Records as Evidence is not the same thing as Records in Evidence

Basis of argument

Adequate records, kept as evidence of activity for all the various purposes of businesses, organisations, government or private persons, are not necessarily the same thing as admissible evidence in a court proceeding. We should not confuse the rules of admissibility of evidence with the everyday requirements for evidence which records should meet.

This is not to suggest that we should encourage or tolerate poor recordkeeping, or systems which do not fulfil the requirement to manage records so they are authoritative, credible, accessible and secure. Rather it is to point out that there are always matters to be tested in relation to the adequacy of the recordkeeping system which can impact on the admissibility of records in an actual court case. In any case the adequacy of a records system is determined by the requirements of the activity those records document, which can vary. The record requirements you have for managing the supermarket shopping are different from those required by the Department of Foreign Affairs for proof of identity and issue of a passport.

Records as evidence, then, is a requirement for all records to be properly useful. Records in evidence requires specific testing of individual examples and the most common testing ground is within legal structures. You can have documents but at best they are a trace of an action, and then a largely unknowable one. They can be tested in court as evidence using time consuming forensic and first hand testimony relating to them but no business has the time or desire to spend time doing that with the myriad of documents they use in their daily activities. Records can be used for many purposes, but their evidential value needs to be inbuilt, not constantly doubted.

It is because records can be used as evidence, not just in evidence, that records management offers benefits for organisations. The AS ISO 15489 –2002, Records Management describes the benefit of records management in the following terms:

“Records management governs the practice both of records managers and of any person who creates or uses records in the course of their business activities. Records management in an organization includes:

a) setting policies and standards;
b) assigning responsibilities and authorities;
c) establishing and promulgating procedures and guidelines;
d) providing a range of services relating to the management and use of records;
e) designing, implementing and administering specialized systems for managing records; and
f) integrating records management into business systems and processes.

Records contain information that is a valuable resource and an important business asset. A systematic approach to the management of records is essential for organizations and society to protect and preserve records as evidence of actions. A records management system results in a source of information about business activities that can support subsequent activities and business decisions, as well as ensuring accountability to present and future stakeholders.
Records enable organizations to
— conduct business in an orderly, efficient and accountable manner,
— deliver services in a consistent and equitable manner,
— support and document policy formation and managerial decision making,
— provide consistency, continuity and productivity in management and administration,
— facilitate the effective performance of activities through an organization,
— provide continuity in the event of a disaster,
— meet legislative and regulatory requirements including archival, audit and oversight activities,
— provide protection and support in litigation including the management of risks associated with the existence of or lack of evidence of organizational activity,
— protect the interests of the organization and the rights of employees, clients and present and future stakeholders,
— support and document current and future research and development activities, developments and achievements, as well as historical research,
— provide evidence of business, personal, and cultural activity,
— establish business, personal and cultural identity, and
— maintain corporate, personal or collective memory.” (AS ISO 15489, Part 1, s.4)

Do any of these benefits not depend upon the quality of records as evidence?

If anyone is having trouble separating records as legal evidence and records as ‘recordkeeping evidence’ think of the U.S War on Terror. They enlisted the support of other countries by demonstrating recordkeeping evidence against Al Qa’eda as a terrorist network, but the evidence may not have had ‘legal’ effectiveness at the time. They are having more trouble in relation to Iraq partly because questions are being raised in relation to whether the recordkeeping evidence is as strong.

The document as a record object, and aggregations of documents as a record object

Two basic propositions can be put forward as practical and simple ways of defining records.
• One was that records were documents plus metadata.
• The other was that records were an aggregation of documents maintained in the course of conducting business activities.

Consider two extracts from AS ISO 15489.

S.7.2 The characteristics of a record

7.2.1 General
A record should correctly reflect what was communicated or decided or what action was taken. It should be able to support the needs of the business to which it relates and be used for accountability purposes.

As well as the content, the record should contain, or be persistently linked to, or associated with, the metadata necessary to document a transaction, as follows:

a) the structure of a record, that is, its format and the relationships between the elements comprising the record, should remain intact;

b) the business context in which the record was created, received and used should be apparent in the record (including the business process of which the transaction is part, the date and time of the transaction and the participants in the transaction);

c) the links between documents, held separately but combining to make up a record, should be present.

Records management policies, procedures and practices should lead to authoritative records which have the following characteristics:
7.2.2 Authenticity
An authentic record is one that can be proven
a) to be what it purports to be,
b) to have been created or sent by the person purported to have created or sent it, and
c) to have been created or sent at the time purported.

To ensure the authenticity of records, organizations should implement and document policies and procedures which control the creation, receipt, transmission, maintenance and disposition of records to ensure that records creators are authorized and identified and that records are protected against unauthorized addition, deletion, alteration, use and concealment.

7.2.3 Reliability
A reliable record is one whose contents can be trusted as a full and accurate representation of the transactions, activities or facts to which they attest and can be depended upon in the course of subsequent transactions or activities. Records should be created at the time of the transaction or incident to which it relates, or soon afterwards, by individuals who have direct knowledge of the facts or by instruments routinely used within the business to conduct the transaction.

7.2.4 Integrity
The integrity of a record refers to its being complete and unaltered.

It is necessary that a record be protected against unauthorized alteration. Records management policies and procedures should specify what additions or annotations may be made to a record after it is created, under what circumstances additions, or annotations may be authorized, and who is authorized to make them. Any authorized annotation, addition or deletion to a record should be explicitly indicated and traceable.

7.2.5 Useability
A useable record is one that can be located, retrieved, presented and interpreted. It should be capable of subsequent presentation as directly connected to the business activity or transaction that produced it. The contextual linkages of records should carry the information needed for an understanding of the transactions that created and used them. It should be possible to identify a record within the context of broader business activities and functions. The links between records that document a sequence of activities should be maintained.

8.2 Records systems characteristics

8.2.1 Introduction
Records systems should support records that contain the characteristics identified in Clause 7.2. The systems should have the characteristics described in 8.2.2 to 8.2.6.

8.2.2 Reliability
Any system deployed to manage records should be capable of continuous and regular operation in accordance with responsible procedures.

A records system should
a) routinely capture all records within the scope of the business activities it covers,
b) organize the records in a way that reflects the business processes of the records’ creator,
c) protect the records from unauthorized alteration or disposition,
d) routinely function as the primary source of information about actions that are documented in the records, and
e) provide ready access to all relevant records and related metadata.

The reliability of the system should be documented by creating and maintaining records of systems operation. These records should demonstrate that the system satisfied the criteria listed above.
A records system should be responsive to changing business needs but any changes in the system should not have an impact on the characteristics of the records in the system. Similarly, when records are transferred from one records system to another, the transfer should be carried out in a way that does not adversely affect the characteristics of the records.

8.2.3 Integrity
Control measures such as access monitoring, user verification, authorized destruction and security should be implemented to prevent unauthorized access, destruction, alteration or removal of records. These controls may reside within a records system or be external to the specific system. For electronic records, the organization may need to prove that any system malfunction, upgrade or regular maintenance does not affect the records’ integrity.

8.2.4 Compliance
Records systems should be managed in compliance with all requirements arising from current business, the regulatory environment and community expectations in which the organization operates. Personnel creating records should understand how these requirements affect the business actions they perform. Records system compliance with such requirements should be regularly assessed and the records of these assessments retained for evidential purposes.

8.2.5 Comprehensiveness
Records systems should manage records resulting from the complete range of business activities for the organization or section of the organization in which they operate.

8.2.6 Systematic
Records should be created, maintained and managed systematically. Records creation and maintenance practices should be systematized through the design and operation of both records systems and business systems.

A records system should have accurately documented policies, assigned responsibilities and formal methodologies for its management.