

ABC Industries

Accident Report - Retention and Disposition Scheduling

Project

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## **ABC Industries – Accident Report Retention and Disposition Scheduling**

### **1. Introduction**

ABC Industries is a mid-sized manufacturing company that produces small household appliances for a variety of brand names. These products are sold Canada-wide in four large domestic retail stores and several small independent retail businesses in Ontario and the Maritimes. It has a corporate head office and main production facility housed together in London and two smaller production plants in Sarnia and Woodstock. The company has launched a records management initiative for its employee accident files. As part of that initiative, I will examine their record series and make recommendations for the retention and disposition of their employee accident files. These recommendations will be based on legal, policy, and operational requirements, and best practice guidelines. Since the administrative office and all production plants are located in Ontario, provincial and national laws and direction will prevail.

### **2. Methodology**

To determine the best course of action regarding the retention and disposition, it will be necessary to review the series for informational content, determine operational requirements for the information, and research the legal statutes and policies that govern this genre of information taking into account the location of the plants in which they operate.

Therefore, the following steps will be taken to make these determinations:

1. Review the record series to determine the informational content
2. Meet with administrative staff at HQs to determine/explore existing workflow, use of information, and security practices
3. Search of government policies, best practices, retention guidelines, and legal requirements relating to Health and Safety but, more specifically, employee accidents. Both federal and provincial government requirements will be addressed.
  - a. Federal Government - Treasury Board Secretariat and Library Archives Canada acts and policies
  - b. Provincial Government – Ontario Ministry of Labour and Ontario government policies
4. Search records management literature for additional information relating to best practices regarding policy application
5. Search for complimentary guidelines and practices from other governments including: the Australian government as the Australians are widely held as records management leaders; and, the United States government as they are our closest neighbour and their practices are often similar.

### **3. Interview Results**

#### **a. Accident Reporting Process**

The current accident reporting process is as follows:

- a. An accident has occurred that requires hospitalization and loss of time on the job
- b. An investigation is launched and evidence collected. An accident report is created and a copy forwarded to ABC Industries' HQs, the Ontario Ministry of Labour, and the Workplace Safety and Insurance Board (WSIB) within 24 hours.
- c. A secondary report outlining recommendations for any safety improvements is created and forwarded to the same offices as the accident investigations
- d. A medical report from the hospital is received at ABC Industries' HQs
- e. Management meets to make decision on appropriate compensation
- f. For contested cases, a legal opinion is provided to management
- g. HR is informed of decision regarding compensation

Note: ABC's corporate offices in London file all accident reports in an overcrowded RM centre, indefinitely. Recently, a records office employee threw out a twenty-year-old accident report concerning a debilitating accident that left an employee with only three fingers on one hand. When asked why they disposed of it, they said "it was 20 years old and whoever it involved has most likely retired".

#### **b. Records Use**

The employee accident files are used by a variety of people for an assortment of operational reasons including:

1. Employee – keeps a copy of the employee accident report form
2. Payroll – for the time off and for the pay adjustment
3. Operational Manager – keeps a copy of the management accident report form
4. Records Office – regulatory requirement to retain information for any possible legal action
5. Union – employee representation & Health & Safety Committee
6. Management – for any subsequent hospital reports, legal proceedings, or compensation

#### **c. Informational Contents of the Series**

The employee accident files will include a number of document-series and sub-series including:

- a. Accident reports including the company and government accident reports with appropriate signatures of representatives from management, union, health and safety, legal, and government
- b. Supporting evidence including logs, testimony, photographs, video, and training certificates
- c. Medical claims, company insurance information, copies of claims submission forms, and billing information
- d. Recommendations for safety improvements including recommendations for closer oversight, increased training, maintenance, and/or replacement of defective parts
- e. Ontario Ministry of Labour approval for continuation of work once the workplace is approved as safe and any suggested or mandated improvements are implemented

Because of the variety of information included in these files (e.g. operational uses and controlled access requirements) it will likely be necessary to separate these files into several series. This will aid in meeting various guidelines related to privacy and security guidelines.

#### **d. Existing Security Practices**

Existing security procedures dictate that employee accident files must be kept in the records management office. The office is locked when the office is closed or when no one is present at the RM office. Accident files related to legal cases are kept in the company vault in the basement and accessed via an indirect access system. The lookup tables are only accessible by a combination safe in the records management office. Only the head of records management, legal, and the CEO have access to the safe.

#### **e. Historical Value**

The complete employee accident files are currently being retained for historical purposes. While it is important for ABC Industries to maintain a record of all accidents and any resulting recommendations for statistical, insurance, and legal purposes, it is not necessary for the entire original file to be kept indefinitely. In fact, as outlined later in this report; this is not advisable. Furthermore, by utilizing microform, ABC Industries would save space and minimise storage costs.

### **4. Policy Research**

#### **a. Legalities and Policies Considered**

Employee accident files are subject to a variety of federal and provincial records management legislation regarding privacy and health and safety.

The federal laws that should be considered include:

- Personal Information Protection and Electronic Documents Act (PIPEDA)<sup>i</sup>
- Policy on Information Management (2007)<sup>ii</sup>

- Privacy Act (1983)<sup>iii</sup>
- Access to Information Act (1985)<sup>iv</sup>
- Guide to the Review of Management of Government Information Holdings<sup>v</sup>
- Canada Revenue Agency<sup>vi</sup>
- Canada Labour Code (continually amended)

The provincial laws that should be considered include:

- Personal Health Information Privacy Act (2004)<sup>vii</sup>
- OHIP Act (2008)<sup>viii</sup>
- Workplace Safety and Insurance Act (1997)<sup>ix</sup>
- Freedom of Information and Protection of Privacy Act [FIPPA]<sup>x</sup>
- Municipal Freedom of Information and Protection of Privacy Act [MFIPPA]<sup>xi</sup>

In his article, “The Scope of Your Recordkeeping Responsibilities”, Donald S. Skupsky, JD, CRM writes about the importance of considering recordkeeping laws from all possible levels of government. This is why any retention and disposition schedules should examine federal and provincial laws.<sup>xii</sup>

All of the above laws will be consulted to determine whether they have any impact on the management of part or all of the employee accident files.

## **b. Legal and Policy Requirements**

The Personal Information Protection and Electronic Documents Act (PIPEDA) 2004, while important to the protection of the personal information of ABC Industries’ consumers’ information, it does not apply. The Office of the Privacy Commissioner of Canada’s website states:

“The Act [PIPEDA] now applies to personal information collected, used, or disclosed by the retail sector, publishing companies, the service industry, manufacturers, and other provincially regulated organizations. The Act does not apply to the personal information of employees of these provincially regulated organizations... Alberta, Saskatchewan, Manitoba, and Ontario have passed legislation to deal specifically with the collection, use, and disclosure of personal health information by health care providers and other health care organizations.”<sup>xiii</sup>

The Canada Gazette exempts Ontario from PIPEDA as it has developed its own health information policy which is deemed sufficiently similar to PIPEDA. Excerpt below:

### “HEALTH INFORMATION CUSTODIANS IN THE PROVINCE OF ONTARIO EXEMPTION ORDER

Any health information custodian to which the *Personal Health Information Protection Act, 2004*, S.O. 2004, c. 3, Schedule A, applies is exempt from the application of Part 1 of the *Personal Information Protection and Electronic*

*Documents Act* in respect of the collection, use and disclosure of personal information that occurs within the Province of Ontario.<sup>xiv</sup>

Since accidents are considered to be a health and safety issue in organizations, Ontario laws and policies govern companies operating in Ontario. Therefore, Ontario privacy policies take precedence when headlining employee accident files. However, it would be advisable that PIPEDA be consulted for comparison.

Provincially, the Freedom of Information and Protection of Privacy Act (FIPPA) governs privacy in Ontario. It states:

“Personal information that has been used by an institution shall be retained after use by the institution for the period prescribed by regulation in order to ensure that the individual to whom it relates has a reasonable opportunity to obtain access to the personal information.”<sup>xv</sup>

### **c. Practices**

The federal and provincial governments provide information on best practices for applying the applicable acts. These best practises should be followed by all RM personnel, regardless of the organization they work for.

These practises include:

- Ensuring all records managers know what acts, policies, and ABC Industries’ procedures apply to the various accident report records series
- Ensuring documents are retained in a format that is easily readable at the end of the retention period as it is today
- Ensuring that documents are kept in a secure location with established protocols to protect data loss or theft by unauthorized personnel
- Ensuring that established retention and disposition schedules are adhered to

### **d. Guidelines**

The Government of Canada and the Ontario government provide a number of documents with guidelines for ensuring an organization’s records management policy is consistent with legislated and mandatory polices. Some of these documents include:

- Retention Guidelines for Common Administrative Records of the Government of Canada by Library and Archives Canada<sup>xvi</sup>

According to this retention guideline, health-related documents should be kept for ten years unless exposure to hazardous chemicals was involved in which case they should be retained for thirty years.<sup>xvii</sup>

The document also makes the following specific statement:

“Prior to the destruction of any records dealing with Occupational Safety and Health inspection, investigation and testing reports, institutions should consult

Part II of the Canada Labour Code and supporting Occupational Health and Safety Regulations, as well as existing TB directives, standards, and procedures governing Occupational Safety and Health. Where there are inconsistencies, the longest retention period should be used. Where retention periods have not been specified, legal counsel should be consulted prior to destruction of the records”<sup>xviii</sup>.

The PIPEDA Information Kit for Businesses by the Office of the Privacy Commissioner of Canada provides the following guidelines for the use of personal information. It suggests the following guidelines be followed to comply with privacy laws.

- Limit the amount and type of the information gathered to what is necessary for the identified purposes
- Identify the kind of personal information you collect in your information-handling policies and practices
- Ensure that staff members can explain why the information is needed<sup>xix</sup>

The PIPEDA Information Kit also offers the following information regarding the added benefit of following these guidelines:

- By reducing the amount of information gathered, you can lower the cost of collecting, storing, retaining, and ultimately archiving data
- Collecting less information also reduces the risk of inappropriate uses and disclosures

Additional guidelines can be found in the:

- Canada Labour Code by the Department of Human Resources and Social Services Canada<sup>xx</sup>
- The Guide to Personal Health Information Protection Act by the Ontario Ministry of Privacy<sup>xxi</sup>

## **e. Other Jurisdictions**

### Australian Government

The Australian government is often viewed as a world leader in records and information management. Their framework and tools have been used as a guide by Canadian and other governments. Therefore, ABC Industries would be well advised to examine Australian records management practices and tools such as their Designing and Implementing Recordkeeping Systems (DIRKS) manual which outlines a step-by-step process for developing a records management system including retention and disposition.<sup>xxii</sup>

### US Government

United States government guidelines should also be examined as Canadian records management policies generally follow the Americans as they are Canada’s closest neighbour and we must occasionally share/exchange



information. Therefore, ABC Industries should examine the US RM practices and determine how they can be adapted to meet our needs.

The US Occupational Safety and Health Act states that “Each employer shall... maintain in each establishment a log and summary of all recordable occupational injuries and illnesses for that establishment... enter each recordable injury and illness on the log and summary as early as practicable but no later than six working days after receiving information that a recordable injury or illness has occurred... Employers must prepare this annual summary of occupational illnesses and retain it for at least five years. They must also provide access to the log for inspection, copying representatives of the Secretary of Labour”<sup>xxiii</sup>

## **5. Criteria for Retention and Disposition**

Criteria consulted for the retention and disposition of ABC Industries employee accident files include, compliance with the various federal and provincial laws, guidelines, and best practices regarding long-term storage. Existing procedures and current RM storage facilities were also a factor as ABC Industries has indicated that they would like to modify current procedures within their current RM storage facilities at this time. Corporate culture and existing practices are also important. From my discussions with ABC Industries records managers it is evident that ABC prides itself on maintaining good records procedures and places a high value on achieving higher standards in their products and safety records. Given these criteria, ABC Industries should develop their own retention and disposition policies and schedules so that they are substantially similar to the policies developed by the Government of Canada. This will reduce the risk of records management problems for ABC Industries in protecting the personal information of employees while encouraging transparency regarding the cause of accidents and any recommendation for improvement.

## **6. Specific Problems Identified**

While developing these retention and disposition guidelines for ABC Industries, several problems were identified.

- a. The majority of the literature in the professional journals is written by Americans and is tailored to addressing American records management needs. For example, there are many documents regarding Sarbanes-Oxley yet only a few that deal with Canadian law. This is of course to be expected as Canada’s population is only ten percent of that of the US.
- b. Another problem with developing a records management policy is the fact that the Government of Canada has recently updated its records management policies from the Policy on Management of Government Information (2003) to Policy on Information Management (2007) and has yet to fully update its websites, thus many of the guides and supporting information are written to address the previous

- legislation and not the “new” legislation from 2007.<sup>xxiv</sup> This is quite disappointing, as over a year has gone by and government documents have yet to be updated. Thankfully, the Government of Canada’s records and information website suggests that the general points made in the older documentation will still hold true, even if some of the particulars will have changed.<sup>xxv</sup>
- c. Furthermore, even when reading current Government of Canada acts, it can sometimes be difficult to determine exactly how they interact as these documents were written in such a technical manner, by lawyers. Anyone trying to draft policy dependent on an understanding of these laws would be advised to hire a lawyer to interpret the various acts and advise RM policy analysts on how they interact.
  - d. Further problems arose when interpreting Australian documents since they have developed their own records and information management lexicon. For example, they refer to retention and disposition as “sentencing”.<sup>xxvi</sup>

## **7. Recommendations**

### **a. General**

ABC Industries needs to maintain its records in a manner consistent with existing Canadian laws, guidelines, and procedures. The majority of the information will be paper based as accident investigations rely on forms and produce reports in this format. These formats, while being traditional, are perhaps the easiest to maintain especially when readability could be important in ten to fifteen years in the future. Electronic formats will change but paper, provided it is stored properly, will be as readable in fifteen years. In specific cases ABC Industries may wish to make microform documents that can be read decades later. This will be important as, unless files are printed on acid-free paper, they are likely to fade or yellow within a number of years. The records retention and disposition schedule should ensure that it minimizes any legal or other risk to ABC Industries while protecting the personal information of the employees named in the files. To do this, ABC Industries is advised to collect as little personal information as necessary and remain cognizant of government regulations to protect information to established standards. If any information is acquired from outside agencies, ABC Industries is advised that it is under legal obligation to protect this information to the standards of the supplying agencies.

As any accident, especially those requiring medical treatment or hospitalization are serious; ABC Industries is advised to establish security surrounding these files. Hence, all of these files should be maintained in a vault or similar location with limited access by the majority of ABC personnel.

As ABC Industries' corporate culture prides itself on its excellent safety record, ABC Industries should take steps to make copies of recommendations available to all personnel. This will also aid ABC's record-keeping image as an organization that values accountability, transparency, safety, and continual improvement of its processes. It will also help maintain the trust of employees following such an event.

## **b. Sub-series Breakdown**

First, the employee accident file should be separated into several sub-series including the accident reports, supporting evidence, medical claims, safety recommendations, regulatory approval and legal files. This should be done as these records have either different access rights, retention periods, or disposition schedules.

## **c. Retention**

In order to comply with legal, privacy, and operational requirements, ABC Industries should take the following steps:

### **1. Accident Report**

Once the accident report is completed, it should be retained for ten years following the completion of any accident investigation, in accordance with best practices as outlined by Library and Archives Canada.<sup>xxvii</sup> The original should be retained in ABC's corporate vault and be subject to controls to ensure only Legal, HR, and designated union representatives have access to the file. Furthermore, to promote transparency, an executive summary with identifying personal information redacted will be placed on the company Intranet for a period of two years. If an employee launches a legal action during this period, the accident report is then classified as a legal file and the appropriate retention and disposition schedule and handling (security) instructions will apply.

### **2. Supporting Evidence**

Evidence such as affidavits, interview transcripts, recordings, photographs, measurements, maintenance logs, pieces of machinery etc. will be retained in the ABC Industries' vaults for the same period as their corresponding accident reports. Any appeals would need access to the original supporting information as a lack of supporting evidence could call the reports findings into question. Access should be confined to legal and senior management.

### **3. Medical Claims**

Information related to medical claims will be retained for a period of fifteen years which is the maximum limitation period set out in the Ontario Limitation Act of 2002, unless the medical claims are part of a legal, regulatory case in which case the legal retention period will apply.

The Ontario Limitations Act of 2002 Section 15(2) states:  
“No proceeding shall be commenced in respect of any claim after the 15th anniversary of the day on which the act or omission on which the claim is based took place. 2002, c. 24, Sched. B, s. 15 (2).”

The Ontario Limitations Act of 2002 Section 16(1) (j) (ii) states:  
“16. (1) There is no limitation period in respect of ...  
(j)(ii) a delivery agent under the Ontario Disability Support Program Act, 1997 or the Ontario Works Act, 1997”<sup>xxviii</sup>.

These files will be maintained in a locked cabinet in ABC Industries’ records vault with only the head of compensation, legal or Chief RM officer having access to the employee’s personal information.

#### **4. Safety Recommendations**

All safety recommendations should be retained in the records centre with copies freely accessible to all employees of ABC Industries. This is consistent with ABC Industries’ commitment to employee safety and transparency. They should be retained for a period of no less than ten years to allow personnel to disseminate them and incorporate them in new documentation when revising workplace documentation. However, should a legal case surrounding these procedures be launched, the legal retention schedule will apply.

#### **5. Regulatory Approval for Continuation of Work**

Information related to the regulatory approval for the continuation of work should be retained for a period of fifteen years in ABC Industries’ vault. This will ensure that should the continuation of work be challenged by a legal case resulting from the original or subsequent accident<sup>xxix</sup>, the Ministry of Labour’s approval for the continuation of work will be available to protect the organization from accusations that work was resumed without approval or while the area was still unsafe. In the event of a subsequent legal case, the retention schedule related to legal files will apply.

#### **6. Legal Files**

Files related to legal cases, be they civil or criminal in nature, should be handled with utmost care. All files should be restricted to the legal team, Chief Records Management Officer and other personnel on a need-to-know basis. After the completion of a legal case, all files should be stored in a double combination safe within ABC Industries’ records vault for a period of no less than fifteen years after the completion of the case to account for the limitation period as outlined in the Ontario Limitations Act of 2002. To ensure readability, all documents will be scanned and converted to microform. Microform conversions are well established and will stand up in a court of law as equivalent to the

original document.<sup>xxx</sup> Film negatives and tape will be stored in a locked environmentally controlled unit within the vault<sup>xxxii</sup>, with access limited to authorized personnel.

### 7. Sub-series Retention Periods and Preferred Media

ABC Industries should manage accident reports according to the tables below outlining the sub-series breakdown, respective retention periods, storage media, storage location, and access rights.

Sub-series	Retention Period	Media	Storage Location	Access Rights
Accident Report	Ten years after investigation complete	Paper	onsite vault	legal, HR, & designated union reps.
Supporting Evidence	Ten years	Paper	onsite vault	legal & senior management
Medical Claims	Fifteen years from date of accident	Converted to microform		compensation, legal
Financial Compensation	Six Years	Paper	onsite vault	Pay, HR, Finance
Safety Recommendations	Ten years	Paper & Intranet	RM Centre & web	All ABC employees
Regulatory Approval for Continuation	Fifteen years	Paper	onsite vault	legal, union & management
Legal Files	Fifteen years	Paper	onsite vault	legal, HR, Senior Management

#### d. Disposition

At the end of the retention period, all documents should undergo the following disposition process:

- The contents of the series are verified by RM centre staff
- The current RM procedures are examined to ensure destruction is still approved by current RM rules
- Approval is sought from the primary office of responsibility, either human resources or legal
- Once approval is obtained, records are destroyed in a way consistent with current RM best practices while a minimum of two RM centre staff witness the destruction and then sign a document attesting to the legal destruction of the files
- This destruction affidavit is sent to the records management office to be stored until its disposition date

## **8. Reflections**

The experience of developing the records management retention and disposition schedules for ABC Industries' employee accident files was similar to what I expected based on my readings for this class, class discussions and lectures, and my co-op work experience at the Office of the Auditor General of Canada. I knew from the readings and my experience that I would have to examine a number of laws and apply them in the development of a retention schedule. However, since I was developing the records schedule myself, it was somewhat easier than it would be in reality because in practice I would have to coordinate with, and gain the approval of, several department heads including Legal, Finance, and Human Resources. I would also have to coordinate with the Health and Safety Board and any unions at the plant.

The greatest challenge was interpreting and applying the multitude of acts and policies pertaining to this series and having to harmonize these with ABC Industries' current procedures and processes. Ensuring that all requirements are incorporated and harmonized correctly is a large undertaking which could have serious consequences to ABC Industries if not done correctly. If I were charged to perform a similar task in the workplace, I would solicit the assistance of corporate policy and perhaps Legal to validate my interpretation and application of the acts and policies to ensure my recommendations were on firm ground.

- <sup>i</sup> “Personal Information Protection and Electronic Documents Act (2000, c. 5)”, Department of Justice Canada. November 14, 2008. <http://laws.justice.gc.ca/en/showtdm/cs/P-8.6>.
- <sup>ii</sup> “Policy on Information Management”, Treasury Board Secretariat. June 26, 2007. <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=12742>.
- <sup>iii</sup> “Privacy Act (R.S., 1985, c. P-21)”, Department of Justice Canada, November 14, 2008. <http://laws.justice.gc.ca/en/showtdm/cs/P-21>.
- <sup>iv</sup> “Access to Information Act (R.S., 1985, c. A-1)”, Department of Justice Canada. November 14, 2008. <http://laws.justice.gc.ca/en/showtdm/cs/A-1>.
- <sup>v</sup> “Guide to the Review of Management of Government Information Holdings”, Treasury Board Secretariat. February 14, 1996. <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=13602&section=text#cha10>.
- <sup>vi</sup> <http://www.cra-arc.gc.ca/E/pub/tg/rc4409/rc4409-06e.pdf>
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- <sup>xii</sup> Donald S. Skupsky. “The Scope of Your Recordkeeping Responsibilities”, ARMA Records Management Quarterly; Oct 1988; 22, 4; ABI/INFORM Global p. 38.
- <sup>xiii</sup> “Fact Sheet on Privacy Legislation in Canada”, Office of the Privacy Commissioner of Canada. December 5, 2008. [http://www.privcom.gc.ca/fs-fi/02\\_05\\_d\\_15\\_e.asp](http://www.privcom.gc.ca/fs-fi/02_05_d_15_e.asp).
- <sup>xiv</sup> “Health Information Custodians in the Province of Ontario Exemption Order”, *Canada Gazette* Vol. 139, No. 25 — December 14, 2005. <http://canadagazette.gc.ca/partII/2005/20051214/html/sor399-e.html>.
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- <sup>xvi</sup> Retention Guidelines for Common Administrative Records of the Government of Canada Section 1, Part 1, General Administration Function (Function-based arrangement) Final Version, December 11, 2006.
- <sup>xvii</sup> Ibid. p. 69.
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- <sup>xxi</sup> Ann Cavoukian, “Guide to the Personal Information Protection Act”, Information and Privacy Commissioner of Ontario. <http://www.ipc.on.ca/images/Resources/hguide-e.pdf>.
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- <sup>xxviii</sup> [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_02i24\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_02i24_e.htm)
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- <sup>xxx</sup> Based on Lecture by Professor Keirstead on November 25, 2008.
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