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Office of General Counsel

Record Retention Basics

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The slide features a logo on the left with a white star and the letter 'M' on a blue background, set against a green and blue horizontal bar. The text is centered and right-aligned.


1

Next Month's Presentation

February 9, 2023

Bias Incident Response

Presented by General Counsel Scott Goings and Vice Chancellor for Equity and Inclusion Andriel Dees



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2

Presentation Content

- Part One: Record Retention Schedules
- Part Two: Records Management
- Part Three: Scenarios



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3

Part One: Record Retention Schedules



4

Record Retention: Introduction

- Minn. Stat. § 15.17, Minn. Stat. § 138.17, Minn. Stat. § 138.19, and the Minnesota Government Data Practices Act set forth general record retention requirements for state agencies
- Records must be kept so that the public can have accurate knowledge of official activities, so that the campuses can conduct business, for legal purposes, and for historical purposes
- Likewise, records that no longer have value should be disposed of in accordance with a record retention schedule



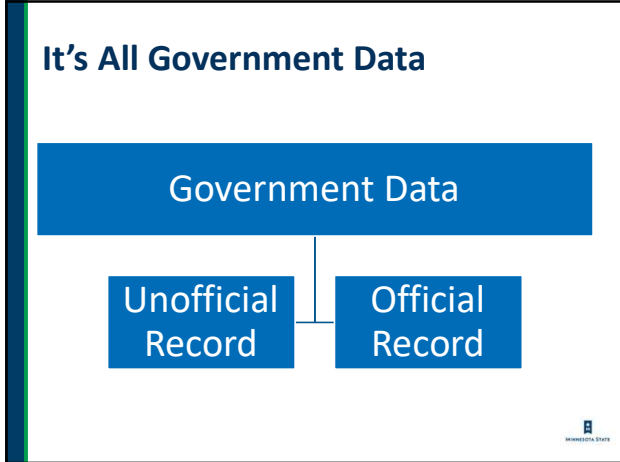
5

Record Retention Schedule Content

- Types of Records
- Time to Keep Records
- Other provisions may include departments responsible for records, statutory references, etc.



6



7

Official Records

- "...make and preserve all records necessary to a full and accurate knowledge of their official activities."
- Not all records are official records, but official records need to be kept.
- Records that are not official records can be omitted from record retention schedules.

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8

Official and Unofficial Records

<p>Official Records</p> <ul style="list-style-type: none"> • Record retention schedule applies, and the Minnesota Government Data Practices Act applies <ul style="list-style-type: none"> ▪ The contract ▪ Invoices ▪ Purchase orders ▪ Contract related communications ▪ RFP's and related materials ▪ Fully signed contract (ink AND electronic versions) ▪ No distinction between paper files and electronic files 	<p>Unofficial Records</p> <ul style="list-style-type: none"> • Record retention schedule does not apply but the Minnesota Government Data Practices Act applies <ul style="list-style-type: none"> ▪ Draft contracts ▪ Draft communications ▪ Personal notes
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9

What Applies to What?

- Government Data**
 - The Minnesota Government Data Practices Act (MGDPA) applies to all government data.
 - This includes official records and unofficial records
- Official Records**
 - The Official Records Act (ORA) applies to official records.
 - Retention schedules only apply to official records.

10

MMB Statewide Schedules & Campus Schedules

- Minnesota Management and Budget has statewide schedules with cover human resources, financial, and facilities records.
- Campuses can adopt these schedules as they see fit, but usually have their own schedules for student records, etc.
- In conflicts between MMB and campus schedules, the campus schedule controls.

11

Statewide Schedules

- For links to the statewide, MMB records retention schedules, please visit the [Minnesota Historical Society's webpage](#).
- The System Office has a records retention schedule for the System Office only. It is not a system-wide schedule.

12

Record Disposition Panel

- Panel of state officials charged with reviewing record retention policies.
- The Panel must approve new record retention schedules and changes to record categories and dates for retention.
- The Panel does not have to review other changes to record retention schedules such as responsible departments.



13

Record Retention: Creating a Schedule

- Consult with the Office of the General Counsel and other schools to find out what a retention schedule can include
- Consult with the [Minnesota Historical Society](#)



14

Record Retention: Getting Approval

- The Minnesota Historical Society can assist with getting approval of your record retention schedule. Visit the [Minnesota Historical Society's website](#) for more information.



15

Record Retention: Following the Schedule

- Provide appropriate notice to the Minnesota Historical Society when records are destroyed
- Don't keep records longer than the schedule sets forth unless necessary
- Update the schedule as needed



16

Part Two: Record Management



17

Minnesota Government Data Practices Act

- The MGDPA does not have formal record retention requirements.
- However, it does mandate that you keep government data in a manner that is readily accessible.
- This means keeping well organized files, especially concerning official records.



18

Responses to Data Requests

- Data Practices Compliance Officials are responsible for fulfilling public data requests.
- If someone is asking for their own data – 10 business days. Including student data (shorter timeframe than FERPA).
- Otherwise, we have a “reasonable” time to respond.



19

Deletion Requests

- Increasingly, we receive requests to delete data.
- There is no state or federal requirement to entertain requests to delete data.
- The GDPR and other laws in foreign jurisdictions may require deletion upon request, but only if there is no legal reason to keep the data. Legal reasons to keep data include record retention schedule and contractual compliance.



20

FERPA and Record Retention

- You cannot destroy records if a request for access is pending even if those records are outside of a record retention period.
- You must maintain a record of requests for private student data and what private data was disclosed for as long as you keep a file on a student.
- Other rules in 34 CFR 99.32 concerning recordkeeping, but these are not record retention rules.



21

Data Breaches

- The MGDPA requires notice to affected individuals of a breach of security (unauthorized access) for
 - any private or confidential data (not just SSN or financial information)
 - in any medium (not just computerized).
 - E.g., lost or stolen laptop containing student program data.
- Contact your supervisor or campus DPCO if you believe you have a possible security breach situation.
 - OGC will assist in determining whether notice is required, how it must be done and other details.



22

Changes to Government Data

- A data subject can contest the accuracy of government data.
- If they contest, we have thirty (30) days to either correct the data, or notify the individual about why we consider the data correct.



23

Record Retention Exception: Litigation Holds

- If the Attorney General’s Office asks for a data set to be under a litigation hold, record retention schedules do not apply.
- You must keep this data until the AGO lifts the hold.
- At many campuses, this means the inboxes of senior officials will always be subject to a litigation hold.



24

Data Inventories: What is a Data Inventory?

- The Minnesota Government Data Practices Act 13.025 requirement
- Document that provides contact information for “responsible authority” and describes categories of data on individuals maintained by the entity
- The “responsible authority” is typically the President of your college or university
- Data on individuals means data related to a specific person



25

Data Inventories: What Needs to be in Data Inventory?

- Contact information for responsible authority (name, title, address)
- Description of each category of record, file, or process that you keep relating to data on individuals



26

Data Inventories: How to Put One Together

- There are data categories in the MGDPA
- Go through those categories, see what data sets your campus maintains
- Then, determine if the data you maintain is public, private, or confidential
- For ease of use of the inventory, the inventory can also cite the MGDPA provision regarding the data and who on campus has access



27

Data Inventories: Make Available

- Data inventories must be available to the public
- The easiest way to do this is to publish it on your website
- The [data inventory for the System Office](#) is posted online.
- Admin has a [data inventory posted on their website](#).



28

Part Three: Practical Scenarios



29

Scenarios

- One of your employees reports that a state-owned laptop was stolen out of their car. What needs to be done?
- A former international student from Greece asks that their records be deleted. What should you delete? What should you keep?
- One of your employees used a personal computer instead of a work-issued one to do work at home. They keep files on the computer in a haphazard manner. What should the College or University do?



30

Scenarios

- Your department is moving. You want to clean out your file cabinets and throw away what you no longer need. Can you?
- You supervise a large department that works in several locations. You need to hire a shredding company to handle your record deletion. Is this okay?



31

Scenarios

- Your campus has used the system office record retention schedule for a few years. Is this correct?
- You want to purge the inbox of your longtime CFO. There was a reason why you couldn't do so before. What could that reason be?
- You want to make changes to an existing record retention schedule. You want to change the departments responsible and the time that they keep certain records. What needs approval from the Record Disposition Panel?



32

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33
