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Is it time for a more modern records retention schedule?

- » Redesign your records retention schedule to enable compliance of electronic information with newer legal and business requirements.
- » Update the schedule to cover all types of records across all types of media, including email, social media, and text messages.
- » Use your schedule to develop consensus with the business on what to save.
- » Make your schedule easy and intuitive for your employees to use.
- » Design your schedule so retention and disposition can be automated through technology.

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Today organizations are inundated with paper and electronic information, with emails and other types of data that are overwhelming data storage systems. At the same time, the legal and regulatory recordkeeping environment



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is becoming stricter, and both global and regional privacy requirements are mounting. Most organizations today have records management policies and processes to govern document and data retention and disposition, but in many cases, these

policies are poorly applied to electronic information. This compliance gap between policies and records implementation is driving compliance risks and increasing costs. It's time to rethink the traditional records retention policy and schedule and create a more modern, compliant, and easier-to-execute policy.

Information has shifted from paper to digital media

According to the Association of Records Managers and Administrators (ARMA), more than 90% of all records today are created or received in electronic format. Traditional records retention schedules were designed around manual processes for the retention and disposition of paper records. Their implementation consisted of sorting paper documents into offsite storage boxes. Electronic information, however, is different. It is more voluminous, stored differently, shared differently, and nearly everyone is likely to be involved in classifying it as a record. It is clear that how the schedule is used (and by whom) is changing.

Paper-centric schedules tend to be long and complex. This complexity worked when it was someone's full-time job to sort paper. It does not work when records, to some extent, need to be classified and handled by nearly everyone in the organization. Traditional schedules that have

thousands of record types across many dozens of pages are just not followed.

We have seen that one of the largest contributing factors of poor records management for electronic information has its root cause in a poor records retention schedule design. These traditional schedules have been confusing and hard to follow:

- ▶ They are outdated with an emphasis on paper records management.
- ▶ They focus only on records with legal or regulatory requirements, not on records that have business value.
- ▶ They were created without consideration of business needs.
- ▶ They are longer—some have thousands of lines for every single record in the organization.
- ▶ They have a heavy emphasis on citations (citations are necessary for legal, but they should not be the primary focus of a retention schedule).

Finally, the traditional view was that longer and more detailed schedules were somehow more compliant and would better stand up to the scrutiny of courts and regulators. The case law during the past ten years has told an opposite story. Courts and regulators have come down on companies—not for how detailed their policies were or were not, but rather for their failure to execute them. Courts are much less interested in long, detailed schedules than they are in how companies are following them.

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Lack of an effective schedule increases risks and costs

These practices need not only be compliant with legal and regulatory recordkeeping requirements, but their implementation—or lack thereof—impacts a number of other compliance regimes, legal processes, and business practices. For example, the effectiveness of a company's records retention policy and schedule sometimes only comes to light during litigation. During the discovery process, companies often find in painful detail how much they are over-retaining information, especially electronic documents, such as files and emails.

This over-retention drives up costs and risks of discovery. Worse, any gap between what a company said it was going to do, as stated in its records policy and schedule, and what it actually is doing can be exploited by opponents in litigation who claim that if the company is under-retaining any given record type, certainly this must be due to spoliation. Conversely, if

a company is over-retaining, opponents' counsel may argue that they must have a de facto "save everything" policy. They press for discovery to be expanded, because the company must have more relevant documents somewhere. Early on companies find themselves on the defensive, and this can set the tone for the entire lawsuit.

Moreover, many organizations are seeing their records management practices affect their recordkeeping programs. The General Data Protection Regulation and the California Consumer Privacy Act allow retention

Table 1: Types of retention compliance

Retention Compliance – Are we following all the rules?				
Immature	Limited	Essential	Proactive	Enabling
No legal basis or regulatory compliance. No inventory of information types. Deletion not supported in policy.	Addresses general legal and regulatory requirements	Addresses both general and industry-specific legal and regulatory requirements	+ Addresses country-specific record requirements	+ Addresses record and explicit non-records in a prescriptive manner

of business records, but also discourage retention of non-records containing sensitive information. Unstructured data linter files share desktops, and this ongoing accumulation makes controlling and managing privacy—and other sensitive information—both expensive and difficult.

It’s time to rethink records retention schedules.

Attributes of a modern schedule

Companies need a better approach to records management led by a modern, compliant, and easier-to-execute records retention schedule. At the highest level, a good schedule provides the foundation for an effective records and information governance program. A modern schedule not only drives compliance, but also saves time and effort on downstream discovery, privacy, disposition, and other compliance initiatives. Most important, it can be a boon for the business, making high-value information more accessible and easier to share.

Retention compliance

Do your retention policy and schedule follow all the rules? An immature retention policy and schedule do not consider the rules, do not provide the legal basis for retention periods, and do not mandate disposition of expired information (see Table 1). As a schedule

matures, it should address general legal and regulatory requirements as well as any industry-specific regulations. For global companies, the most mature schedules include country-specific retention requirements.

But it doesn’t stop there! A good policy should clearly define “What is a record?” and “What is *not* a record?” Without these definitions, employees are less likely to be compliant when trying to follow the policy and schedule. Likewise, giving employees permission to dispose of records is very important. Your policy should be clear in stating that when records expire or are no longer needed, employees *must* dispose of them.

Comprehensiveness

Does your schedule represent all of the unique records in the organization? Companies often try to take shortcuts by copying from industry templates or sample schedules that purport to include all the records a company in that industry should have. These types of schedules really do your organization a disservice, because even though you may be in a similar industry, your organization has unique qualities that other companies in your industry may not share.

It is important to gather as much information about the records you have (see Table 2). The more data you have, the more

Table 2: Record retention management

Comprehensiveness – Have we identified all the records?				
Immature	Limited	Essential	Proactive	Enabling
Uses industry guidelines based on information typical for this type of company	Information inventory is created from a list of what other companies have	Inventory is based on questioning employees, including newer document and record types	+ Wide-reaching inventory across many roles and business units	+ Full inventory of all information types is based on open question review of what employees actual have, assuring all actual record content is captured

comprehensive and strong your retention schedule becomes. There are a number of ways to gather this information, including sending surveys to employees or conducting interviews. Using a hybrid approach is perhaps the most effective method for collecting record information. Start with small group interviews from each functional area, and then follow up with a survey to validate the results of the interview. The end result will be a customized schedule that reflects your business operations and requirements as well as an overall information-types inventory. This process also helps to build consensus, because the business feels they have been

heard, and minimizes the potential pushback when the new schedule is rolled out.

Media

Does the schedule look across all media formats where records may exist? The oldest and often the least mature schedules address only paper or a subset of the media present in the organization. By making a comprehensive list (i.e., an information-types inventory) of all the places things might live—paper, electronic in all of its different forms (e.g., CD/DVDs, USB drives, email, social media)—you will be well on your way to making sure your schedule is media-agnostic (see Table 3). Don't

Table 3: Storage media management

Media – Have we looked across all media where records may exist?				
Immature	Limited	Essential	Proactive	Enabling
Policy addresses only paper records	Addresses paper and email as its own record class	Addresses information and records agnostic of the medium upon which a record exists	+ Is based on a thorough review of all content, regardless of media	+ Addresses all information types on all media across all systems and locations

forget about physical items that may qualify as records, such as lab specimens at life science companies or even shoe design samples at shoe manufacturers. A more mature schedule that includes all media types will help change the mind-set that your schedule only applies to paper records.

Clarity

Do your retention policy and schedule clearly define “What is a record?” and “What is *not* a record?” Likewise, do employees understand what records must be kept and what can be destroyed? Finally, does your schedule specify retention requirements, or are many categories left as indefinite? The least mature policies do not define records or give incomplete definitions.

Here are some tips to make your retention policy and schedule clearer and more understandable.

- ▶ Give explicit definitions of records and non-records. Explain to employees what specific records must be kept, and what you give them permission to dispose of when the records have met their retention requirements or are no longer needed.
- ▶ Use terms and examples familiar to employees, not generic record types pulled from industry-related templates. Leverage

the information collected during the interview/survey process to populate the schedule with meaningful examples.

- ▶ Include “non-records” as a record category. Although it may be controversial, it improves clarity for employees. Your schedule is made up of the records employees *must* keep, but nowhere are there examples of the records they *do not* need to keep.
- ▶ Reduce reliance on the generic active (ACT) period or ACT plus current year (CY) for dictating event-based records. Where possible, specify the triggering event (e.g., termination of employment + 6 years, or expiration of license + 3 years) to give employees a better understanding of the requirement.

Consensus

Often a records initiative is driven by one group in the company, such as Legal or Compliance, and little effort is made to engage the rest of the business. The result is rogue business units who either refuse to follow it or push back on its requirements. Such efforts are often seen as “Legal poking its nose in our business” or “encroaching on our territory” and are therefore seen as unwelcome.

Table 4: Definitions

Clarity – Are we being clear and prescriptive about what is and is not a record?				
Immature	Limited	Essential	Proactive	Enabling
Policy fails to define Records	Policy fails to define Non-Records; Schedule includes confusing acronyms (ACT, CY, etc.)	Policy explicitly defines Records / Non-Records	+Schedule includes specific examples of Non-Records that should not be retained	+Schedule clearly defines triggers for event-based records

A consensus-driven schedule development process engages with the various business stakeholders, making the case for why a policy and schedule are needed, and gaining support for its enforcement.

Some of the best ways to increase consensus are:

- ▶ **Involve the business in the entire schedule development process.** Create a cross-functional project committee or steering committee to allow the whole organization an opportunity to be heard. Get input for your information-types inventory to create the schedule and validate the results to get feedback.
- ▶ **Learn about what people are actually doing with their records.** Otherwise the schedule may not reflect reality. Include both “Big R” and “Little R” records—records that need to be retained for legal or regulatory reasons and those that may not have legal requirements but definitely add business value to the organization.
- ▶ **Negotiate.** Letting some groups keep a few narrow record classes longer in order to keep the majority of records a shorter period of time will improve compliance and buy-in.

Usability

The most practical schedules provide a “Goldilocks” approach to retention schedules: just enough information, not too little, not too much. They use a format that is easy to read, and they organize the schedule in a way that all employees can follow (see Table 6 on page 52). A usable schedule follows a “big bucket” approach with a small number of record categories, rather than a “small bucket” approach with hundreds or even thousands of record line items. Finally, make the schedule concise. Don’t list every single record or example for a particular record category.

To make your schedule user-friendly, consider the following:

- ▶ **Make it visually appealing.** A document crammed with information is hard to read, and schedules in spreadsheet format are sometimes overly busy. A readable schedule should include the basics: the record category, a brief description with some examples (not an exhaustive list), and the retention period.
- ▶ **Organize your schedule by function.** Functional schedules are more user-friendly than departmental or other formats. For records used by multiple departments or functions (e.g., contracts,

Table 5: Achieving consensus

Consensus – Does everyone agree on what to save and not save?				
Immature	Limited	Essential	Proactive	Enabling
Policy is used to justify disposition against practices of business units, who ignore schedule and save nearly everything forever.	Schedule identifies records to be saved, but Policy does little to build a consensus on disposition	Policy not only identifies records, but also serves as agreement across key stakeholders on what to save and not save	+ Business units are in agreement	+Stakeholders, business units and employees agree that the Schedule represents the appropriate retention and destruction of company information

Table 6: Usability

Usability – Is the policy easy to follow?				
Immature	Limited	Essential	Proactive	Enabling
Poorly-organized schedule with hard-to-follow and abstract record definitions	Schedule not organized by business function	Clear record definitions including samples	+ Schedule organized by function or other employee accessible balancing “small bucket” prescription with “large bucket” ease of use	+ Useful and intuitive for employees providing quick access to classifying records

policies and procedures); repeating them in multiple departments just makes the schedule more confusing.

- **Find the right balance when defining exceptions.** Consider making exceptions a separate record category, rather than listing the record types in an exception column.

Integrated

A mature retention policy and schedule should be integrated into your overall information governance program, which includes data classification, privacy, and collaboration and litigation readiness. A well-designed schedule should be a useful tool in all these functions. The data classification and privacy components of your

information governance program should leverage the schedule to understand what types of records exist and if they contain confidential information, personally identifiable information (PII), or intellectual property that needs to be protected (see Table 7).

Some strategies for integrating a retention schedule into your overall information governance program are:

- Before developing the schedule, be sure to update or create a data classification policy to identify how information should be classified from a privacy or security perspective. Having completed this exercise will enable you to help control sensitive information based on its classification level and record type.

Table 7: Retention policy integration

Integrated – Does the schedule integrate with other compliance regimes?				
Immature	Limited	Essential	Proactive	Enabling
Designed as a standalone policy and difficult to integrate	Integration with Records Management functions only	+ Schedule integrated with data security classification policy	+ Record classes integrated	+ Part of a well-designed Information Governance framework

Table 8: Policy defensibility

Defensible – Will the policy be defensible in court or with regulators?				
Immature	Limited	Essential	Proactive	Enabling
Policy is approved but not distributed	Employees self-declare compliance but without any audit of actual retention practices	Policy is widely socialized, employees engage in training programs and retention is spot-checked against selected repositories	+ Policy is audited against actual retention practices across different media on a regular basis	+ Any identified weaknesses are remediated

- ▶ Leverage the information collected during the interview and survey process to feed other parts of your program. A data map is one example. An information-types inventory will contain a lot of information about the locations where records are kept, whether those records contain PII or protected health information, and other information that might be useful to the information governance organization.
- ▶ Legal hold and litigation readiness should also improve when integrated with a mature policy and schedule, because there is typically less information to preserve, collect, and review. These factors can reduce both cost and risk associated with litigation, and they will help with disposition efforts after a legal hold is lifted by giving clear instructions to dispose of records that no longer need to be retained once the legal hold is no longer applicable.

Defensible

Both a retention policy and schedule must be defensible, in the event they must ever be defended in court or to regulators. Defensibility also means ensuring employees are in compliance.

In order to measure compliance, you will need to develop some level of auditing practice to determine user knowledge of and compliance with the policy and schedule. This can include a number of factors.

- ▶ **Adequately train employees on how to use the policy and schedule.** Simply rolling out these documents with no explanation or support is almost a certain guarantee of non-compliance and failure.
- ▶ **Audit employee behavior.** Conduct spot checks to test whether employees have retained an understanding of their responsibilities under the policy and schedule. These can be quizzes or quick questionnaires to fill out.
- ▶ **Review performance/objectives.** The work of records coordinators or others engaged in records management activities should be reviewed to understand how the employees in their particular departments are complying.
- ▶ **Sample selected repositories to verify compliance.** For example, review paper inventories to see how many boxes are eligible for disposition but not yet destroyed. Review a file share to see the composition of records there and whether

employees are engaged in compliant retention practices.

- ▶ **Remediate any weaknesses found in an audit.** Whether that means additional training for reinforcement or developing file plans for email or unstructured data to automate retention, defensibility is difficult if you are not actively addressing non-compliance.

Maintainable

A schedule is a living, breathing document that must be periodically reviewed and updated. As new record types are created, old record types become obsolete; and legal citations change all the time, not to mention new recordkeeping regulations that come into play (see Table 9). Important steps include:

- ▶ **Review and update legal citations and retention periods.**
- ▶ **Identify new record types.**
- ▶ **Evaluate records retained for business value on a regular basis.** A business group that was required to keep records for seven years last year may only want to keep records five years going forward as they begin to think about actual retention requirements.

- ▶ **Put the schedule into an application and format that is easy to update.** Using a database tool like Access makes organization and updates easy. These types of programs also allow creation of professional-looking reports that are easy to read and more usable for employees.
- ▶ **Develop templates to make the update process consistent and repeatable.** Send these to your business functions, or the coordinators in those functions, and train them in advance on how to fill them out. Then it's a fairly straightforward matter to capture their input, analyze it, and update your schedule accordingly.

Conclusion

By understanding and following these best practices for developing a modern retention schedule, you will improve the overall quality of your schedule, make it easier to execute, and achieve higher compliance from employees. By engaging the business, you shift the balance of work from a boring, check-the-box activity to a more positive, affirming activity that will demonstrate great benefits for the organization. *

Table 9: Maintaining records

Maintainable – Can the schedule be easily maintained?				
Immature	Limited	Essential	Proactive	Enabling
Once finalized, policy and schedules are not updated or only updated after many years	Retention periods and citations are updated on a regular basis, but new record types are not identified	Retention periods and citations are updated on a regular basis, and new record types regularly identified	+Retention for business value increased or decreased as part of regular schedule maintenance	+ New media types are proactively assessed for records impact and included in the schedule