

TO: Conferences of the United Church of Christ

FROM: Office of General Counsel

DATE: May 2, 2018

RE: Records Retention Policies

MEMORANDUM

I. INTRODUCTION

A records retention policy (sometimes called a document retention policy) provides a standard way to review, retain, and destroy records that are created or stored in the course of an organization's business. It generally defines a Conference record, provides the length of time that certain categories of records should be maintained, specifies who is responsible for making retention decisions, and specifies where records should be kept.

Establishing a records retention policy can increase a Conference's efficiency and preserve institutional knowledge that may otherwise be lost during times of transition. It can also be useful should the Conference become involved in a legal dispute. A court will more likely find that the destruction of records pursuant to an established policy prior to an organization reasonably anticipating litigation was reasonable and undertaken with a neutral purpose. On the other hand, if an adverse party requests information during litigation that cannot be provided, and no established policy was followed in destroying the record, that may in some instances

OFFICE OF GENERAL COUNSEL
generalcounsel@ucc.org

Heather E. Kimmel
GENERAL COUNSEL
kimmelh@ucc.org
216.736.2138

permit a judge or jury to conclude that the record contained information that was not favorable to the organization.

A good records retention policy considers the retention and destruction of electronic data as well as paper records, applies to all employees in the Conference as well as to volunteers who are charged with creating or storing records on the Conference's behalf, such as its Board of Directors and committees, and is regularly monitored and enforced.

II. DEVELOPING A RECORDS RETENTION POLICY

A. Identify the Conference's Records and Assign Responsibility.

A Conference should consider establishing a point person or a small committee to be responsible for managing the process of identifying the records collected, created, and stored by the Conference. In Conferences with larger staffs, staff support for the committee may be necessary; in smaller Conferences, an ad hoc committee of the Conference board may be tasked with the work. If the Conference has a staff person charged with the management of the Conference's electronic systems, that person should be part of the committee. The committee's first priority should be to establish a timeline for the work and the scope of the policy.

Conferences store a variety of documents; some may store documents on behalf of Associations, or some may act as Associations where no Association is functioning. Be clear in the policy as to the scope of the records covered by the policy. Conference employees may also have Conference documents stored on their personal computers, personal smart phones, in personal email accounts, or in paper format in a remote location—the policy should be clear that it covers these documents as well.¹

¹ Conferences should consider whether the practice of storing Conference information on personal devices or in personal locations is permitted; if not, that should be addressed in the Conference's personnel policies and can be reiterated in the records retention policy. Personal storage of Conference information, if permitted at all, should explicitly be occasional and incidental, not a regular business practice. In no instance should the only copy of a record be kept in a personal location by a Conference employee or volunteer. For example, committee on ministry records should not be kept at the home of the committee chair.

The committee should interview information technology personnel (if they are not included on the committee) to determine what types of electronic data are kept, how it is stored, and how frequently it is backed up. The policy should explicitly cover this electronically stored information (“ESI”) by listing each type of electronic information. The committee will need to determine whether it makes more sense for responsibility for ESI to reside with one individual, or for it to be decentralized and the responsibility of each individual to manage their own ESI. This will likely be a function of how the Conference’s network or electronic storage is operated.

The committee should also interview employees and volunteers to determine what types of other records (paper and electronic) are created and stored, and list each type of these records in the policy, as well as who is responsible for making decisions about the records under the policy.

B. Establish Guidelines for Retention and Destruction.

Prior to establishing guidelines for retention, Conferences should review state and federal laws that may apply to particular types of records. For example, certain records in employee personnel files may have specific retention dates that are required by state or federal laws. If a state and federal law both apply to the record, the longer retention period should be used.

Certain records should be kept in perpetuity even if there is no requirement under state or federal law, like a Conference’s articles of incorporations, bylaws, meeting minutes, and correspondence related to the Conference’s tax-exempt status. The importance of keeping insurance policies cannot be overstated; these should be kept in a disaster-proof safe, along with other critical records. Further, ministerial files and records related to ecclesiastical authorization, ecclesiastical disciplinary proceedings, and minutes of committees on ministry should also be kept permanently.

The policy should also indicate the location of the records being retained, how the records should be organized, and how often ESI should be backed up and/or overwritten.

The policy should include instructions on how often records are reviewed to determine whether they have expired, as well as instructions on how to destroy both expired records and records that are not required to be maintained under the policy.

Finally, the policy should provide an exception for records that are subject to a legal or litigation hold, with instructions on how to comply with the hold.

III. IMPLEMENTING AND ENFORCING A RECORDS RETENTION POLICY

Records retention policies are only useful if they are implemented and enforced. Training should be provided for employees and volunteers at the time the policy is rolled out, with ample opportunity for questions. The effectiveness of the policy depends upon employee compliance; accordingly, consequences for violating the policy, up to and including employment termination, are appropriate. Additionally, updating job descriptions to specify responsibilities for compliance with the policy and/or for detailed responsibilities under the policy may be appropriate. Expectations about employee compliance should be clear, and monitoring of the policy should be conducted on a regular basis by establishing a regular cycle of reviewing and destroying records. It should be communicated to volunteers like Conference board members and other committee members that compliance with the policy is required.

Conferences should also explicitly notify employees and volunteers that there is no expectation of personal privacy in communications that they send or receive through the Conference's email system, records that they store on the Conference's servers, or on Conference equipment, and that any personal communications or other records are subject to destruction without notice.

Finally, review the policy on a periodic basis to ensure that it covers any new technologies or storage methods used by the Conference.

IV. SAMPLE RECORDS RETENTION POLICY

The Office of General Counsel has provided a sample records retention policy for a Conference of the United Church of Christ. Conferences may use this sample policy as a guide in creating their own policy pursuant to the procedure described above, including checking applicable state laws to ensure that the policy is in compliance. Conferences should not adopt the policy without adapting it to the specific needs of the Conference.

**CONFERENCE OF THE UNITED CHURCH OF CHRIST
RECORD RETENTION POLICY**

The business records of the _____ Conference of the United Church of Christ (hereafter "Conference") are important and valuable assets of the Conference. This Record Retention Policy explains the procedures to ensure the proper retention, stewardship and, when appropriate, destruction of Conference's records. The Conference expects and requires all employees to fully comply with this Record Retention Policy.

This Record Retention Policy consists of two parts. The first part explains in narrative format the obligations with respect to the retention of the Conference's records and documents. The second part, which is included on the attached Record Retention Table, consists of a list of document types and the minimum length of time for which each document type must be retained. From time to time the Conference may establish additional retention or destruction schedules for specific categories of records in order to ensure legal compliance or to accomplish other objectives. Those schedules are a part of this Record Retention Policy, and your compliance with them is required.

Records subject to this Record Retention Policy

The Conference's records include essentially all records and communications that you produce in your capacity as an employee, representative or official of the Conference, whether in paper or electronic format. A record may be as obvious as a contract, a memorandum or an electronic - mail communication ("e-mail"), or something not as obvious, such as a computerized desk calendar, an appointment book or an expense report. E-mails, voice mails, and informal notes taken during Conference meetings or while reviewing Conference documents all constitute business records of the Conference. All of the Conference's records are subject to this Record Retention Policy.

The medium or format is not relevant to whether an item constitutes a record that is subject to this Policy. For example, voice mail messages stored or saved on a computer hard drive, server or portable electronic device, even when not written down, constitute business records. The same is true of e-mail communications addressing Conference-related matters, whether or not those e-mails are sent with or to a Conference e-mail address and whether or not they are sent from or to a Conference computer. If you are addressing Conference-related matters in a document or communication that is recorded in one format or another, then the document or communication constitutes a record that is subject to this Record Retention Policy.

Ultimately, when deciding whether a document or communication is subject to this Record Retention Policy, ask the following question: Does the communication, regardless of its format and regardless of its level of formality, address Conference-related matters? If the contents of the communication (or series of communications taken together), however

informal or brief, relate to the Conference's business or operations, then you must evaluate them for retention under the terms of this Policy. If you have any doubts as to whether a document is subject to this Record Retention Policy, you should err on the side of caution and contact the Conference Minister who has access to legal counsel in cases that need further review and clarification.

The length of time that a record should be retained

The Record Retention Table attached to this Record Retention Policy sets forth minimum retention periods for a number of categories of records. The retention periods are as long, or longer, than minimum periods required by federal and state laws and regulations.

If a record does not fall within one of the categories listed on the Record Retention Table or any updated schedule provided by the Conference, consider the following factors when considering whether to retain the record:

- Is the information contained within the document reasonably likely to be useful in performing your job, or is it otherwise likely to be of benefit to the Conference in its operations?
- If the document in question is a photocopy (or one of several photocopies) of a record that must be retained - do you have the original in your possession or are you certain that the original is being properly retained; and is the photocopy an exact duplicate (that is, are you certain that the original has not been altered or changed from the photocopy or the photocopy not altered or changed from the original)? If the answer to any of these questions is "no," then the photocopy should be retained and treated in the same manner as an original document would be treated under this Record Retention Policy.
- Is the document (or series of documents) a contract or commitment on the part of the Conference or in favor of the Conference vis-a-vis a third party, or does the document address a contract or commitment that is already in place? Contracts, including formal agreements, informal arrangements, purchase orders, price quotes, attached unsigned terms and conditions, as well as any additional communications that modify, amend or interpret contracts, must be maintained for the full term of the contract, plus three years. If no term is specified, the record must be maintained for three years after both parties to the contract have honored all commitments under the contract.
- Is the document subject to a "Litigation Hold" (discussed in more detail below)? If answer to this question is "yes," then the document should be retained in the manner the directed until the Litigation Hold is lifted, regardless of how you have answered the other questions above.
- Does the document (or a series of documents) hold information that might potentially lead to a claim or lawsuit at some point in the future? If the answer to this question is "yes," then this material should be retained permanently.

What should be done upon receipt of a notice of a "Litigation Hold"

Under the Federal Rules of Civil Procedure, state court procedural requirements and recent court rulings, when the Conference "reasonably anticipates" that it will be the subject of a "legal proceeding" (including a civil law suit, criminal charge, or investigation or audit by a governmental agency), whether through the receipt of notification or the receipt of other information identifying the possibility of a legal proceeding, the Conference must take actions to preserve all information and records that may be relevant to the claims made in the legal proceeding. When the Conference informs employees that certain types of information are subject to a "Litigation Hold," those records must be preserved until informed by the Conference's legal counsel that the records are no longer subject to the Litigation Hold. The Litigation Hold supersedes any previously or subsequently established destruction schedules or retention policies (including the remainder of this Record Retention Policy) for the identified records for the full period of the Litigation Hold.

When records should be destroyed or discarded

Considerations may favor the destruction of documents that are not subject to a Litigation Hold and are not otherwise required to be retained under this Record Retention Policy. If this Policy no longer requires the retention of a document, then the document may be discarded. Consider the following factors when deciding when and how to discard a document:

- Documents containing confidential or potentially sensitive information should be shredded before they are discarded.
- Confidential information held on computer diskettes or in other media that cannot be shredded must be destroyed in a manner that ensures the information can no longer be retrieved from the medium.
- If there is doubt how to properly dispose of a particular document shred the document before disposing of it.
- All other non-confidential documents and shredded confidential materials should be discarded in waste or recycling bins that are regularly emptied.

Retention of records stored electronically

With continuous changes information technology and computer operating systems, it is imperative that all important documents are printed and stored in hard copy files. All documents retained in accordance with this Policy are to be maintained in paper copy format.

Retention of E-Mail communication

This Policy mandates that all email correspondence, other than that of a general nature, be maintained in active or archival electronic files for a minimum of three years. After this prescribed period, it is the practice of the Conference to delete all such correspondence, except those records that are printed and retained, as per the dictates of this Policy.

Proper handling of electronic information held on non -Conference computer systems

It is understood that certain employees may receive and store Conference-related electronic documents on computers or servers that are not owned or administered by or on behalf of the Conference (a non-Conference computer.). Those documents, including but not limited to (a) The Conference-related e-mail communications stored on a non-Conference computer (including those sent with or received from a non-Conference e-mail address) and (b) other the Conference-related electronic documents stored on a non -Conference computer, will be referred to as "Foreign Stored Documents." All employees must observe the following rules and requirements with respect to Foreign Stored Documents:

- All Foreign Stored Documents are subject to this Record Retention Policy.
- All Foreign Stored Documents should be saved on the non -Conference computer in a separate electronic storage folder that contains all and only the Foreign Stored Documents (the "Conference Matters Folder").
- You must take reasonable steps to limit accessibility to the information contained in any Conference Matters Folder by individuals who are not authorized by the Conference to access such documents.

Employee Discipline for Non -Compliance

Failure to comply with all terms and requirements in this Record Retention Policy may result in disciplinary action, including suspension or termination of your employment with the Conference. Questions about this policy should be referred to the Conference Minister.

I, the undersigned, certify that I have carefully read, understand and agree to abide by the terms and requirements of this Record Retention Policy and the attached Table.

Signed: _____ Date: _____

_____ **Conference,**
UCC Record Retention Table

When records are no longer required to be maintained, a log of items destroyed will be signed off by two individuals. The records will be shredded after the dual verification is made. No records will be destroyed without the proper passage of time and approval of the Conference Minister.

Accounting and Finance	Retention Period
Accounts payable ledgers and schedules	7 yrs.
Accounts receivable ledgers and schedules	7 yrs.
Audit reports	Permanently
Bank reconciliations	7 yrs.
Bank statements	7 yrs.
Budgets (Adopted by action of Gathered Conference)	Permanently
Checks (for routine payments and purchases)	7 yrs.
Checks (for major payments and purchases)	Permanently
Depreciation schedules	Permanently
Financial statements (year-end, other optional)	Permanently
General ledgers, year-end trial balance	Permanently
Invoices (to customers, from vendors)	7 yrs.
Investment transactions	7 yrs.

Contribution Records

Records of contributions	7 yrs.
Documents evidencing permanent terms, conditions or restrictions on gifts	Permanently
Documentation for gifts with expired terms, conditions or restrictions	Expiration + 7 yrs.

Corporate Records

Contracts (expired)	7 yrs.
Debt agreements (current or expired)	Permanently
Deeds, mortgages, and bills of sale	Permanently
IRS or other Government Audit Records	Permanently
IRS Rulings	Permanently
Leases, expired	10 yrs.
Minutes of governing board and related committees	Permanently
Property appraisals by outside appraisers	Permanently
Property Insurance Policies	Permanently
Tax-Exemption Documents and Related Correspondence	Permanently

Payroll and Personnel Documents

Deduction Authorizations	Termination + 7 yrs.
Employee Earnings Records	Termination + 7 yrs.
Employee Handbooks	1 copy - permanently
Employee Personnel Records	Termination + 7 yrs.
Employment applications	Termination + 7 yrs.
Employment Contracts — Individual	Termination + 7 yrs.
Employment Records—All Non-Hired Applicants (including all applications and resumes — whether solicited or	

unsolicited, results of post-offer, pre-employment physicals, results of background investigations, if any, related correspondence)	3 yrs.
Garnishments, assignments, attachments	Termination + 7 yrs.
1-9 Forms	Termination + 7 yrs.
Payroll records & summaries	7 yrs.
Payroll Tax Records	7 yrs.
Retirement & Pension Records	Permanently
Unclaimed wage records (if not submitted to a state authority)	7 yrs.
W-2 and W-4 Forms	Termination + 7 yrs.

Conference Communications

Email Correspondence (stored electronically)	3 yrs.
General Correspondence	3 yrs.
Special Correspondence	Permanently/Archived

Comprehensive General Liability Claims / Legal Proceedings

Accident/Incident Reports	Permanently
Records compiled through discovery in previous legal proceedings	Permanently
Documents that might lead to a possible claim or lawsuit	Permanently

Association Files

Archived Files Held on Behalf of an Association of the Conference	Permanently
Records of Disciplinary Proceedings related to Ecclesiastical Authorization	Permanently
Minutes of Association Committees on Church & Ministry	Permanently
Minutes of Association Meetings	Permanently

Conference Files

Authorized Ministers' Files - Active Ministers Currently Serving	Permanently
Authorized Ministers' Files - Inactive/Transferred/Retired	Permanently
Authorized Ministers' Files - Deceased Ministers	Permanently