

# When the Revenue Agent Comes Calling: Document Retention

09.28.16 | Linda J. Rosenthal, JD



An IRS revenue agent knocking at the door of a 501(c)(3), tax-exempt, organization will have in hand that agency's [Form 14114](#), Governance Check Sheet that includes six sections of questions that must be covered during the audit.

We've already discussed (1) [Governing Body and Management](#); (2) [Compensation](#); (3) [Organizational Control](#); (4) [Conflict of Interest](#); and (5) [Financial Oversight](#).

The sixth and final section includes questions about the organization's document-retention policy. Specifically, the agent will ask:

- If the organization has a written policy for document retention and destruction;
- If yes, whether the organization adheres to its written policy for document retention and destruction;
- If the board contemporaneously documents its meetings and retains this documentation; and
- If the examination/audit was hindered by a lack of necessary documentation.

## *Why are There Questions About Document Retention?*

In the past decade or more, charity regulators at all levels of government have been [laser-focused on issues](#) of governance practices, transparency, and accountability – more than in early periods. These matters have come into focus most particularly as a result of the huge corporate scandals in the early 2000s, including Enron and Worldcom.

As we explained in the [earlier post](#) about the “governing body and management” questions on Form 14114,

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*[g]overnment officials sprang into action, enacting a law commonly known as Sarbanes-Oxley (“SOX”), the names of the sponsoring legislators. There were tough new rules and controls, as well as criminal penalties; the law was written “to prevent wrongdoing and enhance both the integrity of financial reporting and the quality of corporate governance. Although aimed primarily at publicly traded, for-profit corporations, a few of the SOX requirements also directly apply to nonprofits: “They must have a system for accepting and dealing with whistleblower concerns; they must have policies that protect against the intentional destruction of key documents, and their employees must not impede or obstruct governmental investigations.*

### *What, Exactly, is a Document-Retention Policy?*

The National Council of Nonprofits has a helpful resource guide on its website: “Document Retention Policies for Nonprofits.” As explained there,

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*Document retention policies are one of several good governance policies that the IRS highlights on the IRS Form 990 by asking whether the filing nonprofit has adopted a written record retention policy.*

It refers to a much broader category of documents than those ordinarily kept in the fancy, gold-embossed, three-ringed binder many organizations acquire when they first incorporate; that is, the key corporate documents like the Articles of Incorporation, Bylaws, and Minutes.

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*Think of a document retention policy simply as a document management policy. It is unwieldy and unrealistic, as well as unnecessary to think that a nonprofit will keep every document it generates. Normally it is fine to clean up your desk by tossing out papers here and there, but when one staff person presses delete on a key document, and that document is needed later – or if the subject matter of the document is under legal investigation and it appears that the nonprofit deleted it as a cover-up – trouble can follow. Adopting a written document retention policy ensures that staff and volunteers follow consistent guidance about document destruction and that document destruction/deletion practices become a regular business practice of the nonprofit.*

This policy will apply not only to traditional paper documents in that loose-leaf binder or a filing cabinet. It also pertains to writings that are saved in the cloud or other server.

As to what should be retained and for how long, there is no one-size-fits-all answer. It varies depending on the type of nonprofit, the activities it conducts, and the specific requirements of state law.

With that caveat in mind, there are links to several sample document-retention policies; see, for example, [here](#), [here](#), and [here](#).

## **Conclusion**

Additional resources include: Public Counsel Law Center’s “[Memo for Guidance of Document Retention and Destruction](#)”; the North Carolina Center for Nonprofit’s “[Document Retention Policies for Nonprofits](#)”; and the [IRS Compliance Guide For Public Charities](#).