

October 2006
Volumn 4, Issue 2



No October Chapter Meeting

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There will not be an October monthly Chapter meeting in lieu of ARMA International's 51st Annual Conference & Expo in San Antonio, Texas, October 22-25.

This Year's Theme... The Business of Managing Records and Information.

Are your records and information being managed consistently and effectively throughout the enterprise? Are you up to date on the latest technologies and best practices? Are your RIM, IT, legal, and compliance departments working together on e-mail management and electronic records management in general?

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- Information Technology
- Career Development



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“To Advance the Professional Practice of Records and Information Management”

President's Message

By Daryl R. Downs
Chapter President

In recent weeks, members of our executive board and executive committee met together to discuss and prepare a 2006-2007 Strategic Plan for our chapter. Ironically, our meeting date coincided with a rare visit from U.S. President George W. Bush to Salt Lake City, and we had no strategic plan for dealing with the traffic restrictions in downtown Salt Lake City that morning. Nevertheless, all our attendees and our facilitator eventually arrived at our downtown location, and we held a very successful strategic planning session.

I have completed the final version of the strategic plan, and

it is presented here, in the newsletter, for your information. The strategic plan will also be posted on our chapter website at www.armautah.org/strategicplan.htm. We hope that each member will study the plan and then participate with us, your chapter leaders, in achieving our goals as a chapter. If you have talents that you would like to share with our chapter, please contact me or another board member. We would be very pleased to have talented individuals help us improve the quality of our chapter.

One final note. From October 22-26, 2006, some of our members will have the opportunity to attend the ARMA International Conference and Exposition in San

Antonio, Texas. Unfortunately, not all our members can attend this conference. As your chapter president, I would encourage every member who will be in attendance to take seriously the responsibility to attend the sessions, to gather information, and then to return and share your new knowledge with the other members of our chapter. In this way, all our members will benefit from the conference.



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October 8th - October 14th Fire Prevention Week

Fast Facts

- Between 1999-2002, there were 114,000 reported home fires associated with cooking equipment on average per year, resulting in an annual 290 deaths and 4,380 injuries.
- Unattended cooking is the leading cause of home cooking fires.
- Three in 10 reported home fires start in the kitchen — more than any other place in the home.
- Two out of three reported home cooking fires start with the range or stove.
- Electric ranges or stoves have a higher risk of fires, injuries and property damage, compared to gas ranges or stoves, but gas ranges or stoves have a higher risk of fire deaths.

Smoke Alarm Facts

- A 2004 U.S. telephone survey found that 96% of the households surveyed had at least one smoke alarm.
- Roughly half of home fire deaths result from fires in the small percentage of homes with no smoke alarms.
- Homes with smoke alarms (whether or not they are operational) typically have a death rate that is 40-50% less than the rate for homes without alarms.
- In one-quarter of the reported fires in homes equipped with smoke alarms, the devices did not work. Households with non-working smoke alarms now outnumber those with no smoke alarms.
- Why do smoke alarms fail? Most often because of missing, disconnected or dead batteries.

Remember to change the battery in your smoke alarm twice a year. every time you change you clock, once in the Sping and once in the Fall.



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Records Disposal and the Law:

Trends to Watch in 2006 - White Paper - Part II

By: Charles H. Kennedy, Counsel,
Morrison & Foerster, LLP

I. NEW STATE LAWS REQUIRING SECURE DATA DISPOSAL

A. State Disposal Laws Already on the Books

The records disposal laws adopted to date by nine states, including high population states like New Jersey, Texas and California, will have an impact far beyond the borders of those jurisdictions.⁸ In fact, we can expect those states to enforce their laws against any company, wherever located, that maintains information containing those states' residents.

Among other things, the nationwide reach of state disposal laws makes shredding the only prudent option for disposal of paper records that contain personal information. With one exception, all of the state statutes specify the same three disposal methods: "shredding," "erasing," or otherwise "modifying the personal information in the records" to make it unreadable or undecipherable.⁹ Two of these prescribed methods - "erasing" or "modifying" personal information - can effectively be applied only to electronically-stored data. This leaves only "shredding" as a permissible disposal method for paper records. Accordingly, the eight state laws that require companies to shred, erase or modify personal data are often referred to, quite accurately, as "must-shred" laws as they apply to paper records.

The only exception to the "must-shred" approach is North Carolina, which defines reasonable disposal measures to include "[i]mplementing and monitoring compliance with policies and procedures that require the burning, pulverizing, or shredding of papers containing personal information so that the information cannot practicably be read or reconstructed."¹⁰

North Carolina's permitted alternative disposal methods of "burning" and "pulverizing," however, are not practical options for companies that have - or will obtain - personal information of residents of Arkansas, California, Colorado, Georgia, Montana, New Jersey, Texas, or Washington. If a company maintains personal information of residents of those states - and companies with a national marketing footprint almost certainly *will* have such data - it must shred paper records containing that information or face possible enforcement action. Accordingly, national companies that wish to comply with all applicable state disposal laws have two options: they can undertake the pointless task of using different disposal methods for information concerning residents of different states, or they can shred all of their paper documents that contain personal information. In effect, "must shred" is now the national standard for disposal of sensitive paper records.

B. State Disposal Legislation Introduced in 2005

The proliferation of state records disposal laws shows no sign of abating and likely will continue in the 2006 sessions of the various state legislatures. Bills introduced in 2005 confirm this trend, and a number of those bills specify or endorse shredding as a proper or prescribed method for disposing of records that contain personal information. For example, a bill introduced in the Illinois General Assembly would provide that "each agency's program for efficient management of records [must] require shredding as the means of destroying or disposing of personal records unless otherwise required by the act."¹¹ Similarly, a bill introduced in the New York State Assembly would require "any medical business, tax preparation business

or other business person to properly dispose of records containing personal information through one or more of the following means: shredding, destruction, modification, or other reasonable action to ensure that no unauthorized person will have access

to the personal information...."¹² Other bills that mandate proper disposal of paper documents containing personal information were introduced in the legislatures of Maryland and Pennsylvania.¹³

In light of the continuing public and political concern with breaches of data security, many more states can be expected to adopt document disposal legislation in the coming year.

II. PROSPECTS FOR A FEDERAL BREACH NOTIFICATION LAW

Since 2003, when California adopted the first law requiring businesses to notify consumers of breaches of network security involving stored personal information, 22 other states have enacted similar legislation. As a result, U.S. businesses must monitor and comply with a wide variety of breach notification obligations, and the compliance burden this situation imposes is likely to increase as more states adopt breach notification laws in the New Year.

In 2005, Congress discovered that breach notification laws are popular with the public and moved accordingly. Several breach notification bills were introduced in the House and Senate, and although none of those bills became law, a new federal statute may be passed in 2006.¹⁴ If such a federal law is not enacted, or if that law fails to preempt more restrictive state statutes, American business will continue to be burdened with the task of compliance with dozens of breach notification laws.

"To Advance the Professional Practice of Records and Information Management"

Records Disposal and the Law... Continued

A. State Breach Notification Laws

The state breach notification laws already on the books create a crazy quilt of obligations for U.S. business. All of those statutes require business and/or public organizations to report certain occurrences involving defined categories of personal information, and all of those statutes impose penalties for failure to comply. The laws vary widely, however, in significant ways, including the entities to which they apply, the types of information they are intended to protect, and the level of the security breaches that give rise to a duty to report.

For example, some of the state laws apply to all persons or businesses within the state that own or license personal information (although they may exempt financial and healthcare organizations already subject to federal data security regulations).¹⁵ Other states limit their breach notification requirements to specially defined entities, such as "information brokers"¹⁶ and "data collectors."¹⁷ Still other laws apply to state agencies and political subdivisions.¹⁸

Equally confusing is the range of "personal information" categories to which the breach notification laws apply. For example, most of the statutes apply to "computerized" personal data; but North Carolina's law requires notification of breaches of the security of "personal information in any form (whether computerized, paper, or otherwise)."¹⁹ Therefore, businesses that experience security breaches involving only paper records must report those incidents if North Carolina residents will be affected. (Businesses also must be aware that failure to report an incident involving paper records may be challenged by the FTC and state authorities as an unfair trade practice - and may form the basis of private lawsuits by affected consumers.)

Similarly, most of the statutes define the "personal information" to which they apply as including a person's name combined with one or more standard items, such as a Social Security number, driver's license number, or financial account numbers and access codes.²⁰ Some laws, however, cover additional categories of data, such as date of birth, mother's maiden name, medical history and digital signatures.²¹

Even more confusing are the states' different definitions of the circumstances that constitute reportable security breaches. This element of the statutes is especially important to both businesses and consumers. At one extreme, consumers will not benefit from (and will learn to ignore) repeated notices of trivial system incidents that create no real risk of identity theft or other harm. At the other extreme, notifications that are withheld until harm to consumers is confirmed may be "too little, too late" to prevent losses. Ideally, breach notification laws will strike a balance between these extremes, by only requiring companies to give notice of breaches that create a significant, if less than certain, risk that personal information has gotten into the wrong hands and will be misused.

Most of the notification laws now on the books resolve this dilemma by erring on the side of more notice rather than less. The typical statute borrows from California, which requires disclosure of "any breach of the security of the system following discovery or notification of the breach in the security of the data to any resident of California whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person."²² Breach of the security of the system," in turn, is defined by California and most other states as "unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information

maintained by the person or business."²³

Under this "California" standard, the duty to notify is triggered whenever there is a risk that an unauthorized person has *acquired* personal data, even if there are no specific facts to suggest that the information will be used to harm consumers. For example, a company might discover the theft of a laptop computer that contains unencrypted personal information. The company might have no reason to believe that the thief was interested in the stored information. Nevertheless, if the laptop contains personal information of residents of California, or of any of the other states that have adopted the California approach, notification of the incident likely would be required simply because an unauthorized person - knowingly or not - now has access to the information stored in the laptop's hard drive.

Some states, however, let businesses decide not to disclose certain breaches that might have resulted in unauthorized acquisition of personal information. Specifically, a few states have adopted "risk of harm" statutes that require notice only if the breach is reasonably likely to result in criminal activity or other harm to consumers.²⁴ A company in such a "risk of harm" state might, for example, choose not to disclose the theft of a laptop that was promptly recovered from a local pawnshop, on the assumption that the thief was simply looking for quick cash and had neither the time nor the motivation to acquire and misuse the personal data stored on the machine. (Of course, if the thief later turns out to have downloaded the data and turned it over to an identity theft ring before pawning the laptop, the company's decision will be liberally second-guessed by affected consumers and state authorities.)

More state breach notification laws

Records Disposal and the Law... Continued

were proposed in 2005, and more will be enacted in 2006.²⁵ For at least two reasons, however, 2005 saw a strong movement in Congress to pass a federal notification law. One set of pressures came from consumer groups that want to replace or reinforce the patchwork of state laws with a universal, California-type notification requirement. Other pressures came from business interests that prefer a federal "risk of harm" law that preempts more restrictive state obligations. These contradictory demands produced a number of bills and no definitive action, but the battle to craft a national breach notification law will continue in 2006.

The Article is provided courtesy of Iron Mountain (www.ironmountain.com)

FOOTNOTES

1 16 C.F.R. Pt. 682.

2 *Fair and Accurate Credit Transactions Act of 2003*, Pub.L. 108-2159, 111 Stat. 1952, 15 U.S.C. § 1681w(a)(1).

3 16 C.F.R. Pt. 682, § 682.3(b)(1).

4 *Id.* § 682.3(b)(3).

5 *Arkansas Code Annotated* §§ 4-110-103 et seq.; *California Civil Code* §§ 1798.80 et seq.; *Colorado Revised Statutes* § 6-1-713; *Official Code of Georgia Annotated* §§ 10-15-1 et seq.; *Montana Code Annotated* § 30-14-1702; *New Jersey Statutes* §§ 56:8-161 et seq.; *North Carolina General Statutes* § 75.61 et seq.; *Texas Business & Commercial Code* § 48.102; *Revised Code of Washington* § 19.215.

6 *See, e.g., Arkansas Code Annotated* § 4-110-104(a); *California Civil Code* § 1798.81; *Official Code of Georgia Annotated* § 10-15-2; *Montana Code Annotated* § 30-14-1703; *New Jersey Statutes* § 56:8-162; *Texas Business & Commercial Code* § 48.102(b); *Revised Code of Washington* § 19.215.010(2).

7 *Arkansas Code Annotated* §§ 4-110-103 et seq.; *California Civil Code* § 1798.82; *Connecticut Senate Bill S.B. 650* (2005, effective Jan. 1, 2006); 6 *Delaware Code* §§ 101 et seq.; *Florida Statutes* § 817.5681; *Official Code of Georgia Annotated* §§ 10-10911 et seq.; 815 *Illinois Code* § 530/10(a); *Louisiana Revised Statutes* §§ 51:3073 et seq.; *Sec. 1.10 Maine Revised Statutes Annotated* ch. 210-B §§ 1347 et seq.; *Minnesota Statutes* § 325E.61; *Montana Code Annotated* § 30-14-1704; *Nevada Revised Statutes* Sec. 17, Title 52,

§ 24; *New Jersey Statutes* § 56:8-163; *New York Consolidated Law Service General Business* § 899aa; *North Carolina General Statutes* § 75-65; *North Dakota Century Code* § 51-30-02; *Pennsylvania Senate Bill No. 712*, Session of 2005, *Breach of Personal Information Notification Act* (effective July 1, 2006); *Rhode Island General Laws* § 1-49.2-3; 2005 *Tennessee Public Acts* 473, amending Title 47, Chapter 18, Part 21 of *Tennessee Code Annotated*; *Texas Business & Commercial Code* § 48.103; *Revised Code of Washington* § 19.255.010.

8 If a company is a financial institution, medical business or tax preparation business, it also is subject to Wisconsin's "must-shred" law. *Wisconsin Statutes* § 895.505. Some of the state disposal statutes also apply to governmental agencies. *See, e.g., Colorado Revised Statutes* § 6-1-713(1) (applies to "each public and private entity in the state"); *New Jersey Statutes* § 56:8-162 (applies to any "business or public entity"); *Revised Code of Washington* §§ 19.215.020(1), 19.215.010(2) (applies to any "entity," defined to include "a sole proprietor, partnership, corporation, limited liability company, trust association, financial institution, governmental entity, other than the federal government, and any other individual or group, engaged in a trade, occupation, enterprise, governmental function, or similar activity in this state, however organized to operate a profit." Accordingly, government agencies, no less than private businesses, should be aware of their obligations under the records disposal laws of their states.

9 *Arkansas Code Annotated* § 4-110-104(a). 10 *North Carolina General Statutes* § 75.64(b).

11 *Illinois General Assembly, House Bill HB 4229*, synopsis as introduced, available at http://www.ilga.gov/legislation/BillStatus_pf.asp?DocNum=4229&DocTypeID=HB&LegI

12 *New York Assembly Bill A08456*, <http://assembly.state.ny.us/leg/?bn=A08456>.

13 *Maryland House bill 1588* introduced March 8, 2005 by Delegate Moe, summarized at *State Net Maryland*

Bill Tracking, 2005 *Bill Tracking MD H.B. 1588*; *General Assembly of Pennsylvania House Bill No. 1921*, Session of 2005, referred to Committee on Commerce August 18, 2005.

14 *See, e.g., S.1332, Personal Data Privacy and Security Act of 2005*; *S.1789, Personal Data Privacy and Security Act of 2005*; *S.1216, Financial Privacy Breach Notification Act of 2005*; *S.1594, Financial Privacy Protection Act of 2005*; *S.768, Comprehensive Identity Theft Prevention Act*; *S.1408, Identity Theft Prevention Act*; *S.751, Notification of Risk to Personal Data Act*; *S.115, Notification of Risk to Personal Data*

Act; *H.R. 3997, Financial Data Protection Act of 2005*; *H.R. 3140, Consumer Data Security and Notification Act of 2005*; *H.R. 3374, Consumer Notification and Financial Data Protection Act of 2005*; *H.R. 3375, Financial Data Security Act of 2005*; *H.R. 1069, Notification of Risk to Personal Data Act*. 15 *See, e.g., Minnesota Statutes* § 325E.61(1)(a); *Texas Business & Commercial Code* § 48.103(b); *Arkansas Code Annotated* § 4-110-105.

16 An "information broker" is defined in Maine as "a person who, for monetary fees or duties, engages in whole or in part in the business of collecting, assembling, evaluating, compiling, reporting, transmitting, transferring or communicating information concerning individuals for the primary purpose of furnishing personal information to nonaffiliated third parties." *Maine Revised Statutes Annotated* 210-B § 1347(3). *See also Official Code of Georgia Annotated* § 10-1-911(2).

17 In Illinois, a data collector "may include, but is not limited to, government agencies, public and private universities, privately and publicly held corporations, financial institutions, retail operators, and any other entity that, for any purpose, handles, collects, disseminates, or otherwise deals with nonpublic personal information." *Illinois H.B. 1633, Public Act 94-36*, § 5. 18 *See, e.g., California Civil Code* § 1798/29(a); *Burns Indiana Code Annotated* 4-1-11-5(a); *Minnesota Statutes* § 13.055(2); *Ohio Revised Code Annotated* § 1347.12(B)(1). 19 *North Carolina General Statutes* § 75-65(a). Businesses should be aware that breaches of the security of paper records, although not technically covered by the breach notification laws of most states, must be disclosed if any North Carolina residents are affected. Also, failure to report a breach of paper records may be challenged by the FTC or the states as an unfair trade practice, and may form the basis of private lawsuits by affected consumers.

20 *See, e.g., California Civil Code* § 1798.29(e); 6 *Delaware Code* § 101(4); *Florida Statutes* § 817.5681(5); *Texas Business & Commercial Code* § 48.002(2)(defining "sensitive personal information").

21 *See, e.g., Arkansas Code Annotated* § 4-110-103(7); *North Carolina General Statutes* § 75-65(a); *North Dakota Century Code* § 51-30-01(2).

22 *California Civil Code* § 4-110-105(b). 23 *Id.* § 1798.82(d).

24 *See, e.g., Florida Statutes* § 817.5681(10); *North Carolina General Statutes* § 75-61(14); *Revised Code of Washington* § 19.255.010(10)(d).

25 *See, e.g., Alaska House Bill 270* (introduced Apr. 15, 2005); *Massachusetts Senate Bill 2058* (2005).

"To Advance the Professional Practice of Records and Information Management"

Utah-Salt Lake Chapter - Strategic Plan 2006-2007

This Utah-Salt Lake Chapter Strategic Plan for 2006-2007 will assist the new chapter board in achieving the goals described herein and will help ensure that the Utah-Salt Lake Chapter of ARMA International educates its fellow professionals and meets the records management needs of the future.

The following board members of the chapter convened on 31 August 2006 to outline a strategic plan:

Daryl R. Downs, President
 Sonya Kintaro, Past President
 Rori Clark, Vice-president
 Patricia Mcferson, Secretary
 Daye Abbott, Treasurer
 Tom Benson, Corporate Liaison
 Bruce Bailey, CRM, Education Director/ICRM Liaison
 Daryle Bartholomew, Hospitality Director
 Craig Young, Membership Director
 Mark Buchanan, Membership Committee
 Chris Calton, Website Coordinator

Our Chapter's Region Coordinator, Michael W. Goode, served as a facilitator for our strategic planning session.

Mission Statement

TO ADVANCE THE PROFESSIONAL PRACTICE OF RECORDS AND INFORMATION MANAGEMENT

Strategic Plan

The chapter's strategic plan is structured in the following manner: The first level states a goal. The second level identifies the affected program, process or content. The third level lists specific tasks to be performed to achieve each goal.

Goals

- **Clarify Chapter Organization and Procedural Requirements**
 - Bylaws and Constitution
 - Create a Bylaws and Constitution Subcommittee consisting of 3 executive board members and 2 at-large chapter members
 - Evaluate and revise the bylaws and constitution, as needed, and provide clarification on specific procedures
 - Submit proposed changes to chapter members for review and comment
 - Submit proposed changes to the executive board for approval and implementation
 - **More Efficiently Share Chapter Information**
 - Chapter Website
 - Assess the cost of providing the website and the value derived
 - Budget for the cost of a website redesign
 - Redesign and utilize the www.armautah.org website as the single digital repository for most information or content related to chapter business
 - Integrate all content from the ARManagement newsletter into the redesigned chapter website
 - Enhance the website in the following areas: records management content, chapter communications, calendaring and information updates, Utah-Salt Lake Chapter/ARMA branding, public relations, visual appeal, ease of use, and advertising
 - Evaluate the redesigned website at each scheduled board meeting
 - Provide the website content coordinator with an approved list of website links and content for distribution
 - Establish rules and a rate schedule for website use and advertising
 - Gather and assess statistical information from the website
 - Board Member Chapter Binder
 - Evaluate binder contents to be moved to www.armautah.org and determine if there will be limited access or full access to all information
 - Content to be evaluated may include the following items: Links to ARMA membership information and other ARMA International information, a board member's term of office, board position descriptions, budget, bylaws and constitution, chapter retention schedule, code of conduct, financial statements, meeting minutes
 - Migrate appropriate content
 - Develop a schedule and a process for members to direct information to the website content coordinator
- **Expand the Influence of the Chapter in Business and in Government**
 - Public Relations
 - Make use of ARMA International public relations experience and use its booth, banners, and other available items to increase the visibility of the chapter in the business community
 - Determine costs to print and distribute printed bro-

chures that explain the purpose and value of the chapter

- Evaluate print, radio, and other advertising costs and benefits
- Correlate public relations efforts with chapter programming and seminar committees
- Leverage chapter visibility during National Records and Information Management Month in April
- Budget for both public relations and government relations expenditures
 - Government Relations
- Create and fill the position of government liaison
- Use the government liaison to represent the chapter on records issues that affect government entities
- **Develop Stronger Leaders and Members**
 - Leader Development
 - Recruit and involve at least 5 new members in committee/subcommittee or other leadership assignments
 - Assign a chapter leader to mentor each individual with new leadership assignments
 - Member Development
 - Improve each new member's initial experience with the chapter
 - Quickly identify new members and distribute a high quality member packet to them
 - Develop a simple program for introducing and involving new members in the chapter
 - Measure member participation, retention, and recruitment efforts
 - Evaluate the need, viability, and benefit of a records management lending library with books for member use

- **Continually Improve Programming**
 - Chapter Meeting Programs
 - Correlate program development to meet chapter needs
 - Under the direction of the vice-president, evaluate and develop ideas for 7 chapter meetings that will improve the practical records management skills of chapter members
 - Provide programs adapted to meet the needs of novice, intermediate, and advanced records managers
 - Provide programs that meet the needs of both public and private sector organizations
 - Assess the potential benefits of sharing programming with a larger audience by expanding beyond Wasatch Front meeting locations
 - Develop a process for gathering and measuring overall program benefit
 - Organize the first, or September 2007, chapter meeting for the benefit of the incoming 2007-2008 vice-president
 - Seminar
 - Appoint a seminar committee in November of the non-seminar year
 - Carefully correlate the seminar topic to address current issues in the records management and local business community
 - Use the seminar committee to make advance preparations for seminar content, vendor sponsorship, publicity, payment options, locations, dates, accommodations, and other logistical tasks
 - General Programming
 - Evaluate and track the cost of creating programming and presenting it.

- Develop a fee schedule for both member and nonmember attendees at chapter meetings, workshops, and the all-day seminar
- **Organize and Manage the Chapter's Records and Make Preparations for a Written History of the Utah-Salt Lake Chapter**
 - Special Projects/Community Service
 - Select and appoint a chapter historian for 2006-2007
 - Organize and appoint a Historical Committee
 - Create an annual report for the 2006-2007 Chapter year
 - Inventory all existing Chapter records
 - Develop a specific retention and disposition schedule for Chapter records
 - Develop a strategy for retaining historical chapter information permanently
 - Consider the Chapter of the Year requirements as a guide for important items that represent the Chapter
 - Create a specific plan for the writing of a history of the Utah-Salt Lake Chapter of ARMA International

Conclusion

The Utah-Salt Lake Chapter is committed to the practical improvement of the chapter, its members and the records management profession.

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This Newsletter is mailed monthly to over 60 records and information management professionals in the Utah-Salt Lake Chapter area, as well as professionals in other ARMA Chapter areas. Opinions are those of their authors and do not necessarily reflect the official policy or opinions of ARMA International or the local chapter.

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