



# Record Retention

Understanding Schedules and Policy Creation

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# Presenters



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# Privacy is... knowing how long to keep data



# Covered today

- Basics of records retention
- Purpose of keeping data
- Researching data retention laws
- Data minimization for personal data
- Building a retention schedule
- When calculation of a retention period starts
- What to do if laws are contradictory
- Legal Holds
- Public disclosures about data retention

# The basics of records retention



# How data retention coincides with the new normal



But...  
how long should  
we store  
records?



# What is a business record?

A **Business Record** is any documented information, created or received by an organization, that serves as evidence of its activities, transactions, decisions, or legal obligations.

Various formats: paper, electronic, audio, or visual, and can be stored physically or digitally

But what is it anno 2023?

- Collaborative workspaces
- Workflows
- Data driven



# Record Retention Policy

- Definitions
- Importance of Record Retention
  - Efficiency, legal compliance
- Employee Obligations
  - Regular review, process
- Administrator
  - Create policies
  - Oversee compliance
  - Answer questions
  - Revise policies
- Regular Training
- Attached schedule



# Sample Retention Schedule

## Retention Schedule Help

Data class  Data Type  Country  State



Your Data				Tell us what it is		Golden Standard				Andorra		Argentina		Belgium	
Ref	Data Class	Data Type	Examples	Record Type	Retention	Period	From	Country Deviation	Considerations	Retention	Period	Retention	Period	Retention	Period
01-001	Accounting	Journal Entries	Necessary accounting adjustments and reclasses to properly reflect revenue and expenses in accordance with generally accepted accounting principles. This record series includes all journal entries except for journal entries related to capital expenditures and investments (record series 01-009)*	Company accounts and books, including balance sheet, profit and loss account	10	years	From the date following the day on which the fiscal year ended	Brazil: permanent	We have based this on the fact that 4 jurisdictions that have a 10 years retention period, 2 jurisdictions that have a 6 years retention period, 1 jurisdiction that has a permanent retention period, 1 jurisdiction that has a 7 years retention period.	6	years	10	years	10	years
01-002	Accounting	Account Reconciliations	Intermediate fiscal records of receipts and disbursements used to reconcile and adjust the difference between accounts.	Articles of incorporation, bylaws, charters, certificates of incorporation, good standing certificates, corporate restructuring and dissolution, other corporate governance	5	years	From the date of deregistration	Argentina: 10 years, Netherlands: 7 years	We have based this on the fact that 2 jurisdictions that have an unspecified retention period, 2 jurisdictions that have a 5 years retention period, 1 jurisdiction that has a 10 years retention period, 1 jurisdiction that has a 3 years retention period, 1 jurisdiction that has a 1 year retention period, 1 jurisdiction that has a 7 years retention period, 1 jurisdiction that has a 6 years retention period.	0	days	10	years	0	days
01-003	Accounting	Account Workpapers	Supporting documentation prepared to substantiate accounting records.	Income and corporate tax accounting	10	years	From the date following the day on which the fiscal year ended		We have based this on the fact that 3 jurisdictions that have a 10 years retention period, 2 jurisdictions that have a 5 years retention period, 2 jurisdictions that have a 6 years retention period, 1 jurisdiction that has a 7 years retention period.	5	years	10	years	10	years

# To keep or to delete?

## **Sometimes companies want to forget:**

- Laws (often data protection) tell them to destroy data
- Avoid holding on to evidence of breaches of contract or compliance violations
- Large amounts of data are perceived as unmanageable (and outdated data loses value)

## **Sometimes companies want to remember:**

- Data represents tremendous value
- Laws tell them to retain data
- In litigation, having the right data available can mean the difference between winning or losing a case

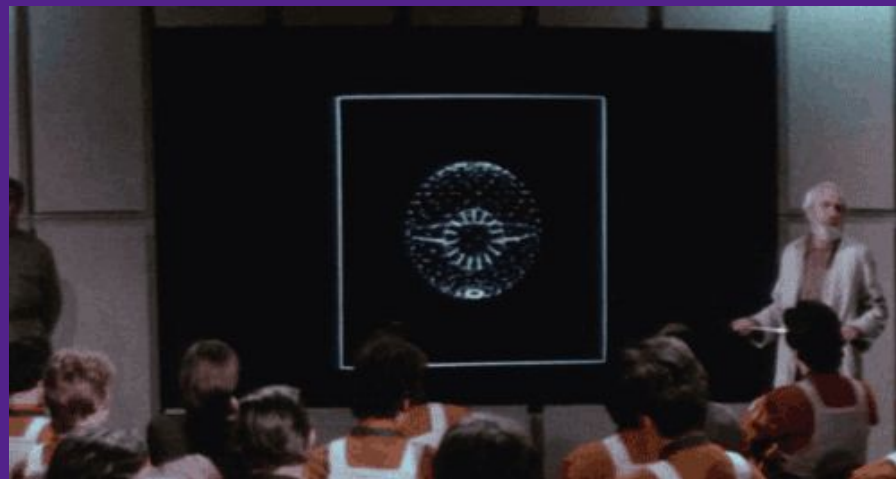
# Benefits of Retention

- Store of knowledge
  - Re-using documents saves time
- Personal information
  - Just ask your marketing team
  - Analyze trends
    - (Consider deidentifying and/or aggregating)
  - Prevent fraud and abuse
    - Separate out PI for only limited purposes



# Downsides of Retention

- Haystack problem
- Cost
- Can be a liability in litigation
- Higher liability for data breach



# Data minimization requirements for personal data



# GDPR, CPRA and all other privacy laws

## **Are fundamentally changing the profession of records retention**

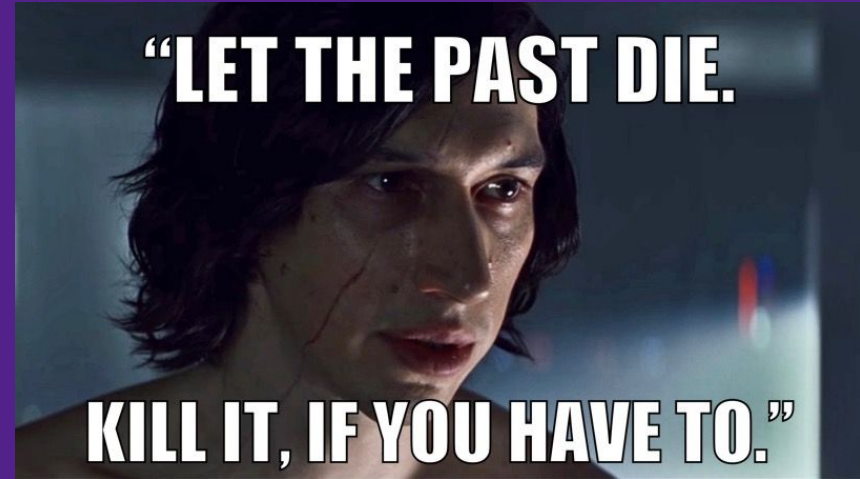
- “No longer than necessary”
- “Data minimisation”
- “Irreversible deletion”
- “Necessity”
- “Archiving scientific or historical research purposes or statistical purposes”

## **No more?**

- “Current + 10 years”

# Data Minimization and Retention

- Purpose determines retention
- The “why?” often answers the question “how long?”
- No new purposes without new notice (and sometimes consent)





# CCPA Data Minimization

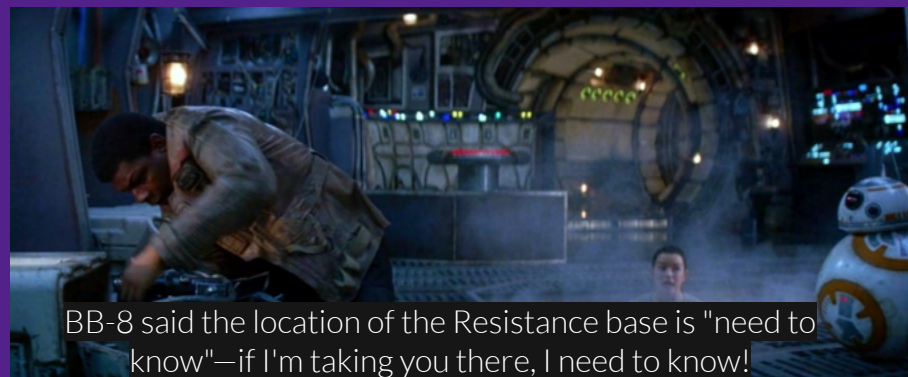
- Businesses must analyze privacy practices to ensure they align with data minimization obligations
- Two requirements:
  - The purpose must be appropriate and consistent with consumer expectations; AND
  - Data processing must be reasonably necessary and proportionate to the purpose for which it is used

# CCPA Data Minimization: Purpose Test

1. Relationship between the consumer(s) and the business.
2. Type, nature, and amount of PI
3. Source of the PI and the method for collecting or processing it.
4. Specificity, explicitness, prominence, and clarity of disclosures to the consumer(s) about the purpose
5. Degree to which the involvement of service providers, contractors, third parties is apparent to the consumer(s).

# CCPA Data Minimization: Necessary and Proportionate Test

1. Minimum PI that is necessary to achieve the purpose
2. Possible negative impacts on consumers
3. Additional safeguards for the PI to specifically address the possible negative impacts on consumers



# Privacy law vs records retention

## GDPR triggered records retention hype

- Privacy justifies storage and removal of data
- Inspires greater data governance and accountability

## Records retention

- Relates to personal data and non-personal data
- Does not only tell when to delete, but also when to keep

## Why privacy professionals should listen to retention specialists

- They know thousands of reasons to keep data
- They know when to delete
- They can give examples when talking to data protection authorities

## Why retention specialists should listen to privacy professionals

- Virtually every minimum term is a maximum term
- They know a risk-based approach to data!

# Just the EU or California? Not according to FTC

Does the US have a Federal Data Privacy law? No, but the FTC seems to disagree

One thing you cannot escape: you need a records retention schedule!

**FTC orders re GoodRx Drizly and CafePress, in thee cases the FTC decided that:**

- Retaining information in an identifiable manner for longer than necessary for the purpose it was collected can be a violation of Section 5 of the FTC Act (15 USC 45)
- Collecting more personal information than necessary for the purpose can also be an Art 5 FTC Act violation.
- You need to adopt and implement in practice a retention policy and schedule.
- The schedule should include the following elements: (1) the purpose or purposes for which each type of Information is collected; (2) the specific business needs for retaining each type of Information; and (3) a set timeframe for Deletion of each type of Information that precludes indefinite retention of any Covered Information.
- Our conclusion: no longer than necessary is no longer something US companies can determine as a “GDPR or CPRA thing”. It is a rule that requires attention at a US national level.

# Over in Europe

**CNIL fines of Inogreffe, AG2R LA MONDIALE, and Discord for keeping customer data longer than 3-5 years**

- Our conclusion: keeping personal data no longer than necessary is not just theoretical risk in almost every CNIL enforcement case, improper retention is a part of the issue.

**Datatilsynet (Danish DPA) fine of SmartResponse where the Danish DPA stated:**

- That a retention period of 5 years – set after the limitation period in the Data Protection Act – is not in accordance with the principle of storage limitation.
- Our conclusion: in Denmark don't store personal data which might handy to demonstrate compliance with the GDPR for the duration of the statute of limitation.

# Risks are real, both GDPR and beyond



Home / Latest News / Business / Crime / Construction boss banned for negligent record keeping

**Crime**

## Construction boss banned for negligent record keeping

Despite the liquidator's numerous requests, it said Tasca failed to provide any company accounts or records

Lewis Catchpole · 2 days ago  1 minute read

What does a  
privacy/GDPR data  
retention audit look  
like?



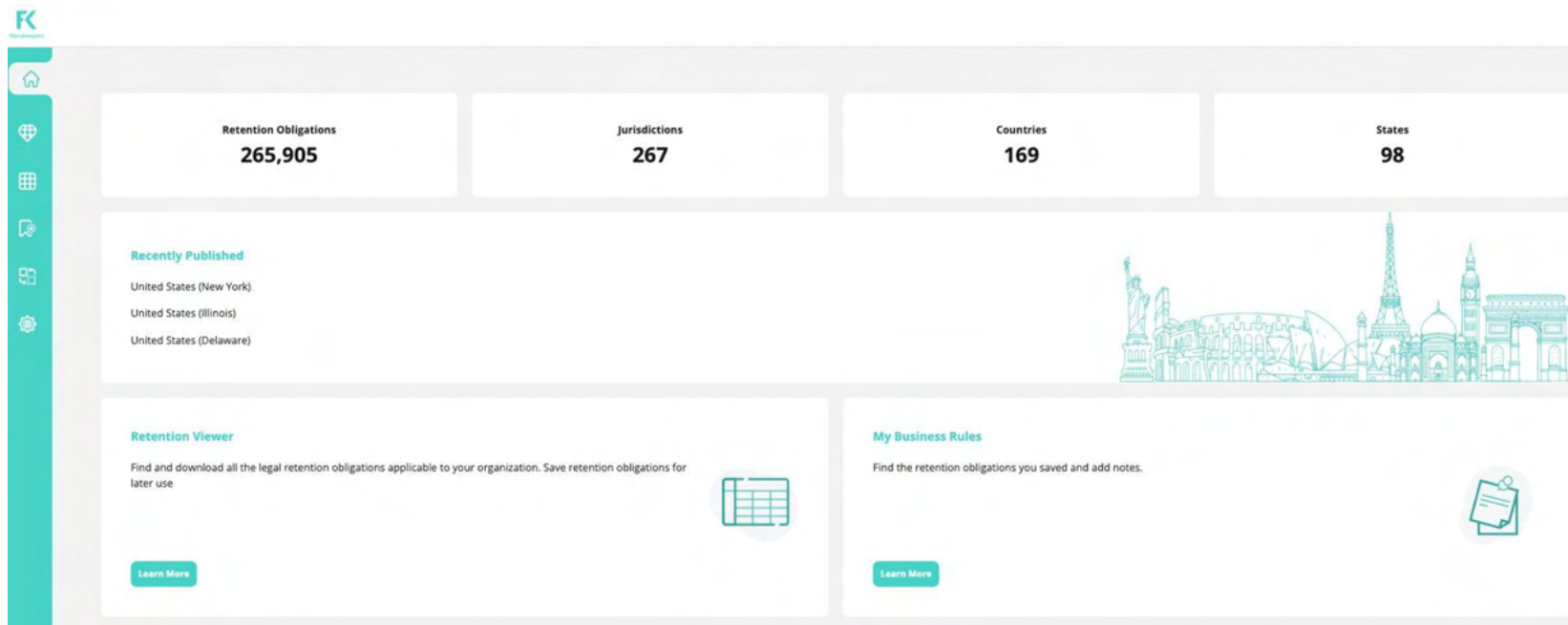


# The Purpose of Keeping Data



# Reading all the laws in the world





# What we've observed

**Every country has legal retention obligations**


**EU countries have surprisingly long retention periods**

**Communist and former communist countries have the most permanent and long retention periods**

**US (federal and state):**

- Lots of minimum requirements (the most in the world)
- But rather short often: between 2-6 years
- Laws are surprisingly focused on data minimisation (but not implemented in practice)
- State and/or federal privacy laws will have a big impact on records management in US

# Record keeping – Russian style

 <b>filerskeepers</b>		Russia retention schedule				
Who	What to store	Minimum or maximum	Retention	Period	From	Legal reference
Employers	Individual data on work experience, earnings (remuneration), income and assessed insurance premiums of the insured person	Minimum		75 years	From the date of creation	<a href="#">Application to the order of the Ministry of Culture of the Russian Federation of August 25, 2010 N 558</a>
Employers	Lists of employees' children	Minimum		0 days	From the date following the day of the replacement of the list	<a href="#">Application to the order of the Ministry of Culture of the Russian Federation of August 25, 2010 N 558</a>
Employers	Documents (statements, inquiries, correspondence) about the provision of places in preschool and school institutions	Minimum		5 years	From the date of creation	<a href="#">Application to the order of the Ministry of Culture of the Russian Federation of August 25, 2010 N 558</a>

# Record keeping – Italian style

Employers	Information relating to preventive, periodic or requested medical examination of workers over 50 years for risks in particular relating to risks to eyesight and eyes and to the musculoskeletal system	Minimum	2 years	From the date of the date of the medical examination	<a href="#">Article 176 Work safety decree</a>
Employers	Information relating to preventive, periodic or requested medical examination of workers under 50 years for risks in particular relating to risks to eyesight and eyes and to the musculoskeletal system	Minimum	5 years	From the date of the date of the medical examination	<a href="#">Article 176 Work safety decree</a>

# Record keeping – Turkish style

Personal data					
Data controllers	Information relating to transactions regarding the deletion, destruction and anonymization of personal data	Minimum	3 years	From the date of deletion, destruction or anonymization	<a href="#">Article 7 Regulation on deletion, destruction or anonymization of the personal</a>
Data controllers	Personal data	Maximum	0 days	From the date the personal data was no longer necessary for the purpose for which the data are collected	<a href="#">Article 4 Personal Data Protection Law no. 6698</a>



# How to build a records retention schedule





# The three issues of a multinational

## **Not knowing what the laws around the world/country say**

- Not knowing what to choose
- Laws are conflicting
- There are so many

## **Not knowing where to start implementation**

- Hardcopy vs digital
- Global vs local
- Cloud vs on premise
- Structured vs unstructured

# Sounds easy?

- A company's systems are used and accessed from many countries
- The laws of all these countries will then apply
- Per country there can be hundreds record retention obligations
- These laws are often conflicting

## Example: Payroll records

- Should be stored at least 50 years in Poland and Romania
- Should be deleted after 6 years in France



# Companies are forced to make choices

## **Companies are waking up to the idea that:**

- Keeping records forever is just not allowed in most countries.
- Compliance in one country can lead to non-compliance or loss of litigation position in another

## **While:**

- A granular approach to records retention technically impossible
- Global systems often do not allow a per country/document approach

**Result:** companies will need to implement simple custom tailored golden standards to ensure compliance with most record retention requirements instead of all.

## Retention Schedule Help

Your Data				Tell us what it is	Golden Standard					Andorra		Argentina		Belgium	
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# How should we look at retention?

## Let's determine your strategy\*

Can differ per business process / department / country

- **“Strategic litigators” look at:**
  - Shortest minimum periods
  - Shortest maximum periods
- **“Data driven companies” look at:**
  - Longest minimum periods
  - Longest maximum periods
- **“Compliance driven companies” look at:**
  - Shortest maximum period
  - Longest minimum period

# 8 steps to create a perfect retention policy

1. Determine your retention strategy (“data driven” vs “strategic litigator” vs “compliance driven”)
2. Determine your governance
3. Determine what deletion means
4. Don't miss out on important categories



# 8 steps to create a perfect retention policy

5. Establish your golden standards
6. Create actionable retention periods
7. Ask for feedback from data users
8. Never forget about the law



# Hold Notices

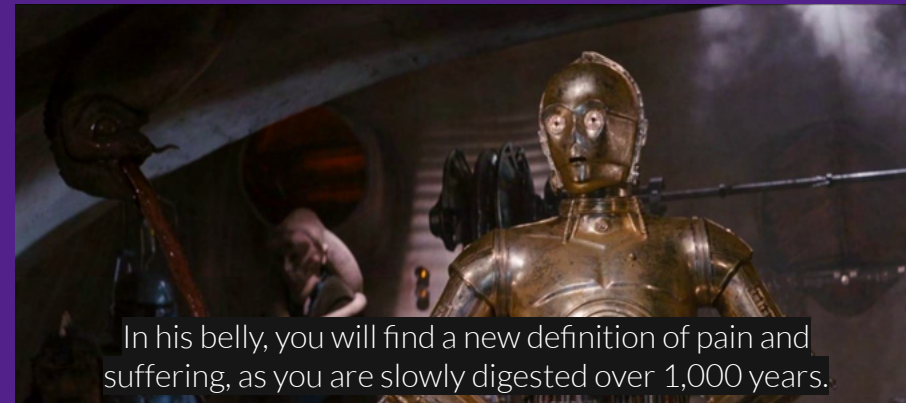
- Critical!
- Legal action requires retention of ALL relevant files
  - Litigation
  - Audit
  - Subpoena
- Employees must know what these are ahead of time
- Legal team should inform all employees
  - Explicitly
  - High importance
  - Repeatedly





# Public Disclosures of Retention Periods

- CPRA added Retention Period disclosure requirement
- Per category of Personal Information
- Specific time period OR criteria
- Criteria might include:
  - Business purpose
  - Legal obligations
  - Privacy impact on individuals
  - Volume and complexity of systems
  - Lifecycle management
- Might delete some info immediately
  - E.g., precise geolocation



Whatever you do,  
don't...



# Thank you!



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