

WHITE
PAPER

Creating a Modern, Compliant and Easier-to-Execute Records Retention Schedule

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Introduction

Today organizations are inundated with both paper and especially electronic information. At the same time, they face legal and regulatory recordkeeping rules as well as new and increased privacy requirements. Adding to these challenges, many employees habitually hoard electronic information, convinced they need to save everything forever despite the risks, costs and productivity impacts. As a result, many companies are rethinking their approach to records management programs. A key first step is upgrading their traditional records retention policy and schedule to one that is modern, compliant, and easier to execute.

Challenges with Traditional Records Retention Schedules

A key component of a records program is the records retention policy and schedule. A records retention policy provides overall guidance on the management of records in an organization. The records retention schedule, typically an appendix to the policy, 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.

Companies are finding that “traditional” records retention schedules fall short in driving effective retention and disposition. These traditional schedules suffer from a number of limitations:

Focus Only on “Big R” Records – Traditional records retention schedules are based almost exclusively on legal and regulatory requirements, often ignoring the business value of information. This business value can include intellectual property, trade secrets, operational processes and other information that makes employees and groups productive. As document and data cleanup projects often are driven by the schedule, failure to account for business value when determining what is a record and how long it should be maintained thwarts effective disposition efforts.

Focus on Paper Records to the Exclusion of Electronic – According to ARMA, more than 90% of all records today are created or received in electronic format. Many 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. This focus on paper misses electronic records and makes program execution more difficult.

Overly Long, Complex and Detailed – Traditional schedules tend to be long and complex. This complexity worked when it was someone’s full-time job to sort paper but fails when managing large volumes of incoming and outgoing electronic information. Employees just do not follow these traditional schedules with thousands of record types across many dozens of pages. Companies are finding that courts and regulators do not view detailed schedules as somehow being more compliant. Worse, these long, complex schedules are more difficult to execute, which drives non-compliance.

Schedules Only Identify “Typical” Record Types, Omitting Untypical Records – While 70% of an organization’s records such as payroll and finance information can be considered “typical” and are common across different companies, more than 30% of its records are specific and, in some cases, unique to each organization. These company-specific records can include business processes, trade secrets and intellectual

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property. Traditional schedules focus on identifying the 70% of typical records, and often miss the 30% of untypical records.

Online, Web-based Schedules Are Harder to Execute – A new twist on traditional schedules is to host them via a third-party web application. The hope is that by hosting schedules online they can be perpetually updated as regulations change. While schedules do need to be refreshed at least annually or semi-annually, hosting schedules online makes them more difficult to integrate into content repositories.

Conflicts with Privacy Rules – Most global privacy rules limit how long personal information should be retained and can be in direct conflict with recordkeeping requirements. Traditional schedules do not address these conflicts.

Lack Consensus with the Business – Few traditional schedules seek to build a consensus with business units on what should be saved and not saved. This lack of consensus drives conflict down the road during disposition initiatives.

Companies need a better approach to records management led by a modern, compliant, and easier-to-execute records retention policy and 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.

Attributes of a Modern, Compliant and Easier-to-execute Records 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.

Schedules Must Be Compliant with Legal and Regulatory Requirements

A basic requirement for any schedule is that it be compliant with federal, state and industry-specific, as well as country-specific, 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.

Schedules Should Identify both Typical and Uncommon Records

A schedule should include all the records across the organization. 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 needs.

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.

Schedules Should Identify Records Across All Media

A schedule should reflect a media-agnostic approach 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 employee computer hard drives and are not as easily inspected. Again, interviews can often tease out record-worthy content across multiple media.

Schedules Should Be Clear and Intuitive

Records retention policies and schedules should be clear and prescriptive about what is and is not a record. 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." Most users will not understand this acronym.

Modern Schedules Represent 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 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. There is a temptation to create the

schedule without input from the business.

Our experience over the years shows 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. 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.

Surprisingly, including business value as a criterion for determining information as a record often does 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.

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 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. Use a departmental-level schedule (a subset of the schedule) to communicate the categories and which documents need to be saved in them. Keep it simple and straightforward.

The Schedule Integrates Privacy Requirements and Other Compliance Frameworks

Most privacy laws require business justification for retaining personal information. Retention of personal information requires detailing a legitimate business purpose for this retention.

The Schedule Can Be Easily Maintained

A schedule is a living document that must be periodically reviewed and updated. 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. Schedules should be refreshed every 12 to 18 months, on average. 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

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These updates are easier to maintain when an organization “owns” its schedule and can freely make updates, vs. “renting” a schedule from a third-party application.

Special Considerations for Global Schedules

It is better to have a single, global schedule with local exceptions where necessary than to have 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. 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 15-30 years, which substantially exceeds the typical 7-year retention in the US, and the 10-year retention required in several European countries. It may make sense to set the global policy for ten years with a specific local exception for China.

Conclusion

Many organizations are updating their records programs to improve compliance and lower risks. Creating a modern, easier to execute program provides an additional benefit: it can increase employee productivity and collaboration. Including both information that needs to be saved for legal and regulatory requirements as well as information containing true business value better enables employees to access high value information and reduces the “clutter” of unneeded information. While compliance, risk minimization and cost reduction are indeed important drivers, often employee productivity emerges as one of the largest program drivers and business benefits.

About Contoural

Contoural is the largest independent provider of strategic privacy and Information Governance consulting services. Serving more than 30% of the Fortune 500, many small and mid-sized companies, public sector organizations, and non-profits, we reduce risk, ensure compliance, lower costs, and drive employee productivity. As an independent provider we sell no products, provide no “reactive” eDiscovery services, store no documents, nor receive referral fees. Contoural is recognized as the market leader in strategic privacy and Information Governance consulting services.

Our Strategic Consulting Services

Data Retention/Records Retention Schedule Development

Assessment and Roadmap

Personal Information Inventory

Risk Tolerance Review and Targeted Program Maturity

Risk-driven Policies and Notices

Privacy-enabled Incident Response

Privacy Subject Access and Deletion Request Process

Privacy Training and Awareness

Data Placement Strategy and Rollout for Unstructured Files and Semi-structured Email Data

Structured Data Retention and Remediation Strategy

Organizational, Disposition and Monitoring Services

Organizational Privacy Roles and Responsibilities

Employee Behavior Change Management and Training

Fractional Privacy and Records Manager

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650.390.0800 | info@contoural.com | www.contoural.com

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