

InfoPAKSM

Creating Modern, Compliant and Easier-to-execute Records Retention Schedules

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This InfoPAKSM details the best practices for creating and maintaining a records retention policy and schedule that is modern, compliant and easier-to-execute. It describes:

- The challenges of traditional approaches in meeting modern recordkeeping requirements
- How to get started
- How to design a compliant and effective schedule
- Tips on how to execute your schedule once it is created (another InfoPAK will go into greater detail)
- How to evolve a records program into a broader and more useful Information Governance (IG) program)

This InfoPAKSM is the first of a two-part series. The second InfoPAK, available in 2018, will address, “How to Execute a Records Retention Schedule.”

This material was developed by Contoural, Inc.. Contoural, Inc. is a sponsor of the Information Governance Committee and a sponsor of the Legal Operations Committee Records Management and Information Governance Foundational Toolkit. For more information about the author, visit their website at www.contoural.com or see the “About the Company” section of this document.

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I. Introduction

Today organizations are inundated with both paper and especially electronic information. Paper records are filling up record storage facilities and files, emails and other types of data are overwhelming data storage systems. At the same time, the legal and regulatory recordkeeping environment is becoming stricter. The challenge is not only recordkeeping; companies face new and more stringent privacy rules, need to identify and protect high value and confidential information from threats, and need to reduce risk and costs during litigation. Making these challenges worse, hoarding of electronic documents by employees who are convinced that they need to save everything forever is ironically hurting the employees' own productivity as high value information gets lost among the clutter of older and useless documents, data and their copies. Left unaddressed these problems only get worse.

A key first step to gaining control over these problems is developing effective and compliant records retention policies and schedules. At its core, a policy and schedule not only defines legal and regulatory recordkeeping requirements, but also builds a consensus across key stakeholders, business units and employees on what should be saved and for how long, and what can and should be deleted. It not only ensures legal and regulatory compliance, but helps classify high-value from low-value information, increasing productivity and enabling defensible cleanup.

The shift to electronic as the primary communication medium for information has changed how organizations create, receive, share and collaborate information. It therefore makes sense that the policies and schedules to drive the identification, classification, retention, retrieval and disposition of this information should also change.

A. Traditional Approaches to Developing Records Retention Schedules

Records retention schedules are not high on the list of most company's priorities. The task usually falls to the Legal or Compliance Department, which often views creating or updating a schedule as necessary drudgery. Many take a traditional "check the box" approach to create their schedule, either modifying a basic template, creating one from a computer program or handing it off to their law firm to develop it. These approaches create schedules with little input or interaction from the business.

I. Focuses Only on “Big R” Records

These traditional approaches fall short. First, many records retention schedules are based almost exclusively on legal and regulatory requirements. These records can be referred to as “Records” or “big R” records. Some documents that don’t have a legal retention requirement do contain valuable business information that the business should retain. These “little r” records include everything from last year’s marketing campaign to manufacturing process information to product development ideas and notes. While it is important to capture legally-based “big R” records, effective schedules also need to include business value or the “little r” records. Also known as operational records, the “little r” records may constitute a significant portion of a company’s intellectual property, trade secrets and productivity-enabling content.

Traditional policies and schedules that focus exclusively on “big R” records to the exclusion of “little r” records run into problems. When trying to clean up file shares from redundant, obsolete and trivial data (often abbreviated as ROT), for example, using a schedule that is devoid of any sense of business value to decide what to keep or not keep may backfire. Imagine if documents and data with business value are deleted because they are not classified as official business records. It’s unproductive for Legal or IT try to justify deletion based on something “not being a record” and face off against business units and employees clinging to their emails, files and other documents because they know *some* of it has business value. (Usually the business units and employees win.) These traditional policies that were designed narrowly to reduce document hoarding end up being of little value in driving disposition programs.

2. Focus on Paper Records to the Exclusion of Electronic

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 the paper documents into offsite storage boxes. Electronic information is different. Not only is it more voluminous, it is stored differently, shared differently and nearly everyone is likely to be involved in classifying it as a record. 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, but it does not 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, for the most part, are just not followed.

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 know they are following them.

Case Study: Company sanctioned for spoliation for failure to follow its policy.

ASUS faced patent infringement litigation. (*Phillip M. Adams & Assoc., LLC v. Dell, Inc.*, 621 F. Supp. 2d 1173)) The records retention policy stated that certain records were to be maintained by employees. Many of these records were in email, but there was no centralized system for storing email records, and much of the records classification was purely at the discretion of employees. There was also no audit of the record stores to ensure employees were following the policies. Critical emails were not available; ASUS argued they were destroyed via “good faith deletion” efforts. The Court did not buy this argument, and ruled spoliation of evidence and sanctioned the defendant.

3. “Click Compliance” Drives “Fauxpliance”

One approach to compliance with a records’ schedule is to send regular notices to employees instructing them to save or delete specific records. This “click compliance” is measured by having employees “check the box” or click a link in an email acknowledging they have followed the records policy. Job done, right? No real effort is made to ensure that the right records have been saved or older records deleted other than disciplinary action for employees who do not check the box. Although easy to execute, this employee self-reporting is really a type of “faux” compliance, or what we call “fauxpliance.”

Telling employees to do something without any real enforcement or audit will not stand up to legal scrutiny. Employees often click the link to acknowledge compliance, with little understanding of what they are clicking and why. Often employees will initially be good at classifying their documents, but then soon fall behind. They still click the acknowledgement with the policy believing they will soon catch up. As more and more unclassified emails and files pile up, they effectively give up by continue to click acknowledgement anyway. Unfortunately, assessments of employee self-reported record retention programs – most of which had penalties for noncompliance – show a significant gap between reported and actual record retention practices. Many employees committed “fauxpliance,” saying they were following the policy while they actually were not.

Why the noncompliance? Employees send, receive and create hundreds of electronic documents every week, and the sheer amount of time it takes to manually categorize and

delete these records encourages many to "fudge" on their monthly reporting. Employees justify this by saying, "I'll get to it later," yet they almost never do.

4. Traditional Approaches Exclude Working Documents

Traditional approaches take a black and white approach declaring the world is made up exclusively of official records and non-records. Records should be saved, and non-records should be deleted. There's actually a middle area – working documents. Working documents contain draft or transitory information that is useful for a limited period. This information can include tracking spreadsheets, duty rosters, invites, meeting notes and other types of documents that need not be retained for a long period, but that employees may want to retain and have access to for a year or two. Traditional schedules and records program ignore these working documents. Employees end up saving this information anyway, and because they are not addressed or managed, they do not get deleted, driving the accumulation of unneeded information.

B. Downstream Impact of Record Retention on Litigation

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

C. The Need for a Modern, Compliant and Easier-to-execute 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.

II. Getting Started Creating a Schedule

Starting or updating a records program feels to many like the Chinese proverb “the journey of a thousand miles starts with a single step.” Fortunately, the journey of a modern records retention program is not a thousand miles – it is a much easier endeavor. And while the hardest part of a new program is that first step, if that step is done correctly, the rest of the process is much easier to complete.

A. What’s the Difference Between a Policy and a Schedule?

What is commonly referred to as a records policy actually has two pieces: a policy and a schedule. A records retention policy provides overall guidance on the management of records in an organization. A policy has three primary purposes: 1) it defines records and non-records, including short-term working documents, and states that records must be kept for the duration of the retention period listed in the records retention schedule; 2) it states that once a record’s and working document’s retention period has expired, that they must be destroyed; and 3) in the event of a legal hold, the policy and retention schedule are suspended for the records under the hold.

The records retention schedule (called a schedule or abbreviated as “RRS”) is a listing of records created and maintained by the organization. It describes the records that must be kept for legal, regulatory or business purposes, and provides a retention period during which time that record must be retained by the organization. The schedule may or may not contain citations detailing the specific legal or regulatory requirements for retaining any given record.

Appendix A contains sample schedule excerpts.

Typically, a schedule is an addendum to the policy. The policy gives force and effect to the schedule. It states that records must be kept according to the retention requirements of the schedule. The schedule is effectively a reference to an organization’s records with information on how long those records must be kept. Most policies are anywhere from two to six pages. The real effort goes into creating the schedule, which can vary in length.

B. Who Should Be Involved and How to Get Them Engaged?

We advise that both records programs and larger Information Governance programs should engage a variety of groups across the organization. While one group – often legal – may own the development of the policy and schedule, they should work with other key stakeholders and get input from many business groups. This involvement is both for

practical purposes of developing an informed schedule, as well as to build consensus early in the process on what to save and not save.

When engaging and recruiting other stakeholders to assist in schedule development, focus on the benefits the schedule will provide to each stakeholder. Consider stakeholder and other employee pain points and the risks inherent in their daily work, and propose individual benefits provided by better management of records (see Table 1).

Stakeholder	Sample Records Win and Messaging to Engage
Legal	Compliance with corporate retention and destruction policies not only for paper but also email and other electronic documents.
Litigation	Significantly reduced eDiscovery risks and costs; narrower legal holds; early case assessment.
Privacy	Compliance with European Data Protection and US privacy requirements; easier implementation of cross border controls; easier implementation of EU “Right to Be Forgotten” requirements.
Compliance	Better compliance and monitoring of corporate compliance requirements including FCPA; easier investigations.
Records Management	Control, management and disposition of paper as well as electronic information.
Risk Management	Better overall controls and reporting for IG-related risks.
IP Management	Better collaboration among knowledge workers; easier identification and support for IP development.
IT	Reduced data storage costs; better use of existing technologies; better and more useful IT services.
Data Governance	Better protection of privacy; higher data quality; avoid “polluting” data lakes.
Information Security	Easier identification of corporate confidential, as well as other sensitive, information; reduced risk of data breaches.
Facilities	Decrease in the amount of paper records storage.
Audit	Better investigation processes; reduced risk of IP breach.
HR	Improved collaboration among employees; better management and control against hostile workplace claims.
Finance	Potentially large cost savings across multiple groups; better compliance with Sarbanes Oxley Act (SOX) and other regulatory requirements.
Business Units	Increased employee productivity; better use and reuse of information; mitigated impact of employee turnover.
Individual Employees	Save an average of two to three hours per week, per employee, searching for information.

Table 1. Stakeholders to engage in development of records retention schedule and messaging to engage them.

Case Study: Polish Subsidiary Rejects Proposed Schedule Until Engaged

The Polish subsidiary of a medical device manufacturer curiously raised significant concerns over the accuracy and compliance of a proposed schedule. They said that the schedule, “wouldn’t work here.” After much discussion, their real objection was unearthed – they did not feel appropriately engaged in the process. Who would have thought the Polish subsidiary had such strong feelings over records? After two or three phone interviews collecting input, and a few minor updates, the new schedule was now supported, and even embraced, by this subsidiary.

Avoid the temptation of having the legal department create a schedule by itself without input from other stakeholders or input from the business, as this process creates a schedule that is less likely to be followed than one developed by engaging business units and employees. Understanding what information has real business value is hard without input from the business.

C. How Do We Collect Data on Record Types?

Two of the most traditional approaches for creating and populating a schedule are among the least effective. The first approach is to get a “standard” or sample schedule from the web or other source and apply a few modifications. While many records are for companies in the same industry, many are not. This approach runs a risk that many types of records may be missed.

The other traditional approach is to populate and or validate schedules exclusively through online surveys of employees. This method can be helpful for geographically distributed organizations with many remote offices. The challenge with these types of surveys is that the quality of data tends to be poor. Many survey recipients either ignore the survey or answer the questions in a cursory manner. Response rates from employees who actually carefully read through the survey and diligently answer the questions tends to be low (between 3% to 6%). Sending more surveys to more employees can generate more responses and a lot of data points, but the overall quality of the data remains low.

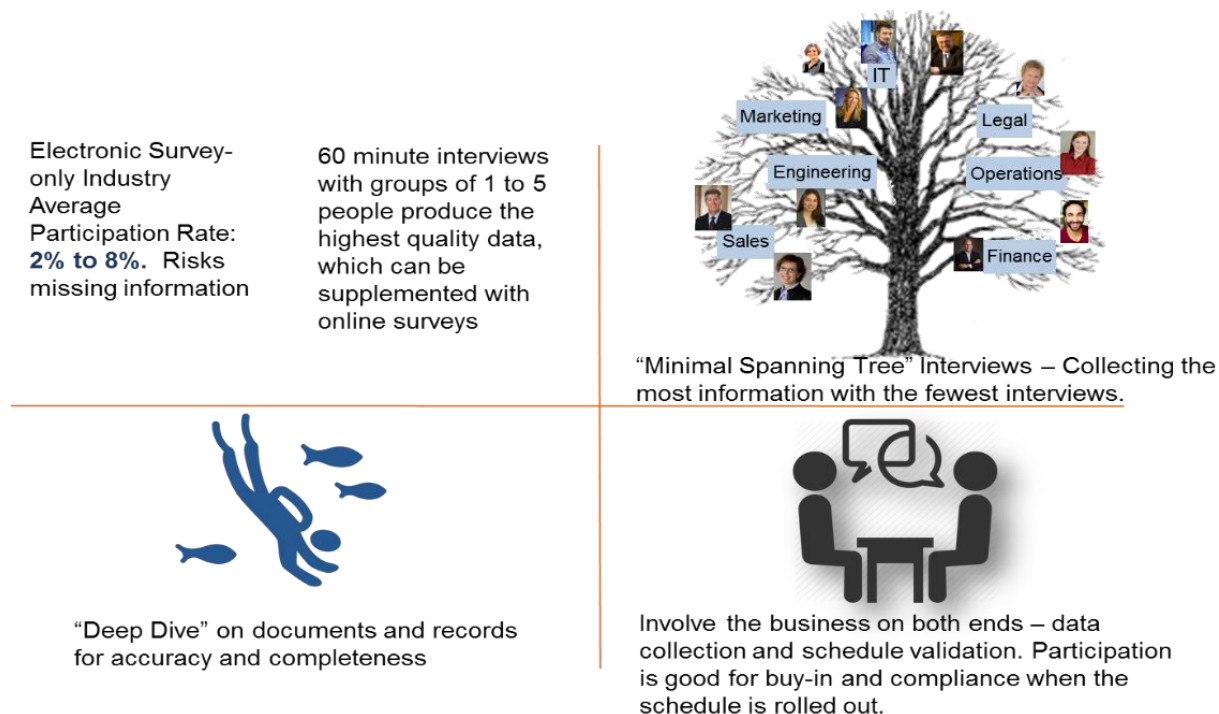


Figure 1. Schedule Data Collection Strategies

The most effective data collection technique is through a series of either one-on-one or small group interviews. These interviews should take less than an hour and target a small set of employees spanning a wide variety of functions. The data quality from these interviews tends to be very high yielding good information on exactly what types of documents and records are received and created. They help separate the business value “wheat” from the low value content “chaff.” Perhaps most important, interviews let employees feel that they are part of the process and being “heard,” increasing the likelihood that the policy will be followed. The biggest drawback with interviews is the time it takes to conduct the interviews, both by the interviewer and the people participating in them. We advise taking a “minimal spanning tree” approach of interviewing the fewest people to get the most coverage (see Figure 1).

Often the best approach is a combination of data collection, including interviews of core functions, supplemented by surveys for more remote areas. It is important to get good data on record creation across key areas and then use surveys to validate that information.

Case Study: Do Employees Really Want to Participate in a Records Management Interview?

An Associate General Counsel for a large health insurance carrier was updating her records retention policy. Doubtful that a cross section of groups and employees would want to engage in a records management interview, she nonetheless scheduled a series of

interviews. Once the process started she commented “I was amazed. The employees talked and talked and talked about what they needed, what they wanted, how it impacted the work. Many interviews went over. Some groups later were miffed they did not get a chance to participate. I would have never thought.”

D. Records Management and Information Governance Frameworks and Standards

Sometimes organizations want to refer to outside records management and Information Governance standards and frameworks to ensure their program is both meeting standards as well as industry best practices. Table 2 shows the more prominent standards.

Records Management and Information Governance Frameworks and Standards	
<p>Records Management</p> <ul style="list-style-type: none"> ▪ ISO 15489-1:2001 ▪ Legal and Regulatory Requirements (10K+) ▪ Generally Accepted Recordkeeping Principles (GARP) ▪ Information Governance Maturity Model (IGMM) ▪ Federal Sentencing Guidelines ▪ EDRM Information Governance Model ▪ AHIMA Information Governance Principles for Healthcare 	<p>eDiscovery</p> <ul style="list-style-type: none"> ▪ Sedona ▪ Sedona Canada ▪ EDRM.net ▪ Case Law (Pension Committee v. Bank of America, Victor Stanley v. Creative Pipe, Chin v. Port Authority) ▪ TREC ▪ Practice Direction 31B (UK)
<p>Information Security</p> <ul style="list-style-type: none"> ▪ FIPS 199 ▪ ISO 27001, 27002 ▪ HIPAA ▪ EU General Data Protection Regulation (GDPR) ▪ Privacy Shield ▪ PCI Requirements ▪ State Privacy Laws ▪ GLBA 	<p>Data Storage and IT</p> <ul style="list-style-type: none"> ▪ ITIL ▪ ISO 32000-1 (PDF) ▪ CORBA

Table 2. IG Frameworks and Standards

While there are specific regulations and laws covering retention of specific records, there are not well-accepted standards for records policies and programs. There are some general, somewhat vague and loosely-defined frameworks for both records management and larger Information Governance programs. Furthermore, there are many frameworks and standards in other compliance areas that impact records management. Unfortunately, however, there is no single standard that can serve as a guide for developing a program or schedule. In general, we recommend looking at a variety of standards when putting a program together.

Many of the frameworks and standards listed in Table 2 are only focused on one small piece of records management or Information Governance, such as eDiscovery. Some are well-defined standards and most are less prescriptive frameworks. IGMM, for example, is at best a framework. It does not provide much prescription on targeting specific levels of maturity. Few of these provide any type of objective measurement against current capability. In summary, focus on specific record retention regulations, however, be careful about getting caught up in somewhat nebulous records management frameworks. Instead, focus on program execution.

E. Creating an Information Types Inventory

Before records can be classified, first develop a baseline inventory of the types of data and documents held by the organization. This is called an Information Types Inventory (ITI) and is a working list of record and information types, including departmental inputs on business requirements and document examples. Using a combination of existing documentation and in-person interviews with business functions across the enterprise, record and information types (discrete elements of information that need to be managed and protected) can be collected and confirmed. The inventory process includes identifying (or validating and enhancing existing lists of) information types (including any existing schedule), identifying process outputs, and collecting record type examples during interview sessions (see Figure 2).

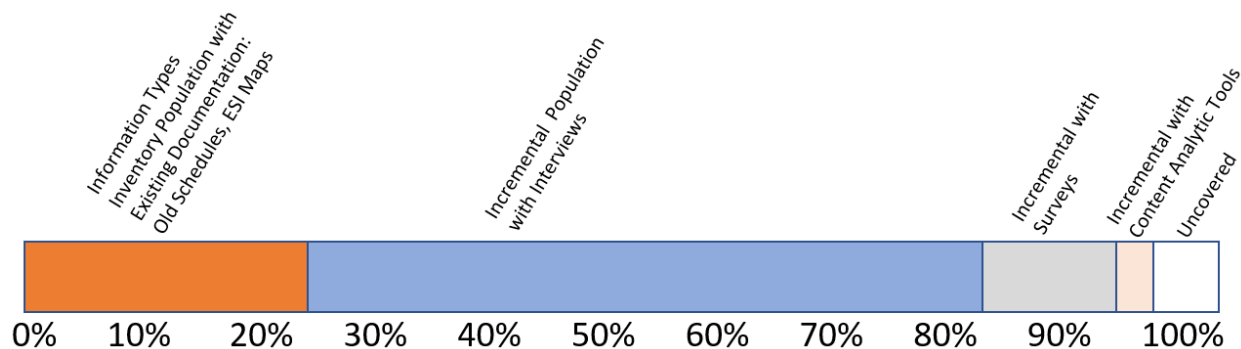


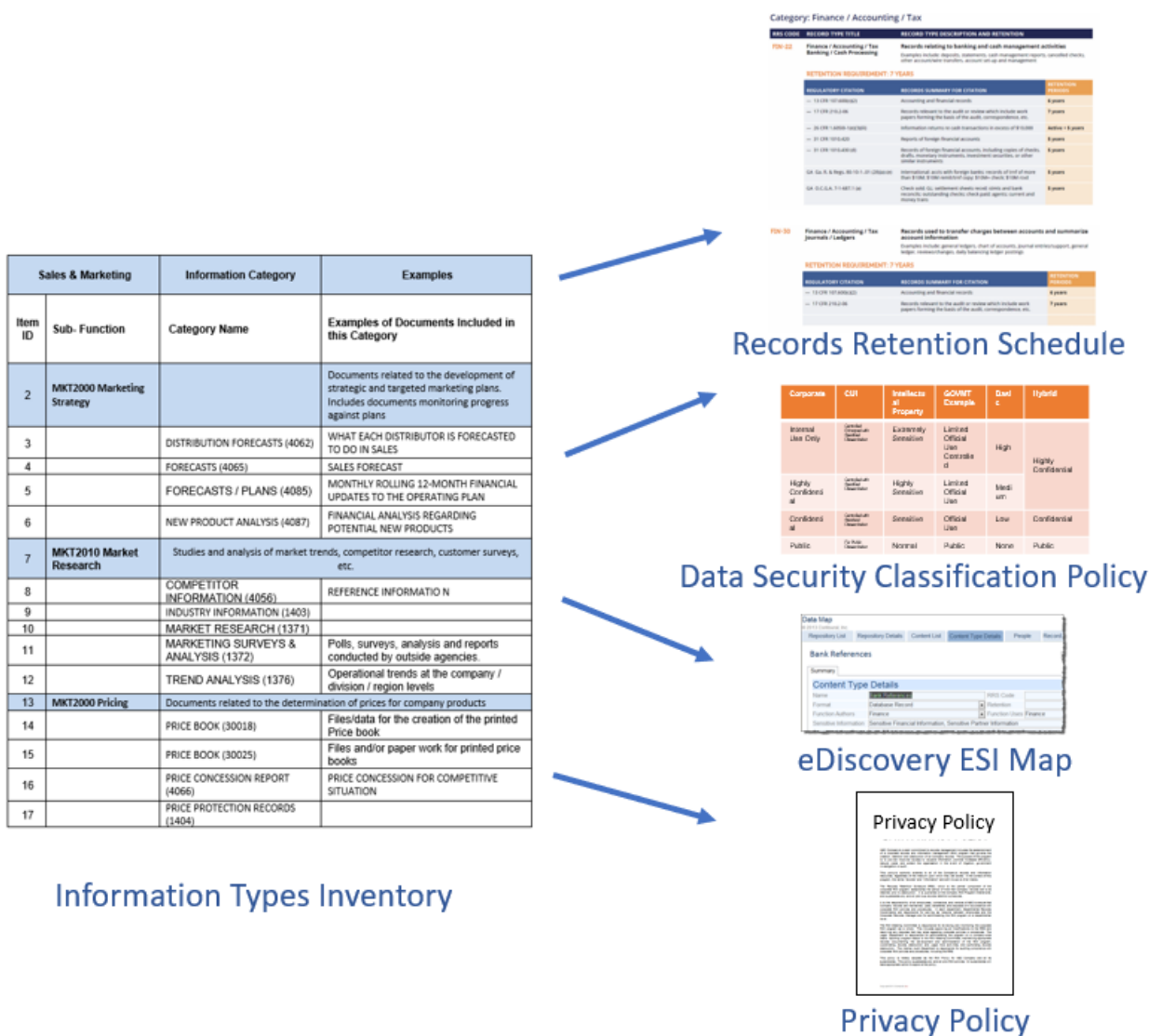
Figure 2. Information Types Inventory Population Strategies - A combination of leveraging existing documentation and interviews can populate a significant portion of the inventory. Interviews are surprisingly effective at collecting this data.

Appendix B lists a sample Information Types Inventory excerpt.

The inventory is then used as a baseline input to the schedule. It sets up the question: From our entire universe of information, which of these should be considered records? The information gleaned during the inventory review can be used to specify recommended

retention periods for each unique record class, and, if appropriate, to reflect consolidation of the preliminary record types. The document should include a listing of record classes, which are high-level functional categories into which record types are grouped and organized for clarity and ease of use. This document includes all the business records retained by the organization. The schedule should also include selected examples for each record class to enhance end-user understanding of the meaning and scope of each class, as well as updates to associated procedures.

This same inventory used as input into the schedule may also be useful in other areas, including the development of a data security classification policy, eDiscovery ESI map and a privacy policy (see Figure 3). This saves time and reduces the need to ask the business units and employees the same content questions again.



Sales & Marketing		Information Category	Examples
Item ID	Sub-Function	Category Name	Examples of Documents Included in this Category
2	MKT2000 Marketing Strategy		Documents related to the development of strategic and targeted marketing plans. Includes documents monitoring progress against plans
3		DISTRIBUTION FORECASTS (4062)	WHAT EACH DISTRIBUTOR IS FORECASTED TO DO IN SALES
4		FORECASTS (4065)	SALES FORECAST
5		FORECASTS / PLANS (4085)	MONTHLY ROLLING 12-MONTH FINANCIAL UPDATES TO THE OPERATING PLAN
6		NEW PRODUCT ANALYSIS (4087)	FINANCIAL ANALYSIS REGARDING POTENTIAL NEW PRODUCTS
7	MKT2010 Market Research	Studies and analysis of market trends, competitor research, customer surveys, etc.	
8		COMPETITOR INFORMATION (4056)	REFERENCE INFORMATION
9		INDUSTRY INFORMATION (1403)	
10		MARKET RESEARCH (1371)	
11		MARKETING SURVEYS & ANALYSIS (1372)	Polls, surveys, analysis and reports conducted by outside agencies.
12		TREND ANALYSIS (1376)	Operational trends at the company / division / region levels
13	MKT2000 Pricing	Documents related to the determination of prices for company products	
14		PRICE BOOK (30018)	Files/data for the creation of the printed Price book
15		PRICE BOOK (30025)	Files and/or paper work for printed price books
16		PRICE CONCESSION REPORT (4066)	PRICE CONCESSION FOR COMPETITIVE SITUATION
17		PRICE PROTECTION RECORDS (1404)	

Information Types Inventory

Category: Finance / Accounting / Tax

Item ID	Sub-Function	Information Category	Examples
FIN-02	Finance / Accounting / Tax Banking / Cash Processing	Records relating to banking and cash management activities. Examples include deposits, statements, cash management reports, cancelled checks, other account-related, amount due and statements.	
RETENTION REQUIREMENT: 7 YEARS			
REGULATORY CATEGORY		RECORD SUMMARY FOR LOCATION	RETENTION PERIOD
13-000-101-00000	Accounting and Financial records	Accounting records for the year or other fiscal period and papers forming the basis of the audit, correspondence, etc.	7 years
13-000-210-00000	Information related to cash transactions in excess of \$10,000	Records of cash transactions in excess of \$10,000.	7 years
13-000-300-00000	Records of foreign financial accounts	Records of foreign financial accounts.	7 years
13-000-400-00000	Records of foreign financial accounts, including copies of checks, drafts, and other documents	Records of foreign financial accounts, including copies of checks, drafts, and other documents.	7 years
OR: 13-000-500-00000	Records of foreign financial accounts, including copies of checks, drafts, and other documents	Records of foreign financial accounts, including copies of checks, drafts, and other documents.	7 years
OR: 13-000-600-00000	Records of foreign financial accounts, including copies of checks, drafts, and other documents	Records of foreign financial accounts, including copies of checks, drafts, and other documents.	7 years
OR: 13-000-700-00000	Records of foreign financial accounts, including copies of checks, drafts, and other documents	Records of foreign financial accounts, including copies of checks, drafts, and other documents.	7 years
OR: 13-000-800-00000	Records of foreign financial accounts, including copies of checks, drafts, and other documents	Records of foreign financial accounts, including copies of checks, drafts, and other documents.	7 years
OR: 13-000-900-00000	Records of foreign financial accounts, including copies of checks, drafts, and other documents	Records of foreign financial accounts, including copies of checks, drafts, and other documents.	7 years

Records Retention Schedule

Corporate	CDR	Intellectual Property	GOVINT	Data C	Hybrid
Internal Use Only	Confidential	Exclusively Sensation	Limited and Official Use Controls	High	Highly Confidential
Highly Confidential	Confidential	Highly Sensation	Limited and Official Use	Medium	Confidential
Confidential	Confidential	Sensation	Official Use	Low	Confidential
Public	Public	Normal	Public	None	Public

Data Security Classification Policy

Date Map

Bank References

Content Type Details

Name: [Field]
 Content Type: [Field]
 Function: [Field]
 Source: [Field]

eDiscovery ESI Map

Privacy Policy

[Text of Privacy Policy]

Privacy Policy

Figure 3. Data collected in an Information Types Inventory can be used not only for schedules, but also data security, discovery and privacy.

Note that we advocate developing a broad Information Types Inventory versus a simpler records inventory. In addition to the previously discussed multiple uses of an inventory, in capturing all the types of information and *then* classifying those types as records, it is likely the schedule will better capture all the records. In pre-judging what a record is, a records inventory may miss some. Creating a full-blown Information Types Inventory may be a little more work than simply gathering inputs for a records retention schedule, but it is likely to save time in the long run.

F. Anatomy of a Schedule

The diagram shown in Figure 4 highlights key components of two different types of records retention schedules. The sample schedules are excerpts of actual schedules. Each was designed to be the optimal schedule for that organization. These two different schedules illustrate that each organization should design a schedule that meets its specific needs.

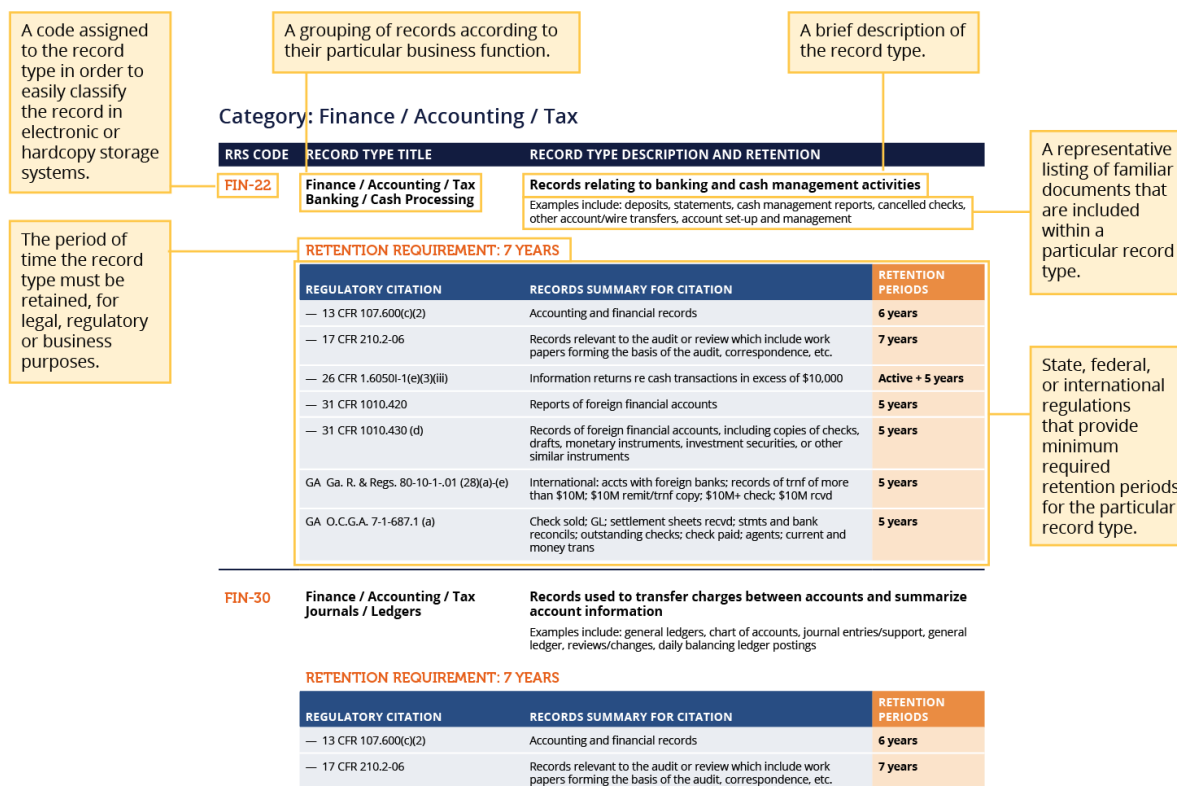


Figure 4. Sample schedule with legal citations. Contrast this with the simpler schedule below.

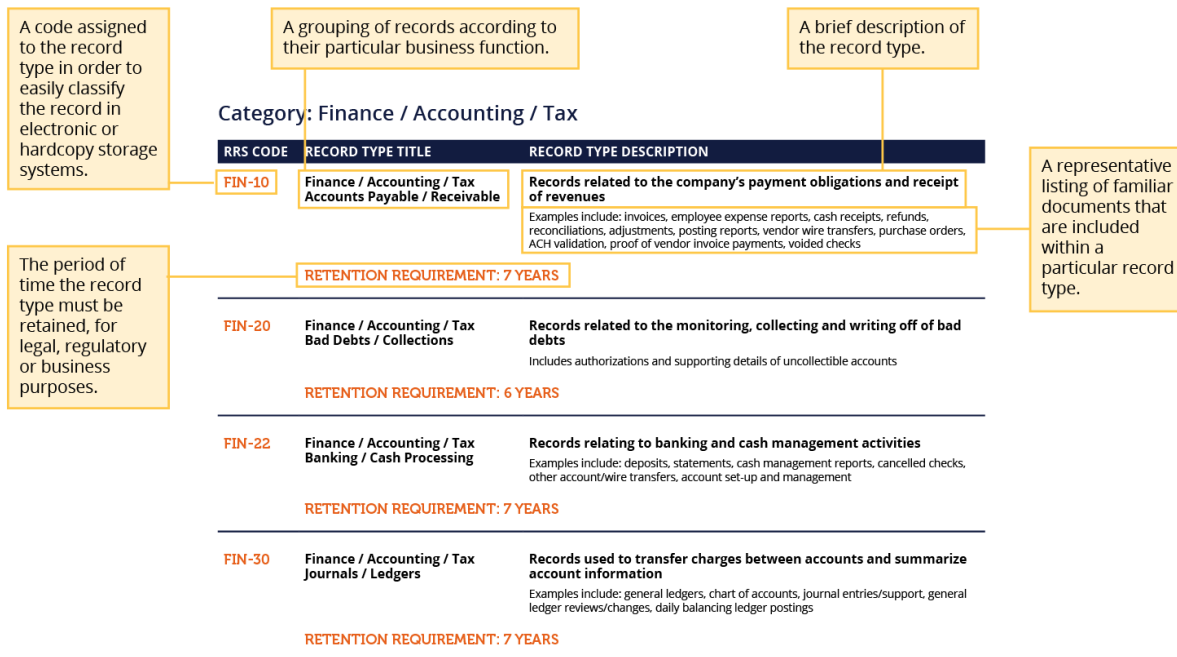


Figure 5. Sample schedule without legal citations. Contrasted with the sample above, this demonstrates that different types of schedules are appropriate for different types of organizations.

III. Attributes of a Modern, Compliant and Easier-to-execute Record Retention Schedule

After reviewing hundreds of schedules and assessing their implementation, we have found that the more successful schedules share some common attributes; these attributes are discussed below.

A. Sports Car, Sedan or Golf Cart – Picking Your Program Maturity

Each company faces its own distinct combination of legal and regulatory requirements, litigation profile and company culture. Technology product vendors and law firms warn of the risks around records management and often recommend (their own) complicated products or solutions for these risks. While some organizations do need a high-level, mature and complex (and more expensive) “sports car” level of program based on their

risks, we have found some organizations may be better off with a “sedan” or even “golf cart” level program. Successful records programs, and by extension their records retention schedule, target an appropriate level of maturity (see Figure 5). It is better to have a well-executed, albeit simpler, approach than a more complex, difficult and expensive “sports car” maturity target that spends more time in the repair shop than being driven.

Take note that maturity varies tremendously across industries. Industries facing more regulatory requirements or higher litigation profiles in general, such as global financial services, will want to have a higher than average records management maturity target than those in less regulated industries, such as manufacturing. Often senior management is willing to invest in a target maturity level that is slightly above the average in their industry, but is less interested in having a program that is far above this. This is okay, so long as maturity is properly calibrated.



Figure 5. Records Program Maturity Targets

In this InfoPAK, when we describe attributes of a schedule we have included a maturity scale. Use this as a guide when evaluating your program. Almost no organization needs to have the highest level of maturity for all attributes of a schedule. As each organization is different, the design factor and maturity levels for each schedule will need to be customized in the creation of each schedule.

B. Attribute I: Compliant

A basic requirement for any schedule is that it should be compliant and defensible with federal, state and industry-specific, as well as country-specific, international record mandates. The schedule should include minimum retention periods, retention trigger events and descriptions of the records (paper/physical and electronic) that the organization maintains in the regular course of business.

Two Basic Types of Retention Periods

There are two types of retention periods: fixed-period and event-based:

Time-based: Records are retained for a predetermined fixed-period. Many financial records, for example, must be retained for seven years. This retention period is known when the record is created.

Event-based: Records are retained until some type of trigger event occurs. Many employee records, for example, must be saved until the employee retires or terminates, plus six or seven years. Event-based records are more difficult to manage, as there needs to be a mechanism to feed the triggering event into the retention period.

A significant challenge of matching regulatory requirements with retention periods is that many regulations tend to be non-prescriptive. For example, the US Sarbanes Oxley Act of 2002 (SOX) requires, among other things, that companies should retain as records, “certain other documents that contain conclusions, opinions, analyses, or financial data related to the audit or review.” In a company, many, many documents could be construed as relating to “financial data” related to the audit. This language over the years has been subject to a wide range of interpretations, and even many years after this law was enacted, there is still little to no case law providing more prescription on retention. We have also seen widely varying opinions interpreting this rule by larger law firms. This is just a single example and SOX is not unique in its vague retention requirements.

Type of Requirement	Record Type	Entities Impacted	Retention Period
US Federal	Form I-9	Employers	Employer - Later of 3 years after hire date or 1 year after termination date
		Employers	Previously Employed individual - Later of 3 years from the date of the initial execution of the Form I-9 or 1 year after the individual's employment is terminated
US State	Worker's Compensation - Employment Records	New York Employers	Current calendar year and for the preceding 3 calendar years
		Ohio Employers	A record of all injuries and occupational diseases, fatal or otherwise, received or contracted by his employees in the course of their employment and resulting in seven days or more of total disability - Keep
		Washington Employers	All original employment time records - 3 full calendar years following the calendar year in which employment occurred
Industry Specific	Equipment leak records	Air emissions: HazMat Oil & Gas	Federal - 3 years Texas - 5 years
	PCB records	Manufacturer, processor, distributor in commerce, use, or disposal of PCBs or PCB items	Federal - 3 years after facility ceases using or storing Missouri - until closure of the facility
Australian	Time and wage records	General	7 years
India	Payroll records	General	8 years
Ireland	Employee files	General	7 years post-termination

Table 3. Samples of record retention regulatory requirements. The typical large corporation may be subject to more than 30,000 different records retention rules.

What is a company to do with so many non-prescriptive regulations? We advise clients to make an informed judgement, taking a "Goldilocks" approach usually somewhere in the middle. Be consistent with how others in the industry have implemented the rule. More important, once you draw your line the real effort should be on consistently applying your policy. Consistency is at the heart of compliance enabling defensibility. Our conversations

with US “rule-based” regulators have revealed that they themselves often do not have a consistent auditing standard for these ambiguous rules. They primarily look at a well-reasoned approach applied consistently. This is also consistent with the European “principle based” regulatory approach.

Table 4 provides a maturity matrix that details different maturity levels for retention compliance.

Retention Compliance Maturity Levels – 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

Table 4. Maturity Levels for Retention Compliance

Should You Include Legal Citations in Your Schedule?

Traditional schedules may include documenting citations detailing the laws and regulations supporting a retention period within the schedule itself. These citations can be voluminous, and many ask, are they necessary?

At a minimum....

Records retention periods should be validated against all legal and regulatory requirements. It is important that retention practices are compliant with current laws.

Many organizations adopt a “high water mark” retention

Many organizations adopt a high-water mark retention strategy, detailing the citations only for the longest retention requirement for any record. For example, a single record commonly faces multiple retention requirements, including a 5-year regulatory period, a 6-year period and a 7-year period. In this example, the schedule would only detail citations for the 7-year period.

As long as we validate the retention period, do we need to document citations in the schedule?

This varies from company to company and industry to industry. It is certainly not true that only schedules with citations can be considered “complaint.” Weighing the arguments both for and against reveals:

Pros:

- Documents compliance with retention regulations
- May help employees understand the reason for the given retention period
- May provide proof of due diligence to a court or regulator

Cons:

- Creates an additional obligation to keep citations updated, an effort that may be better spent implementing and training on the schedule
- Could mean thousands to tens of thousands of citations
- Simply because the schedule contains citations, that does not mean employees will comply with them
- Citations may be confusing for employees – they may be turned off by the “legalese” while all they need to see is a retention period
- Compliance is not achieved by having a policy, rather by demonstrating you are following it

Taking a hybrid of the two, some companies list the citations in a separate document but do not list them in the schedule itself.

C. Attribute 2: Both Typical and Uncommon Records Identified

A schedule should include all the records across the organization (see Table 5). Companies often try to take short-cuts by copying from industry templates or sample schedules that purport to include all 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. Also, these template schedules tend to undervalue business need.

Most schedules easily capture “typical” records such as payroll and human resources. Companies should also identify non-traditional, uncommon or even unique record types. Often these uncommon record types end up becoming the most important types. These records are best uncovered by interviews (see Figure 1).

Case Study: Uncommon Record Types

Most companies think of “records” as being either a piece of paper or perhaps an electronic file. Records can be in any type of media. Some of the less common record types may include:

- Running shoes (IP for an athletic shoe company)
- Cosmetic and perfume products (samples kept for historical purposes or for possible litigation needs)
- Pharmaceutical drug product labels (similar to above, for historical or litigation purposes)
- CD plastic holders and DVD plastic boxes
- Airbags – kept as records
- Ignition switches and other auto parts

Comprehensiveness – Have we identified all the records?				
Immature	Limited	Essential	Proactive	Enabling
Only uses industry guidelines to approximate information typical for this type of company	Information inventory created from a list of what other companies have	Inventory developed 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 based on open question review of what employees actually have, assuring all actual record content is captured

Table 5. Maturity Levels for Record Identification

Little or Big Bucket Retention Categories?

A big debate at records management conferences has been between little bucket or big bucket retention categories. (Yes, there are conferences where people debate these things.) The traditional approach is to have detailed schedules with each record having its own retention period. Such schedules could have scores of different retention periods. While this “little bucket” approach works for paper documents, it is harder to follow for electronic information. Advocates of the little bucket school argue that precise retention periods help avoid over-retention of records.

Within the last decade many organizations have shifted to a “big bucket” strategy where records are grouped together and there are fewer overall retention periods. A simplified

system based on broad retention categories – sometimes called “big buckets” – and a limited number of retention periods (e.g., 1 year, 5 years, 7 years, 10 years and permanent) make it easier for employees to comprehend, thereby making it easier for them to comply. Note that it is generally acceptable to retain information somewhat longer than a department wishes, but it is much less acceptable to trim the retention period shorter than desired (and should not be made shorter than mandated by rules and regulations). The increased level of policy compliance and record completeness may well compensate for the modest increases in storage cost and litigation review time.

D. Attribute 3: Records Identified Across All Media

A schedule should reflect a media-agnostic approach (see Table 6) that does not, for example, classify email as a record type, but rather recognizes email as a medium that contains both records and non-records. Today, many records – some exclusively – exist in newer media such as email, files and even social media. A more mature schedule includes all media types and will help change the mindset that your schedule only applies to paper records.

Is Email Really a Record?

A common mistake we see in schedules is identifying email as a record type with, for example, a two-year retention period. Email contains all types of records and non-records (mainly non-records), with varying retention requirements. These electronic records have been described by some as “inventory resistant” because, unlike paper records where compliance can be measured by counting the number of boxes going into a warehouse, most electronic records accumulate on employees' computer hard drives and are not as easily inspected. Again, interviews can often tease out record-worthy content across multiple media.

Media – Have we looked across all media where records may exist?				
Immature	Limited	Essential	Proactive	Enabling
Schedule 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	+ Based on a thorough review of all content, regardless of media	+ Addresses all information types on all media across all systems and locations

Table 6. Maturity Levels for Records Across all Media

E. Attribute 4: Clarity in a Policy and Schedule

Record retention policies and schedules need to be clear and prescriptive about what is and is not a record (see Table 7). Avoid using confusing acronyms. Spell out event-based triggers. Offer only a few choices of retention periods. Ensure that the schedule considers business value so that employees save documents in the appropriate repositories rather than in underground archives.

For example,

Instead of....

ACT* + 7

Say...

Termination of Contract + 7 Years

Or....

Until Superseded + 7 Years

*ACT is an abbreviation for “Active.” If you were not aware of this, it is highly likely most users will not be either.

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

Table 7. Maturity Levels for Clearly Defining What is and is Not a Record

F. Attribute 5: The Schedule Represents a Consensus on What to Save and Not Save

Looking to combat ongoing accumulation of older files, emails and paper records, many organizations look towards their records policies and schedules as a mechanism to defensibly delete unneeded documents and data. Employees, in Legal and IT's view, have a bad habit of wanting to save everything forever. There is a fear that any discussion with the business units will result in their demands to save everything. The temptation is to create the schedule without input from the business.

Our experience over the years has demonstrated that the most successful disposition efforts – getting rid of 70% or 80% of unneeded files, for example – are more likely to occur when business units and departments are included on policy discussions and a consensus is reached. Effective schedules seek to build a consensus on what to save and what not to save (see Table 8). Stakeholders, business units and employees must agree that the schedule represents the appropriate retention and destruction of company information and that it reflects business value.

Avoiding Schedule Pushback

In enforcing a retention policy, Legal sometimes gets set up as the “bad guy.” Business units claim that, “legal is poking its nose in our business” or “encroaching on our territory” and therefore is unwelcome. The result is rogue business units who either refuse to follow it or push back on its requirements. This pushback is most effectively headed off early, during

the schedule development process. Engaging multiple groups and stakeholders, doing good data collection and making a reasonable effort to incorporate business value greatly reduces the risk of this policy pushback.

Employees may want to save more “little R” business value records than Legal and IT are initially comfortable with. This does not mean that all the documents of an employee who hoards everything (and claims that he needs it all forever) can or should be classified as a “little R” records. Rather “little R” records tease out that information which is useful and productive from the mass of information employees often want to hoard.

Surprisingly, these business value records often do not greatly increase overall retention significantly. Employees and departments may initially believe that all their older documents contain some level of retention-worthy business value, but upon examination and discussion the business value incrementally increases retention only modestly – much less than initially suspected.

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 8. Maturity Levels for Records Policy Consensus

G. Attribute 6: The Schedule is Easily Usable

A records retention schedule must be easy to understand. The schedule must identify and be organized to make it easy for any given employee to find records in a language that is familiar to them. It is helpful to provide specific definitions of record and non-record, as well as examples that employees actually use. To improve the results, do not burden employees with descriptions of record types that they are not likely to encounter. The traditional approach is to organize the schedule from the perspective of the records manager. A more modern approach is to organize the schedule based on business function

or role, allowing it to be quick and accessible (see Table 9). Use a departmental or level-schedule or specific file plan (a subset of the schedule) to communicate the categories and which documents need to be saved in them. Keep it simple and straightforward.

H. Attribute 7: The Schedule Integrates with Other Compliance Frameworks

The legal and regulatory requirements around records retention are only one type of compliance regime impacting documents and data. Other regimes include privacy, eDiscovery, information security and intellectual property. As such, a schedule, as well as a records retention program, should not sit as an island, but rather should be consistent and integrate with these other compliance regimes (see Table 10). A well-designed schedule should be a useful tool in all these functions. The data classification and privacy components of your IG program should leverage the schedule to understand what types of records exist, if they contain confidential information, Personally Identifiable Information (PII) or Intellectual Property (IP) that needs to be protected. Share the effort - many compliance hands make less work.

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 IG framework

Table 9. Maturity Levels for Integration with Other Compliance Frameworks

I. Attribute 8: The Schedule and Processes Are Defensible

A records schedule and records program are a little scary from a compliance perspective: How does a company know its schedule is correct? What if everyone does not follow it? We have a lot of data and documents. Will our policy and program stand up to scrutiny?

The good news is that courts and regulators do not expect perfection. They understand the records policies and programs are inherently imperfect. Defensibility comes from demonstrating reasonable and good faith efforts that you have developed a sound policy and have made real efforts to implement it, however imperfect (see Table 10).

The Myth of the Perfect Policy

Fear of non-compliance drives many companies to wait until they have a perfect policy, perfect schedule and perfect file plan. Records management is an inherently imperfect process. Courts do not expect perfect. Instead, as stated in the US Federal Rules of Civil Procedure, they are looking for “reasonable, good faith efforts.” Do not let pursuit of non-existent perfection stall out your program.

Many companies have been able to achieve real, measurable and defensible enterprise-wide record retention and deletion. Instead of depending on “fauxpliance,” they have put effort not only into the policy and schedule, but their execution as well. They make it easier for their employees to follow the policy, centralize control of record deletion and monitor employee compliance with technology. They have audited their programs, and when gaps are identified they use this as feedback either to update the policy, increase training in a particular area or simplify retention processes.

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	Policy is approved and distributed

Table 10. Maturity Levels for Records Policy Defensibility

J. Attribute 9: The Schedule Can Be Easily Maintained

A schedule is a living document that must be periodically reviewed and updated (see Table 11). 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.

We recommend that schedules be refreshed every 12 to 18 months. Companies should then update their processes and training to reflect any changes in the refresh. Updates should include:

- Updating the schedule for any new record types
- Updating the schedule for any new business that may have been acquired or business units that were divested
- Updating the schedule for any changes in legal and regulatory requirements
- Updating the schedule to reflect changes in business value, adjusting retention either upward or downward based on business usage
- Most important, updating record retention training and procedures to reflect the new retention requirements

Are Online, Auto-updating Schedules More Compliant?

- Legal and regulatory recordkeeping requirements change periodically. Technology now permits schedules to be managed and automatically updated online as laws and regulations change. Having automatically updated retention periods may seem more compliant, but they present a new type of risk.
- Regulators are looking for companies to demonstrate they are following their policies. If a schedule gets updated every month, a company in turn would need to update their record processes and training also every month. As soon as a company's policy changes, there is an expectation that the record processes will be updated concurrently. This amount of process change is challenging for most organizations. This increases the likelihood there will be a gap between policy and implementation.
- What's the greater risk: Having a slightly out of date policy, or having a gap between the policy and the implementation? We would argue it's the latter. The risk of regulatory requirements being out of date within a one or two-year period is typically small, as nearly all legal and regulatory retention period changes have a twelve month or two-year grace period. We advise that companies track policies changes over time, but only do a formal policy and schedule refresh and republish every twelve to eighteen months. Concurrent with the republishing, records management processes should also be updated. In our experience, the latter – not following your policy – is a much greater compliance risk for most organizations.

Maintainable – Can the schedule be easily maintained?				
Immature	Limited	Essential	Proactive	Enabling
Once finalized, Policy and record types 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

Table 11. Maturity Levels for Maintainability

K. Special Considerations for Global Schedules

Many organizations face recordkeeping requirements across a number of countries, raising a number of questions:

Should we have country or region-specific schedules, or should we create a single global schedule?

It is often better to have a single, global schedule with local exceptions where necessary than having multiple geography-specific schedules. First, while recordkeeping requirements do vary across countries, the differences may be small and/or often the business value of retention trumps the various legal requirements. Second, record-containing emails and files flow across borders between a marketing team in the US and a development team in India, for example. While you could declare the US-based marketing team as the records custodian, does that mean the records do not fall under Indian record management policies? It quickly becomes complicated. Hence a policy with a single global retention period is arguably more compliant. Finally – and most important – it is exceedingly difficult to implement multiple policies, especially as companies often have the same content management system for multiple countries.

Note that there are some outliers. For example, China requires retention of some accounting records for 15 years, which substantially exceeds the typical 7-year retention in the US, and the 8-year retention required in several European countries. It may make sense to set the global policy for eight years with a specific local exception for China. China also requires permanent retention of some key records.

Do we have to start globally, or can we start in a single area such as the US or Europe?

Many companies with most of their operations in one country find it easiest to develop a baseline schedule in the US, for example, and then update their schedule to include different countries. In some cases, the global corporate retention policy may be adjusted to meet a slightly longer requirement in another market – e.g., customs records must be retained for 5 years under US laws, but Canada requires 6 years – to enable consistent systems and procedures. The US and EU countries typically have the strictest retention requirements, so these make good baseline areas.

Will other regional compliance requirements, such as the European General Data Protection Regulation, conflict with our records management policy?

A good records program enhances privacy efforts; it doesn't clash with them. A strong records program identifies what you have, whether it is a record, how it should be managed, how to retrieve it when necessary and when it should be deleted. European Data Privacy programs ask what personal information do we have, how should it be managed and secured, how to find it when necessary and when should it be deleted. Both sets of requirements often address the same questions, and a good records program can boost privacy programs.

IV. A Brief Overview on Executing Your Records Retention Schedule

One vendor recently described implementing a records retention schedule as the “last mile” of the program. Sorry, but we disagree. We instead would characterize developing a policy and schedule as the “first mile” of the program. The real effort and value of a program is executing the policy and schedule. This section highlights some of the strategies for executing a schedule. Note that more detailed information is listed in the *Resources* section of this document. A good next resource is the “ACC Information Governance Primer for In-house Counsel InfoPAK.” This section touches on some key issues, but should not be considered a full resource for implementation. Also, watch for the second InfoPAK in this series, “Executing Your Records Retention Schedule.”

A. Where is Records Management Best Suited to Sit?

Records management (sometimes referred to as *Records and Information Management*, or RIM) ownership today is mixed. In many organizations, the records management function most often reports into Legal, Compliance, followed by IT, and some organizations have

“standalone” records management organizations with some responsibility for electronic information. Even if records management has historically reported into a particular group, the changing legal and data landscape should prompt organizations to rethink who should own it. Figure 6 shows typical records management organizational roles.

- **Records Steering Committee** represents key stakeholders and largest business entities; no reporting lines
- **Records Program Executive** acts as the functional head of the IG Program; typically, a direct report to Legal, Compliance or IT
- **Records Compliance Leads** are strategically placed based on the matrix structure selected
- **Records Coordinators** facilitate implementation of the IG Program activities support to execute program activities



Figure 6. Records Management Organizational Roles

Many companies are reorganizing their programs. Led by either a Records Management or Information Governance Steering Committee, the function reports into a program executive. Business units and operations groups have Compliance Leads with Coordinators in each department.

B. Implementing a Data Placement Strategy

Companies implementing their schedule for electronic information often find that they have a significant amount of their records in uncontrolled and unmanaged areas including desktops, files shares and cloud-based storage areas. Organizations need to develop strategies for saving the right information in the appropriate repositories, referred to as a data placement strategy. This type of strategy determines where data and documents should live based on their privacy, security, intellectual property, collaboration, discovery and retention requirements.

By developing a data placement strategy, the organization is providing a full governance framework, simpler user experience, increased compliance and collaboration and simplified taxonomy development, and reducing the amount of data not placed in appropriate repositories. These processes support the development of appropriate repository usage protocols, centralization of records, and information governance with distributed

management across all repositories, resulting in reduced storage costs, reduced discovery cost and risk and increased employee efficiency and productivity. These processes also allow for the appropriate protection to be applied to information and repositories that require it.

C. Following the “Five Second Rule”



To get employees to comply with a policy, the entire process of storing and classifying records and documents should take 5 seconds or less.

The switch from paper to electronic documents has also driven up the quantity of information any given employee receives. For example, the average employee sends and receives 167 emails each day. Traditional, time-intensive records classification processes do not work. We find that employees typically will spend up to five seconds manually classifying documents. If it takes longer, they will use that five seconds to subvert the classification system. Some users comply, but overall policy compliance drops significantly when classification takes longer than five seconds. Adopt easier and faster records classification processes, such as having a content management system or repository “tag” the document with the correct retention period when it is placed in a particular area.

D. Employee Behavior Change Management and Training

The organization now has the policies and processes, roadmap, tools and technology in place. Are we done yet? Not quite. The organization now needs to get the employees on board and properly using the new tools that have been put in place.

Employee behavior change management, including communications and training related to this initiative, is a critical element to drive user compliance. User behavior must actually change in order for the company to be compliant with policy and regulatory requirements. These efforts help to ensure effective implementation of the new structures and processes

by affected employees and to demonstrate compliance with legal and regulatory requirements. Designed to drive users toward a target behavior set and to measure progress in achieving compliance, these activities are also beneficial for providing formal, consistent communications to employees and executive sponsors during implementation. With the proper metrics, tangible results can be illustrated, such as the impact on retention behavior, document retrieval and management time, reductions in data/email stores, increased levels of transparency and increased effectiveness in responding to records requests.

Putting together an effective change management program involves working with a communications and training group to understand what kind of communication plans have been successful in the past in the organization and understanding what kind of platforms are available for training. Does the organization have classrooms that can be utilized? Should the organization plan on using webinars, computer-based training or other online trainings? Putting together what particular audiences need to be addressed, what platforms are available to deliver the training to the right audience and looking at the messaging that needs to be developed are key considerations to ensuring a successful change.

Some of the key steps in getting employees to accept and use the changes include:

- Development of a communications and training plan
- Creating communications and training content
- Applying the records policy to email and other information repositories
- Training employees

E. Making Records Retention Part of an Information Governance Program

Faced with increasing data volumes, more stringent legal and regulatory recordkeeping requirements, stricter privacy rules, increasing threat of breaches and decreasing employee productivity, corporations are reorganizing separate records management, discovery, security and IT programs into comprehensive Information Governance programs (see Figure 7), addressing both information in all formats and media. Information Governance combines traditional records management, eDiscovery, privacy, security, defensible disposition and employee productivity into *real-world, executable strategies*. These strategies allow organizations to better manage, retain, secure, make available and dispose of information through *cross-functional initiatives*. Instead of having different programs and workstreams addressing the same electronic information, company IG programs create single workstreams that serve multiple needs.

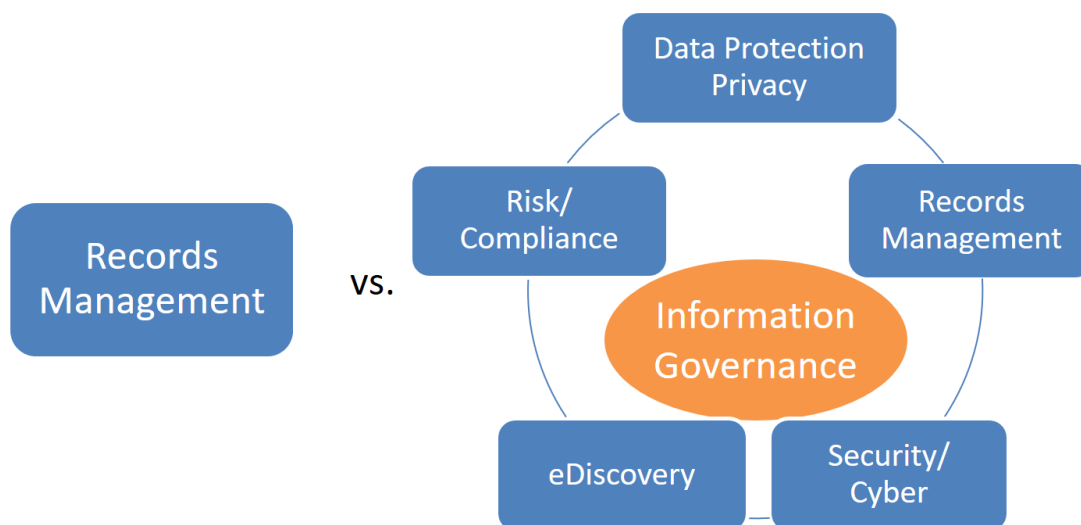


Figure 7. Many companies are upgrading their records management programs to be broader and more useful IG programs.

Information Governance programs need to be both comprehensive in their approach and tactical in their execution. Taking a big picture view can allow single initiatives to accomplish a number of business goals. Successful IG programs are developed with this larger view in mind. At the same time, it is important that these initiatives be broken into discrete tasks, and that the benefits can be both measured and easily understood. While formal definitions may be technically accurate, often it is more useful to describe these programs in plain, simple terms.

V. Closing Thoughts on Executing Your Records Retention Schedule

A. Avoid Manual Processes

Gone are the days when manual processes could handle the comparatively small number of paper records created on a daily basis. Today, the average employee spends nearly 80 hours per month reading and creating email, and office workers spend much of the rest of their days creating other forms of electronic records, such as presentations, documents and spreadsheets. No manual process could keep up with this volume of records, and even the best is bound to lapse or fail on occasion. Therefore, records managers and Information

Governance professionals must push for automated processes to classify and retain information. The process of applying automated classification systems to electronic records will naturally bring the records manager into contact with a wide variety of people and situations, enabling better records management overall.

B. Embrace Technology

The addition of technology to the records management equation presents an opportunity to finally implement the best concepts of the field, including complete categorization and automatic reorganization as needs change. As the field of data storage becomes more focused on content management, ever more fine-grained management of records will become possible. Records management professionals must embrace technological developments and push for their acceptance throughout their organizations.

C. Move Away from a Paper-centric Paradigm

To better address the shift over the last decade from paper to electronic media, organizations are moving away from a paper-centric paradigm and taking a more comprehensive and electronic media-capable approach. Records retention strategies – driven by records retention schedules – should be mindful of taking this media-agnostic approach.

Traditional Paper-centric Approach	Electronic Media-capable Approach
Media-specific Approach That Addresses Mainly Paper	Content-specific Approach Capable of Addressing Paper and Especially Electronic Content
Focused Almost Exclusively in Legal and Regulatory “Big R” Records	Includes Both Legal and Regulatory Requirements Plus “Little r” Business Value
Detailed Records Retention schedules with Hundreds of Categories	Compliant Yet “Bigger Bucket” Retention Categories for Easier Classification
Manually Oriented Record Classification Strategies	Easier, Faster, Intuitive and Sometimes Automated Classification Procedures
Documents Classified for Retention Periods	Documents Classified for a Broader Information Governance Framework Including Retention, Data Security, Access Controls and Collaboration
Many Records Printed Out on Paper as the Official Copy	Most Documents Managed in Electronic Format
Information Stored in Difficult to Access Locations, such as Offsite Storage	Employees and Departments Have Easy Access to Their Documents and Data
Employees Self-verify Compliance	Regular System Audits Ensure Policy Defensibility

Table 12. Media-agnostic Approach

C. Don’t Let Perfect Be the Enemy of Good

Rather than shooting for a perfect records management plan from the start and falling short and never actually executing, try to get a good one up and running so the benefits can begin to be seen. The single most important element that distinguishes the “good enough” from the “perfect” approach is implementation. What makes “good” even better are audit and remediation. If part of your schedule or program is not working, figure out why and update it.

A good program:

- Encompasses the majority of records, both paper and electronic
- Meets the needs of a wide variety of stakeholders throughout the organization
- Helps employees identify high-value information, reducing the clutter of low-value documents and data
- Is implemented with real-world considerations, applying a few policies very broadly
- Gives the organization real capability to respond to legal discovery
- Is automated, removing the inconsistency of manual processes
- Facilitates ongoing, defensible disposition

- Is up-to-date with respect to technology

VI. About Contoural, Inc.

Contoural is the largest independent provider of strategic Information Governance consulting services. We work with more than 30 percent of the Fortune 500 and numerous mid-sized and small companies, and provide services across the globe. We are subject matter experts in Information Governance, including traditional records and information management, litigation preparedness/regulatory inquiry, information privacy and the control of sensitive information, combining the understanding of business, legal and compliance objectives, along with operational and infrastructure thresholds, to develop and execute programs that are appropriately sized, practical and “real-world.” Contoural is a sponsor of ACC’s Information Governance Committee, and a sponsor of the ACC Legal Operations Committee Records Management and Information Governance Toolkit.

As an independent services provider Contoural sells no products, takes no referral fees from product vendors, nor provides any “reactive” eDiscovery, document review or document storage/warehousing services. This independence allows us to give our clients unbiased and impartial advice while serving as a trusted advisor.

Contoural services include:

- Assessment and Roadmap Development
- Record Retention Policy and Schedule Creation and Update
- Data Security Classification
- Litigation Readiness
- Data Placement
- Technology Selection
- Taxonomy and File Plan Development
- Behavior Change Management and Training
- Legacy Document and Data Remediation
- Information Governance Organizational Development
- Offsite Record Storage Audit, Contract Negotiation and Cost Recovery

With an average of 24 years of experience, Contoural consultants include former litigators, former in-house counsel, records managers, compliance experts, eDiscovery specialists, privacy professionals, technology experts, former CIOs, training and behavioral change management specialists, industry technology analysts, among others. Many hold JD degrees; most are members of ARMA International, IAPP or AIIM, and most have in-depth

experience in one or more areas of technology that can help enhance, and potentially automate, the implementation of policies, retention schedules and processes for records management and litigation readiness. In addition, Contoural consultants remain active in the legal community, including the American Bar Association and various State Bar Associations.

VII. About the Author

Mark Diamond, President, CEO and Founder, Contoural, Inc.

Note: The content in this InfoPAK reflects the collective insight, experience, recommendations, advice, and wisdom of many Contoural consultants and other team members. While Mark is listed as the author, any credit for the quality of the content should be bestowed on this larger team. Any shortcomings belong exclusively to Mark.

Mark Diamond is an industry thought leader in information governance, encompassing records and information management, litigation readiness, control of privacy and other sensitive information, defensible disposition, and employee collaboration and productivity. Mark is a frequent industry speaker, presenting at numerous Legal and IT industry conferences. Additionally, Mark delivers more than 50 onsite Information Governance seminars to internal corporate audiences each year.

Mark is founder, President & CEO of Contoural, Inc. Previously, Mark was co-founder of Veritas' (OpenVision) Professional Services group, founder and General Manager, Worldwide Professional Services for Legato Systems, Vice President of Worldwide Professional Services at RightWorks, and he has worked as a management consultant. He also served as Chair of the Storage Networking Industry Association customer advisory board on data security. He sits on the board of advisors for high technology companies.

He has a Bachelor's degree in Computer Science from the University of California San Diego. Mark is former President of the UC San Diego Alumni Association, and served as a Trustee of the university's foundation.

Mark welcomes any questions, comments or criticisms of this InfoPAK. He can be reached at mdiamond@contoural.com and for more information, on Contoural's site at http://www.contoural.com/about-management_team.php.

VIII. Additional Resources

A. ACC Information Governance Primer InfoPAK

“Information Governance Primer for In-house Counsel,” (2016), available at <http://www.acc.com/legalresources/resource.cfm?show=1439795>

B. ACC Docket Articles

Annie Drew and Mark Diamond, “Building a Business Case for Information Governance,” *ACC Docket* 32, no. 8 (Oct. 2014): 26-40, available at <http://www.acc.com/legalresources/resource.cfm?show=1377595>

B. ACC Legal Quick Hits

“How the Lowly and Boring Records Retention Schedule Can Have a Big Impact on Your Information Governance Program,” *Legal Quick Hit*, (2017), available at http://webcasts.acc.com/detail.php?id=658995&go=1&_ga=2.84143321.1529715264.1513276418-432379149.1453311770

“How to Hire, Train, Develop Objectives for, and Supervise a Records Management and Information Governance Team,” *Legal Quick Hit*, (2017), available at http://webcasts.acc.com/detail.php?id=426069&go=1&_ga=2.84143321.1529715264.1513276418-432379149.1453311770

“Who Should Own (and Pay) for Information Governance – Legal or IT?” *Legal Quick Hit*, (2016), available at http://webcasts.acc.com/detail.php?id=752726&go=1&_ga=2.83922137.1529715264.1513276418-432379149.1453311770

“How to Delete A Lot of Email and Files Quickly (and Defensibly),” *Legal Quick Hit*, (2016), available at http://webcasts.acc.com/detail.php?id=812093&go=1&_ga=2.83922137.1529715264.1513276418-432379149.1453311770

“Creating a Return on Investment (ROI) Model for Information Governance,” *Legal Quick Hit*, (2016), available at http://webcasts.acc.com/detail.php?id=432174&go=1&_ga=2.83922137.1529715264.1513276418-432379149.1453311770

C. ACC – Webcasts

“First Year Student Orientation: Launching or Updating Your Records Management Program,” *Webcast*, (2017), available at http://webcasts.acc.com/detail.php?id=659596&go=1&_ga=2.84143321.1529715264.1513276418-432379149.1453311770

“Information Governance: Getting a Program Started,” *Webcast*, (2017), available at http://webcasts.acc.com/detail.php?id=550935&go=1&_ga=2.84143321.1529715264.1513276418-432379149.1453311770

“Creating an Information Governance Project Plan,” *Webcast*, (2016), available at http://webcasts.acc.com/detail.php?id=740113&go=1&_ga=2.83922137.1529715264.1513276418-432379149.1453311770

D. ACC – Information Governance Committee Resources

“Employee Behavior Change Management Programs for Information Governance,” *Quick Counsel*, (2017), available at <http://www.acc.com/legalresources/quickcounsel/employee-behavior-change-management.cfm>

“Creating a Data Classification Standard,” *Sample Form & Policy*, (2017), available at <http://www.acc.com/legalresources/resource.cfm?show=1460255>

“Data Map Design Strategies,” *Sample Form & Policy*, (2017), available at <http://www.acc.com/legalresources/resource.cfm?show=1454429>

“Data Map Population Strategies,” *Sample Form & Policy*, (2017), available at <http://www.acc.com/legalresources/resource.cfm?show=1454435>

“Data Map Use Cases,” *Sample Form & Policy*, (2017), available at <http://www.acc.com/legalresources/resource.cfm?show=1454447>

“Creating Discovery Response Processes,” *Article*, (2017), available at <http://www.acc.com/legalresources/resource.cfm?show=1454480>

“Defining Effective Legal Hold Processes,” *Article*, (2017), available at <http://www.acc.com/legalresources/resource.cfm?show=1454486>

E. Contoural Whitepapers

“Real World Strategies for Archiving and Decommissioning Legacy Applications” *White Paper*, (2017), available at http://www.contoural.com/whitepaper_summary.php?id=38

“Defensible Disposition: Real-world Strategies for Actually Pushing the Delete Button” *White Paper*, (2014), available at http://www.contoural.com/whitepaper_summary.php?id=31

“Metrics Based Information Governance,” *White Paper*, (2013),

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“Stop Hoarding Electronic Documents,” *White Paper*, (2012), available at

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“Email Classification Strategies That Work,” *White Paper*, (2012), available at

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“Seven Essential Storage Strategies,” *White Paper*, (2015), available at

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“Is It Time for Auto-Classification? – Part 1,” *White Paper*, (2015), available at

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“Is It Time for Auto-Classification? – Part 2,” *White Paper*, (2015), available at

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F. Other Articles

Mary Butler, “IG and ‘Mission Control’: Launching the Future of Healthcare,” *The Journal of AHIMA*, (2015), available at

[http://journal.ahima.stfi.re/2015/08/01/ig-and-mission-control-](http://journal.ahima.stfi.re/2015/08/01/ig-and-mission-control-launching-the-future-of-healthcare/?sf=pkyvo#aa)

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Mary Butler, “Panel: launching Information governance harder than Landing on the Moon,” *The Journal of AHIMA*, (2015), available at

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Mark Diamond, “Eight Steps in Launching an Information Governance Program,” *Compliance and Ethics Professional*, (March 2015): 17-21, available at

<http://www.contoural.com/docs/scce-cep-2015-03-Diamond.pdf>

Mark Diamond, “Six Steps for Creating a ‘Super Data Map,’” *Information Management*, (2014): 28-32, available at

<http://imm.arma.org/publication/frame.php?i=224033&p=34&pn=&ver=flex>

Mark Diamond, “Can Legal and IT Agree on Compliance? Yes, And Five Steps to Get There,” *CIO Review Magazine*, (December 10, 2013), available at

<http://www.cioreview.com/magazine/Can-Legal-And-It-Agree-On-Compliance-Yes-And-Five-Steps-To-Get-There-XGOO67982021.html>

Mark Diamond, “The Root Cause of Washington Gridlock?”

Relational Databases," *Inside Counsel Magazine*, (November 2013), available at <http://www.insidecounsel.com/2013/11/01/the-root-cause-of-washington-gridlock-relational-d>

Mark Diamond, "Fibs Your e-Discovery Vendor and Law Firm May Tell You – Part 1," *Inside Counsel Magazine*, (May 2013), available at <http://www.insidecounsel.com/2013/05/15/fibs-your-e-discovery-vendor-and-law-firm-may-tell>

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Mark Diamond, "5 Strategies to prevent Runaway Legal Fees When Being Billed Hourly," *Inside Counsel Magazine*, (April 2013), available at <http://www.insidecounsel.com/2013/04/08/5-strategies-to-prevent-runaway-legal-fees-when-be>

Mark Diamond, "Cheat Sheet: 8 Strangest Lawsuits Driving the 7 Most Noteworthy In-House Career Moves," *Inside Counsel Magazine*, (April 2013), available at <http://www.insidecounsel.com/2013/04/01/cheat-sheet-8-strangest-lawsuits-driving-the-7-most>

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Mark Diamond, "What is Big Data and Why Should In-House Counsel Care?" *Inside Counsel Magazine*, (February 2013), available at <http://www.insidecounsel.com/2013/02/19/what-is-big-data-and-why-should-in-house-counsel-c>

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IX. Appendix A: Sample Schedules Excerpt

Schedule with Legal Citations

Category: Finance / Accounting / Tax

RRS CODE	RECORD TYPE TITLE	RECORD TYPE DESCRIPTION AND RETENTION
FIN-22	Finance / Accounting / Tax Banking / Cash Processing	Records relating to banking and cash management activities Examples include: deposits, statements, cash management reports, cancelled checks, other account/wire transfers, account set-up and management
RETENTION REQUIREMENT: 7 YEARS		
REGULATORY CITATION	RECORDS SUMMARY FOR CITATION	RETENTION PERIODS
— 13 CFR 107.600(c)(2)	Accounting and financial records	6 years
— 17 CFR 210.2-06	Records relevant to the audit or review which include work papers forming the basis of the audit, correspondence, etc.	7 years
— 26 CFR 1.60501-1(e)(3)(iii)	Information returns re cash transactions in excess of \$10,000	Active + 5 years
— 31 CFR 1010.420	Reports of foreign financial accounts	5 years
— 31 CFR 1010.430 (d)	Records of foreign financial accounts, including copies of checks, drafts, monetary instruments, investment securities, or other similar instruments	5 years
GA Ga. R. & Regs. 80-10-1-.01 (28)(a)-(e)	International: accts with foreign banks; records of trnf of more than \$10M; \$10M remit/trnf copy; \$10M+ check; \$10M rcvd	5 years
GA O.C.G.A. 7-1-687.1 (a)	Check sold; GL; settlement sheets rcvd; stmts and bank reconcils; outstanding checks; check paid; agents; current and money trans	5 years

FIN-30	Finance / Accounting / Tax Journals / Ledgers	Records used to transfer charges between accounts and summarize account information Examples include: general ledgers, chart of accounts, journal entries/support, general ledger, reviews/changes, daily balancing ledger postings
RETENTION REQUIREMENT: 7 YEARS		
REGULATORY CITATION	RECORDS SUMMARY FOR CITATION	RETENTION PERIODS
— 13 CFR 107.600(c)(2)	Accounting and financial records	6 years
— 17 CFR 210.2-06	Records relevant to the audit or review which include work papers forming the basis of the audit, correspondence, etc.	7 years

Schedule without Citations

Category: Finance / Accounting / Tax

RRS CODE	RECORD TYPE TITLE	RECORD TYPE DESCRIPTION
FIN-10	Finance / Accounting / Tax Accounts Payable / Receivable	Records related to the company's payment obligations and receipt of revenues Examples include: invoices, employee expense reports, cash receipts, refunds, reconciliations, adjustments, posting reports, vendor wire transfers, purchase orders, ACH validation, proof of vendor invoice payments, voided checks
RETENTION REQUIREMENT: 7 YEARS		
FIN-20	Finance / Accounting / Tax Bad Debts / Collections	Records related to the monitoring, collecting and writing off of bad debts Includes authorizations and supporting details of uncollectible accounts
RETENTION REQUIREMENT: 6 YEARS		
FIN-22	Finance / Accounting / Tax Banking / Cash Processing	Records relating to banking and cash management activities Examples include: deposits, statements, cash management reports, cancelled checks, other account/wire transfers, account set-up and management
RETENTION REQUIREMENT: 7 YEARS		
FIN-30	Finance / Accounting / Tax Journals / Ledgers	Records used to transfer charges between accounts and summarize account information Examples include: general ledgers, chart of accounts, journal entries/support, general ledger reviews/changes, daily balancing ledger postings
RETENTION REQUIREMENT: 7 YEARS		

X. Appendix B: Information Types Inventory

Sample Excerpt

Sales & Marketing		Information Category	Examples
Item ID	Sub- Function	Category Name	Examples of Documents Included in this Category
2	MKT2000 Marketing Strategy		Documents related to the development of strategic and targeted marketing plans. Includes documents monitoring progress against plans
3		DISTRIBUTION FORECASTS (4062)	WHAT EACH DISTRIBUTOR IS FORECASTED TO DO IN SALES
4		FORECASTS (4065)	SALES FORECAST
5		FORECASTS / PLANS (4085)	MONTHLY ROLLING 12-MONTH FINANCIAL UPDATES TO THE OPERATING PLAN
6		NEW PRODUCT ANALYSIS (4087)	FINANCIAL ANALYSIS REGARDING POTENTIAL NEW PRODUCTS
7	MKT2010 Market Research	Studies and analysis of market trends, competitor research, customer surveys, etc.	
8		COMPETITOR INFORMATION (4056)	REFERENCE INFORMATION
9		INDUSTRY INFORMATION (1403)	
10		MARKET RESEARCH (1371)	
11		MARKETING SURVEYS & ANALYSIS (1372)	Polls, surveys, analysis and reports conducted by outside agencies.
12		TREND ANALYSIS (1376)	Operational trends at the company / division / region levels
13	MKT2000 Pricing	Documents related to the determination of prices for company products	
14		PRICE BOOK (30018)	Files/data for the creation of the printed Price book
15		PRICE BOOK (30025)	Files and/or paper work for printed price books
16		PRICE CONCESSION REPORT (4066)	PRICE CONCESSION FOR COMPETITIVE SITUATION
17		PRICE PROTECTION RECORDS (1404)	
18		PRICING DATA (1405)	INCLUDES PRICING LISTS, PROPOSALS, AND QUOTES
19		PRICING DATA (3937)	OFFICIAL PRICE LIST FOR ALL PRODUCTS, CHANNELS AND ACCOUNTS.
20	MKT2010 Advertising and Product Promotion	Documents related to the design and production of promotional literature, advertising, and other communications promoting company products and services.	
21	x	ADVERTISING RECORDS (1362)	
22	x	BROCHURES -PAST COPIES (1364)	
23	x	CO-OP ADVERTISING (4059)	PROMOTIONAL FUNDS
24	x	DIRECT MAIL (1367)	
25	x	EXTERNAL PUBLICATIONS (1368)	Newsletters, and annual reports