

# Management Alert



## New Year and New Legal Considerations: A Careful Review of Corporate Document Retention Policies Should be a Part of Your New Year's Resolutions

By Andrew S. Boutros, Jason Priebe, Jay C. Carle, and John R. Schleppebach

*There are many competing business and legal considerations that can shape corporate record retention policies. Federal and state governments have enacted statutes, and agencies have issued myriad regulations that require corporations to hold certain categories of documents for certain defined periods, particularly with regard to areas such as labor and employment, customs and border entry, immigration, and tax. Often overlooked in this complex web of requirements are the practical considerations involved in potentially responding to white collar criminal investigations, enforcements, or related litigation. Specifically, retained documents can be used to demonstrate corporate knowledge of the information contained in those records. And materials that have been retained for twenty years or more may even qualify for the ancient documents exception to the rule against hearsay brining to bear the old adage that some things seem to get "better" with age.*

*As companies step into 2018, it is the perfect time to reassess their document retention policies, which are often taken for granted and usually assumed as being appropriate and sufficient. Laws relevant to preservation change, and it is important to stay abreast of the latest developments and their implications. For example, federal rule-makers recently recognized the concern about the ancient documents exception outlined above and on December 1, 2016, amended the relevant Federal Rule of Evidence 803(16) to apply only to materials "prepared before January 1, 1998, and whose authenticity is established." Some similar state rules, however, remain unchanged. Forward-looking companies would do well to work with in-house counsel and their outside advisors to carefully reevaluate their document preservation calculus to ensure it properly takes into account white collar criminal and other retention considerations. Doing so can make all the difference in enforcement and litigation matters, especially in high-profile matters and highly-regulated industries.*

For the full version of a related article that comprehensively examines many of the issues flagged in this Alert and that originally appeared in *Bloomberg Law White Collar Crime Report*, 12 WCR 1061 (Dec. 22, 2017), please [click here](#).

[Andrew Boutros](#) is a partner in Seyfarth Shaw's Chicago and Washington, D.C. offices; and [Jason Priebe](#) and [Jay C. Carle](#) are partners and [John R. Schleppebach](#) is counsel in the firm's Chicago office. If you have any questions, contact Andrew Boutros at [aboutros@seyfarth.com](mailto:aboutros@seyfarth.com), Jason Priebe at [jpriebe@seyfarth.com](mailto:jpriebe@seyfarth.com), Jay Carle at [jcarle@seyfarth.com](mailto:jcarle@seyfarth.com), or John Schleppebach at [jschleppebach@seyfarth.com](mailto:jschleppebach@seyfarth.com).

[www.seyfarth.com](http://www.seyfarth.com)

Attorney Advertising. This Management Alert is a periodical publication of Seyfarth Shaw LLP and should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

Seyfarth Shaw LLP Management Alert | January 8, 2018

©2018 Seyfarth Shaw LLP. All rights reserved. "Seyfarth Shaw" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership). Prior results do not guarantee a similar outcome.