails? No! The public records definition is construed in a broad fashion so you may expect to provide, upon request, voice mail messages and text messages to be provided through a public records request. Texting on your personal phone will not insulate you! There is still only one method of communication which can never become a “public record”: unrecorded words spoken between people. Yes, there are a handful of exceptions beyond this as to what constitutes a public record; do not get excited about the limited and largely inapplicable exceptions. The spoken word “evaporates” after it is said. If you must refer to Councilman Smith as a blistering idiot, please do so over lunch or in passing at the water cooler.

My last point on this little detour about communications: do not joke in your communications. You cannot presume that the intended recipient of an email will be the only person who ever sees it. I have,

for example, a great working relationship by phone and email, with a woman at the Cleveland Water Department who is assigned to handle our billing. Every Friday I send her an email with billing issues that need her attention the following week. Being a generally nice person, I often write “Have a nice weekend.” Nothing wrong with that. On a couple of occasions, I have had to edit my inclinations to say “Wow, gonna be a hot weekend; don’t drink too much cold beer!” I don’t actually know if she drinks beer and I don’t know if she is predisposed to drinking excessively. While my well-intentioned beer remark is funny, silly, and friendly, it is wide open to a slew of negative interpretations by third party readers because it is so wildly out of context. If our office receives a public records request related to our diligence in communicating with the water department, all of my funny, silly and friendly quips will be provided to the requestor and it could make us or the water department employee look bad. Just don’t mix jokes with your official business unless you are at lunch or the water cooler with the person you want to joke with.

So, let’s get back to the organization of all of those politely-worded, non-joking documents.

ORGANIZING YOUR PROCESS

I have pretty thoroughly described the storage of our paper, but records and information are also stored in our property management database which is called Property Profile System (PPS). You can talk to one of our folks about a license for acquiring it; we use it to track lots of activities and data for the properties we acquire. This information (the data, but not the software) is subject to public records requests, so it needs to be “orderly and accessible” as well. Whatever process you have established for both paper and electronic records, you need to write it down—like a “recipe” for what to do with a document that comes in. Then, you need to stick to it! Do this for both paper and electronic documents, the coming in and the going out—this is the “Records Retention” process.

How do you know how long to keep a document? You come up with the rules when generate a Record Retention Numbering System or RC-2. This is a list of the kinds of documents that your land bank receives, creates, or handles and how long you intend to hold on to them. We usually update our RC-2 with the Ohio Archives annually, but it can be more frequent if your circumstances require it. To create an RC-2/RRNS, your board of directors needs to create a “Local Records Commission” organized out of your staff and board members. Whenever you keep or dispose of a document, you will do so in compliance with the terms you have laid down in the RC-2. That’s just how it works.

ISSUES WE HAVE RUN ACROSS

- Our RRNS/RC-2 not reflecting actual practice/lingo. Terms changed since the inception of the Cuyahoga Land Bank. Usages of documents and flow of processes changed. *Solution: be fluid and update the RRNS/RC-2 as needed.*
- Mixing documents of different retention periods in the financial payment packages. (Good place for digitizing everything, so that entire years of financial records can be purged with one fell swoop!) Mixed documents will have to be resorted at ripeness/purge date, originals filed, remainder destroyed. *Solution: make copies of the original documents with permanent retention periods and only put copies in financial files so that the whole year can be destroyed at once, OR scan all of the financial records after audit, remembering that digital records must be as equally accessible as the original paper would have been AND the retrieval system understood by more than one person.*

- Space for files is at a premium. *Solution: buy more cabinets. Do not feel wedded to the way your filing system started...unless you have 7,000 files. At that point, you are pretty much committed. Less than 500 files, you can fix it; more than 500 files, you probably need to tolerate it or start an entirely new system.*

WHEN YOU GET A PUBLIC RECORDS REQUEST

...and you will, your organized documents will help you answer the request in a timely manner.

Preparatory action:

- Hire (or select) the most qualified staff member to organize your records. The litmus test question: “tell me how you have your family photographs organized.” A person who has a penchant for order, systems, and chronology is an ideal candidate. This may also mean that they worked in a library or media center, make family photo scrapbooks for fun, and/or feel a bit OCD on occasion (but of course, you can’t ask directly about that).
- Get a copy of the “yellow book” from the State Auditor’s office. This is your handbook for dealing with records retention, public records and public meetings. Get a current one every couple of years. It is loaded with case citations and footnotes, enough to make any lawyer salivate. Read it! The footnotes too! You will find that there are some sections you can skip because they pertain to law enforcement agencies, state colleges, or medical boards. Read the rest and mark it up!
- Your board establishes your Local Records Commission; its members from the Board should have an interest in systems management, law, or a similar background. You should have a representative from each of your internal departments on the committee. In our case, our LRC of 10 people includes 1 Board member and at least one representative from Finance, Acquisitions, Compliance, Programs, and the Executive departments. That way, when an issue comes up about the way a document is treated or what it is called, someone is instantly available to respond to the question about it. When your LRC has its first meeting, establish your RRNS/RC-2, authorize the posting of the policy in your office (required by law).
- Write up your process and policy related to public records requests; also, develop a staff open records manual. This manual is a desk reference for any employee on how to handle the documents coming across his/her desk/computer. It provides basic information about how to find a document in the filing cabinets, how long to keep emails, and the like.
- Make your public records policy poster.

Routine Acton:

- Attend Auditor of State presentations on the “sunshine law” on a regular basis.
- Get your filing system going. Follow the process to the letter.
- **KNOW YOUR RESPONSIBILITIES:** acknowledge every request for public records promptly. Assemble your documents. Err on the side of providing the information, as opposed to withholding. Communicate with the requestor; they are not your enemy unless you turn them into such. Document your communications. Avail yourself of the Auditor’s resources if necessary to resolve questions or conflicts—don’t guess!

When you get fancy:

- Organize your emails in folders by year; purge the entire year according to your prescribed schedule. *Warning: be sure that any “original documents” exist in a separate file or hard copy before deleting!*
- Use a DropBox account to answer public records requests. Saves effort, time, resources, and the irritation of meeting the Ms. Knowbetters of the world in person.
- Post generic information like meeting notices, policies, and minutes on your website.

When you provide information to the public, you are the epitome of good government at work. Transparency builds confidence in our public offices, and we always are in need of that. Make your land bank the kind of place renown for compliance with the sunshine law. Here’s a real life example from our files: in a certain city on a certain side of Cuyahoga County, there is a man who has become a certain kind of famous for filing public records requests with city agencies anytime there are decisions made that he is unhappy with. He is unhappy a lot, apparently, since he requests a lot of information from many public offices. We acquired and were preparing to demolish a building which was nearby his own home in this certain city. He filed a public records request with our office, asking for every record related to the acquisition and demolition of this building. Within 24 hours of his emailed request, we acknowledged it with a reply email. We asked him if it would be okay to create a DropBox account for depositing the scans of the documents, and he agreed. Within 2 days of his request, he had access to every paper document we possessed via the DropBox account. Within 2 weeks, he had access to the complete collection of our records for the property, including emails which had been reviewed and redacted according to the O.R.C. provisions. He wrote this to us:

“I want to thank you for the prompt, thorough, and constituent-oriented manner in which you have responded to my PRR. I wish all public entities took this responsibility as seriously as you have demonstrated.”

Now, you might not recognize that as being a warm and fuzzy communique, but given the circumstances, we managed to please a hard-to-please constituent. That is our job as public record custodians: the first line of defense against a suspicious and/or irritated citizenry, deflecting those feelings by opening our records that they are lawfully entitled to see.

CONCLUSION

Like I said at the outset: your collection of documents will start small, but in the space of a year or 5 years, they can grow beyond your initial imagination and can encompass reams of paper in multiple drawers. I hope you are now ready to manage your paper from start to finish and feel encouraged to tackle the public records requests without hesitation!

AND NOW, FOR JACQUI