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Why Record Retention & Data Management Systems Matter for Nonprofits – Transcript

****Jess Birkin** 00:00:02** Welcome to Charity therapy, the podcast where we explore the ups and downs of the nonprofit sector and answer your burning questions. I'm your host, Jess Birkin, owner of Birken Law Office, and I'm excited you're here. Imagine hanging out with me and my super smart, funny, nonprofit expert pals. You get to ask them anything about your nitty gritty nonprofit life and get their wisdom for free. Whether you're a seasoned pro or just strapping on your nonprofit boots, we're here to share stories and remind you you're not alone on this journey. So get ready to join the conversation and bring me the tough question. I ain't scared. Ready to rock? Let's dive in. Hello and welcome to this episode of Charity therapy. I'm here today with Megan, per usual. Hello, hello.

****Meghan** 00:00:51** So happy to be here. Per USU, co-host. I'm not the exciting guest, but being pursued feels kind of nice, too, you know? Yes, yes, I feel like I'm channeling 1998. Like, I feel like that's an expression I used a lot in college.

****Meghan** 00:01:12** I mean, I feel like I always use purge, so I yeah, I mean, this track's listeners don't know this about me, but I trend older than I actually am, so sounding like usually an old woman. But we'll take college in 1998 as well. I was born, yeah. So Megan's an old soul, shall we say? Yes. All right. What are we doing? All right. What's happening? Let's talk about it. Let's talk about some stuff. So you and I, you mostly work on the kind of, like, boring side of the legal industry, right? Like it's just a lot of paperwork. It's. We're not going to court. We're not yelling at each other. Usually, like most people, like you just said, your work is more exciting than mine, which I'm like, hey, good. I mean, mostly just that check mark. I don't do a lot of paperwork. I don't do any of the legal work because guess what? I'm not a lawyer, but it has been fascinating working on this more boring side of the legal industry.

****Meghan**** 00:02:08 For me, as someone who is not a lawyer, because it's becoming more and more clear that the paperwork does really matter sometimes. Oh, yeah. Jess, I know you've been talking to several folks and clients about their data retention policies lately, and before we launch into the actual question, can you tell us what data retention policy is and why nonprofits need to care about it?

****Jess Birkin**** 00:02:35 Yeah, absolutely. Data retention.

****Meghan**** 00:02:37 Or records.

****Jess Birkin**** 00:02:38 Retention.

****Meghan**** 00:02:38 Policy is basically a.

****Jess Birkin**** 00:02:42 Tool that.

****Meghan**** 00:02:43 Tells you how.

****Jess Birkin**** 00:02:43 Long you need.

****Meghan**** 00:02:44 To keep your stuff. So.

****Jess Birkin**** 00:02:48 You know, running any company, whether it's non-profit or for profit, there's there are a lot of documents that get generated different records, emails, Goals. Meeting minutes.

****Meghan**** 00:02:58 Board decisions.

****Jess Birkin**** 00:03:00 Employment records, whatever. And different.

****Meghan**** 00:03:03 Laws sort.

****Jess Birkin**** 00:03:05 Of make the rules or dictate how long you have to keep each different kind of record. So a records or a data retention policy is really, really important to help nonprofits understand.

****Meghan**** 00:03:18 How.

****Jess Birkin**** 00:03:19 Long they need to keep things.

****Jess Birkin**** 00:03:21 And then anything that you don't legally need to keep, you could choose to destroy. And destroying old data and old records can be a really good practice. I mean, I think nonprofits tend to be toward the other side where they just, like, keep everything because they think somehow it needs to go into a museum someday because the work is super important and they're really passionate about it. But destroying old data is actually a good practice. Storage is cheap. Yes, you could just like, keep piling on cloud storage. For a lot of groups it wouldn't really matter. But when we do that, we give like cyber criminals more opportunities to get more information through ransomware attacks and things like that. And just purging old data periodically just keeps

things tidier, keeps it organized, and it can prevent you from getting dragged into litigation issues.

****Meghan**** 00:04:13 Yeah, that's interesting because yeah, from my perspective, it seems like a housekeeping thing, not something that has any real life importance. And I wouldn't have thought of it as a, you know, I.

****Jess Birkin**** 00:04:25 Think most people don't.

****Meghan**** 00:04:26 Write. I just think of like, I have a family member who saves every receipts she's ever had since, like 1978, and it's like she's been trying to clean it out. And I'm like, I feel like a lot of nonprofits have that same energy of just like, I don't know, could be important. We might as well just keep it. Yeah. Yep.

****Jess Birkin**** 00:04:43 No, totally. I like the auntie with the receipts because, you know, it's all that, like heat transfer papers. So she's keeping everything, but they're all blank.

****Meghan**** 00:04:51 All blank?

****Jess Birkin**** 00:04:51 Yeah. Because that that ink, like, goes away eventually. So you're just like, I've kept all of the receipt.

****Meghan**** 00:04:58 I don't even know what they say.

****Jess Birkin**** 00:05:00 It was disappearing ink.

****Meghan**** 00:05:02 Oh, okay. Well, all right, let's get into why this matters for nonprofits right now in 2025. So here is our listener question. I work at a prominent nonprofit that works directly with trans youth to help access resources.

****Meghan**** 00:05:17 I know that if the government really does start targeting nonprofits, my organization would be on the list. What can we do now to prepare? I don't want to lose my mind over a bunch of contingency plans, but I do want to protect our work and the folks that we serve.

****Jess Birkin**** 00:05:32 Yeah. This is this is a great question. And this is, you know, obviously, we're getting a lot of client questions that are in this same vein right now. I think executive directors and boards that are really thinking ahead and are trying to be prepared for, like, every possible outcome. This is something that is definitely coming up for folks. So what I normally would say is for small nonprofits, especially, the simplest data retention policy is seven years. Seven years generally hits all of the limits and then some. For all the like, legal documents you need to keep. That's kind of a good rule of thumb. If something is older than seven years old, you can probably get rid of it. If, though, you want to take a more aggressive approach and be purging more data sooner than you would want to have a policy that like line item any, let's say, personnel files, they need to be kept for between 1 and 3 years, depending on where you are.

****Jess Birkin**** 00:06:38 Well, you're going to want to purge those at the three year mark, and you're going to keep your meeting minutes for seven years. And so you're going to have a more detailed, more sort of like hard to follow needs, a bit of a system for each thing. You cannot just start dumping records that you legally need to keep, right? And you also cannot purge records or delete anything. If you're under investigation and have a pending litigation or, you know you have some knowledge that like there's going to be a request for information. In the legal world, we call that a discovery request. Or it's like, give us all your records on this topic. You can't destroy anything if.

****Meghan**** 00:07:25 You.

****Jess Birkin**** 00:07:26 Have that situation. So the best time to destroy stuff is now. Right.

****Meghan**** 00:07:31 Right. So this person who's saying that they work in with trans youth, which is one of those, you know, very hot button topics right now that, you know, the Trump administration likes to blow a lot of hot air about.

****Meghan**** 00:07:42 And it's like, if this actually does become something where this organization is being sued for something, they don't want to have all of their, you know, every single client or whatever that they've served in the past. Like their data to be made publicly available. That's really the fear here, right?

****Jess Birkin**** 00:08:00 And and that's that that's where the rub is, right? Because keeping data longer than it's required can create a paper trail that you wouldn't have needed to share otherwise. Because if you have it and there's an issue you have to hand it over, you can't destroy it, but you need to balance things, right. Because any organization, for profit or nonprofit should have some sort of business analysis. Like historical data can be really important. Keeping a CRM, a donors list, past participants because those are our future donors. Like, maybe we don't want to purge all of that information, but also if it, you know, the winds start to change in a certain direction, maybe in order to protect people's identity, we would want to destroy old participant data so that we don't have a list of all the trans people in the area or whatever.

****Jess Birkin**** 00:08:55 This is going to be something that depends on the organization and depends on their particular mission, their particular work. Obviously, if you're a non-profit medical clinic, you have HIPAA privacy compliance to contend with. If you're operating internationally, you may be subject to like GDPR. Right. So like whether.

****Meghan**** 00:09:16 You.

****Jess Birkin**** 00:09:16 Want that participant data, whether you want some of that historic data that's more than six years old that could be purged, that's going to be on a case by case basis. And so it's a little bit of like it depends. And as long as you don't have any current threats, you can always create a plan for like this is our standard data retention policy. And we go to like if we go to like threat level orange or threat level red in the world, then we have a sort of like second fallback position, which is in the event that these things start happening in the world. we would go to this more aggressive data purge policy. Could do something like that. But you can't get rid of stuff that you legally need to keep.

****Jess Birkin**** 00:10:05 So that's that's the main thing.

****Meghan**** 00:10:08 Yeah. And I feel like you have mentioned a couple of things in this, you know, explanation, but what do you need to keep. So you mentioned meeting minutes. You mentioned like employee personnel files. Like what about like emails like or things like that. Are there any legal requirements to keep sort of the, like just miscellaneous communications and things?

****Jess Birkin**** 00:10:28 No, there's really no I mean, again, unless you've been served with a lawsuit or complaint or criminal charge or something, you don't have to preserve your emails. But then there's just sort of the question of like, at what point, how far back do you need to have email in order to just be able to, like, do your job? I mean, just this morning, like I got named to Minnesota Monthly's top lawyers by my peers. And I was like, oh, that's so nice. And they're like, hey, you should buy this plaque. And I'm like, I think I already signed up for that and I'm searching for the email.

****Jess Birkin**** 00:11:05 Don't even get me started on how bad outlook search is. But it's funny because you do end up searching for old emails. And so like, at what point is it two years? Is it three years? Is it 18 months? Like, how old is like, I don't care about this anymore. I could delete every email that's older than this. I think that's going to depend. But certainly you can purge. You could purge every email that comes in. You could purge it immediately.

****Meghan**** 00:11:37 Yeah. Yep. I think that with nonprofits especially, people get a little bit. We've talked about this before, the feeling like they need to act like government in some ways. And I think that that sometimes leads to feeling like they need to paper the file, even though there is no file, and they're talking about like, what box lunch to bring to their, you know, volunteer group on Friday. And they just feel like they need to cover their trail no matter what it is, or even if that's not a top of the mind thought, it's just this kind of unconscious feeling that we need to be super transparent and aboveboard, and I need to be able to, like, show our work.

****Jess Birkin**** 00:12:22 Or like I need everyone to know that I said this.

****Meghan**** 00:12:26 100%, no matter what the motivation.

****Jess Birkin**** 00:12:28 Disagreed, you know, or whatever.

****Meghan**** 00:12:30 Exactly.

****Jess Birkin**** 00:12:31 And there's something to that as far as, like executing your fiduciary duties, there are some emails that could be very relevant to, you know, hiring, firing, making a key corporate decision. And I'm not saying you should purge those emails. If there's an email that becomes like a like a relevant record. Like, let's say, to a personnel file that shouldn't just live in your inbox forever. And until the unlikely event

that you need to pull the personnel file, you should be moving that email to the personnel file storage area as that's happening. So maybe that's important for me to clarify, because I do think people tend to just like the inbox is like a dumping ground of everything, and we don't move stuff out of there. Or people have like some insane 50 folder system in their inbox.

****Meghan**** 00:13:25 Speaking from personal experience, stress of what your inbox used to look like.

****Jess Birkin**** 00:13:29 Maybe calling myself.

****Meghan**** 00:13:31 Out there a little.

****Jess Birkin**** 00:13:32 Bit.

****Meghan**** 00:13:32 Yeah, yeah. And I think, I mean, the other part of this that we're not really acknowledging is that takes time in the nonprofit world when we're all trying to do more with less, and you don't want to be spending your time on anything that isn't directly mission related because you don't want any overhead, and you grab the idea that you need to spend time creating a file system that is reliable and that you can understand and that you know when things need to be destroyed, is sometimes a little bit of a tough pill to swallow when there is a lot of other work to be done. But as you see here, like, it can matter.

****Jess Birkin**** 00:14:11 It can matter. And, you know, it's like the the old adage about planting a berry patch. The first best time to plant a berry patch was 20 years ago. The second best time is today, right? It's like, yeah, it would have been great if you started out like having everything organized and systemic from the beginning.

****Jess Birkin**** 00:14:32 But the second best time is now. And the sooner you get through the pain of like going through this, setting your policy, determining how you're going to figure all this stuff out, the sooner you will have an organized system that makes sense and is compliant. So sometimes you just gotta suck it up.

****Meghan**** 00:14:51 Absolutely. Because this is part of the, like, very unsexy part of running a nonprofit, you know? Yeah. You're not directly handing out the meals to the homeless here. Like, this can feel not important in the grand scheme of things. And if you continue to ignore all the systems and administrative responsibilities, this nonprofit is not going to last forever. So it's just it's part of it's part of the deal. It's sometimes you got to do the boring stuff of saying everything before 2018 needs to be deleted in our inboxes and take the time to do that rather than ignore it forever.

****Jess Birkin**** 00:15:34 Well, and I'll just say this as my sort of final comment on the thing, you can groan and moan and like, be like, this sucks and do this now.

****Jess Birkin**** 00:15:44 Or you can wait until you have some burning fire pain, where you're finding out that you have not been retaining all of your employment records appropriately. And you know this because you got a nasty gram from a lawyer about an employee you fired, and now you're even more stressed out and you're in trouble. Yep. So you know. Yep, it's either pay the tax now or pay the tax later. And I would prefer to moan and groan with nothing actually bad happening.

****Meghan**** 00:16:19 Exactly. We all loved it.

****Jess Birkin**** 00:16:19 That's mean. That's just me.

****Meghan**** 00:16:21 Sometimes we gotta give ourselves the reason to complain. And this time it's going through all of your Google Drive files or whatever.

****Jess Birkin**** 00:16:28 So yeah, and you can also like work with an IT provider. There are plenty of IT consultants who will help you implement things like this. You don't have to do it manually one at a time. You know, like you can get help with this, so reach out if you need help. Well, what did we learn today, Megan?

****Meghan**** 00:16:47 All right, let's grab a few takeaways here.

****Meghan**** 00:16:49 First of all, you probably need a data retention policy. If you don't have one, it tells you how long you need to keep your stuff, and it can be more important than you think it is. The second data retention is not just about housekeeping. It's not just about, you know, making sure everything's tidy and clean. Like there are actual stakes in your data retention policies. And some of that has to do with potential litigation. This is sort of like planning for the rainy day. So your data is both an opportunity of your historical information and statistics and all that kind of stuff, but also a risk, because if you are served a request for information, you have to turn stuff over. And particularly for folks who are working in the hot button mission areas that are worried about coming under, you know, intense scrutiny or investigation from the government or anything like that. Now would be the time to get your data in order, so that you don't have to give over more information than you need to.

****Meghan**** 00:17:49 Is that it?

****Jess Birkin**** 00:17:50 Yes, absolutely. Yeah. I'll just say if you're like, where do I start? I believe we have an app for that on our website. So we'll put a link to that in the show notes. All right. Well Megan, as always, thank you for being here. And folks, if you enjoyed this episode, do me a huge favor. Share it with a friend. If you've got a friend at a nonprofit in a mission area that's under threat right now, just send them the link to this episode. It really does help us out, and it helps people find the show. If you have a

question or a story to share, we'd love to hear from you. So send me a note online at Charity Therapy Show. And thanks for listening.

About the Author



Hi, I'm Jess Birken.

I'm the owner of Birken Law Office, I help nonprofits solve problems so they can quit worrying and get back to what matters most – The Mission. I'm not like most attorneys, I actually have an outgoing personality, and – like you – I like to think outside the box. Most of my clients are passionate and have an entrepreneurial spirit. I'm like that too. My goal is to help you crush it. Getting bogged down in the minutia sucks the joy out of the important stuff. My clients want to do the work – not the paperwork.

Let's connect!

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