

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

Abstract

In this white paper, Contoural outlines the best practices for creating and maintaining a records retention schedule that is modern, compliant and easier to execute. It lists challenges of traditional approaches and highlights the ideal attributes of an effective schedule. Finally, it details a maturity model of key design factors that can be used to create each organization's ideal schedule.

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Introduction

Records retention schedules are important. They define an organization's legal and regulatory retention obligations. More important, their implementation drives larger downstream compliance, privacy, discovery, disposition and employee productivity efforts. Yet for most companies, retention schedules are not high on their list of compliance priorities. The task usually falls to the Legal or Compliance Department, which often views creating or updating a Retention Schedule as a necessary evil for compliance. Many organizations take a "check the box" approach in creating their schedule, either modifying a basic template, creating one from a computer program, or handing it off to their law firm to develop it—all of these approaches with little input or interaction from the business. This produces schedules that are hard to follow, decrease compliance, increase risks and raise costs.

Traditional approaches to records retention schedules can cause costs to spiral out of control, employee productivity declines, collaboration is harder, and the cost of discovery soars.

Traditional Approaches to Developing Records Retention Schedules

Traditionally, records retention schedules were designed for the retention and disposition of paper records. Much of record schedule implementation consisted of sorting the paper documents into offsite storage boxes. Yet during the past few decades the world of information management has changed as organizations and employees have transitioned from paper to email, files and other types of electronic communications. Companies are realizing that these traditional, paper-centric approaches do not work with electronic information. This has created a significant gap between what is called for in policies and what information is actually being retained and disposed.

These traditional approaches fall short in many ways:

- They are outdated with an emphasis on paper records management, to the exclusion of the majority of records that are created or received in electronic media
- They focus only on records with legal or regulatory requirements, with little to address records with business need or business value
- Historically the emphasis has been on creating longer and complex schedules. Some schedules have thousands of lines for every single record in the organization. The misconception was that a longer schedule was more compliant.
- These detailed schedules are difficult and time consuming for employees to follow
- Often there is a heavy emphasis on creating a detailed policy itself, with little consideration on how the policy will be executed.

The result of the above approaches is that companies do not follow their own records retention policy. Both paper and electronic storage requirements and costs spiral out of control, employee productivity declines, collaboration is harder, and the cost of discovery soars. It is as if merely having a records retention policy and schedule will automatically place an organization in compliance with its records management obligations. A more modern and effective approach is needed.

What Makes a Good, Modern Records Retention Schedule?

At the highest level, a good records retention schedule provides the foundation for an effective records management and Information Governance program. But what makes a records retention schedule good? Through our creation, refresh and execution of hundreds of records retention schedules over the years we have identified common attributes:

A good schedule not only drives compliance, but also saves time and effort on downstream discovery, privacy, disposition and other compliance initiatives.

Addresses Modern Records and Their Requirements. A good schedule addresses all types of documents across all types of media, capturing not only traditional record types in typical areas such as finance and human resources, but also an organization's atypical or even unique records across a variety of functions. In other words, modern schedules truly represent important information across all parts of a complex enterprise.

Builds a Consensus. A schedule should not be a policy club to be wielded against the business units to demand they delete non-records. Rather, an effective schedule represents a consensus across multiple stakeholders and groups on what data and documents need to be retained both for legal and regulatory requirements, while also addressing business value. It helps sort out what must and should be saved from non-record and low value information.

Collaboration Difficulties. Dumping unfamiliar folder structures and archives onto new users without curation can make collaboration more difficult. Employees from the acquiring side may not know how the acquired team organized their files and important documents can be effectively lost in the confusion.

Will Be Followed. Compliance is achieved in the view of courts and regulators in not only having a policy, but rather demonstrating that a policy is being followed. They are not interested in whether you "checked the box" and drafted some policy documentation. They want to see how you implemented those policies and requirements. Compliance means showing you actually did what you said you were going to do. Modern records retention schedules are designed to be followed.

Minimal Compliance Alignment: In the rush to migrate, the incoming data is often not aligned with the buyer's records retention schedule or privacy rules. That leaves the messy work of compliance for later, and it may be much harder to apply retention or disposition policies after data is intermixed post-merger.

A good schedule not only drives compliance, but also saves time and effort on downstream discovery, privacy, disposition and other compliance initiatives. More important, identifying high value information makes the employees and the overall business more productive.

Key Design Factors

The ideal records retention policy and schedule is specific to each organization, with some organizations facing greater regulatory requirements while others have a relatively low regulatory profile. Some organizations are centralized and others geographically diverse. The amount and diversity of information and record types varies tremendously. Taking a "one size fits all" approach produces a mis-fitting schedule that is harder to execute. The key to creating the ideal schedule for any organization is balancing a variety of design factors based on each organization's needs.

These design factors can be expressed in a maturity model. Typically, immature schedules are harder to execute and more mature schedules are easier to execute. Nevertheless, few organizations need a schedule that is at the highest level of maturity across all elements. The key is finding the right balance of these design factors to produce the ideal schedule for your organization.



The Key Design Factors are:

Compliance

Does your retention policy and schedule follow all the rules? An immature retention policy and schedule does not consider the rules, does not provide the legal basis for retention periods and does not mandate disposition of expired information. As a schedule matures, it should address general legal and regulatory requirements as well as any industry-specific regulations. For global companies, the most mature schedules include country-specific retention requirements.

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	Addressed both general and industry-specific legal and regulatory requirements	+ Address country-specific record requirements	+ Address record and explicit non-records in a prescriptive manner

Comprehensiveness

Does your schedule represent all of the unique records in the organization? Companies often try to take shortcuts by copying from industry templates or sample schedules that purport to include all 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.



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 actual have, assuring all actual record content is captured

Media

Does the schedule look across all media formats where records may exist? The oldest (and often the least mature schedules) address only paper or a subset of the media present in the organization. Today, many records—some exclusively—exist in newer media such as email, files and even social media. Also don't forget about physical items that may qualify as records—lab specimens at life science companies, or even shoe design samples at shoe manufacturers. A more mature schedule includes all media types and will help change the mindset that your schedule only applies to paper records.

Have 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	Address information and records agnostic of the medium upon which a record exists	+ Based on a thorough review of all content, regardless of media	+ Address all information types on all media across all systems and locations

Clarity

An effective policy and schedule clearly define “What is a Record?” and “What is not a Record?” Likewise, it details for employees what records must be kept, and what can be destroyed. Finally, the schedule specifies retention requirements and avoids incomplete definitions.



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

Consensus

Often a records initiative is driven by one group in the company—sometimes Legal, sometimes Compliance—and little effort is made to engage the rest of the business. The result is rogue business units who either refuse to follow it or push back on its requirements. Such efforts are often seen as “legal poking its nose in our business” or “encroaching on our territory” and therefore are unwelcome. An effective schedule reaches out to multiple groups and stakeholders. It makes the case for why a policy and schedule are needed, and gains support for its enforcement.

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

Usability

The most practical schedules provide a “Goldilocks” approach to retention schedules—just enough information, not too little, not too much. They use a format that is easy to read, and organized in a way that all employees can follow. A usable schedule follows a “big bucket” approach, with a small number of record categories; rather than a “small bucket” approach, with hundreds or even thousands of record line items. Additionally, a usable schedule should be concise—they don’t list every single record or example for a particular record category.

Is the policy easy to follow?

IMMATURE	LIMITED	ESSENTIAL	PROACTIVE	ENABLING
Poorly-organized schedule with hard-to-follow and abstract record definitions	Schedule not organized by business function	Clear record definitions including samples	+ Schedule organized by function or other employee accessible balancing “small bucket” prescription with “large bucket” ease of use	+ Useful and intuitive for employees providing quick access to classifying records

Integration

A mature retention policy and schedule should be integrated into an overall information governance program which includes data classification, privacy, collaboration and litigation readiness. A well-designed schedule should be a useful tool in all these functions. The data classification and privacy components of your information governance program should leverage the schedule to understand what types of records exist, if they contain confidential information, PII or IP that needs to be protected.

Does the schedule integrate with other compliance regimes?

IMMATURE	LIMITED	ESSENTIAL	PROACTIVE	ENABLING
Designed as a standalone policy and difficult to integrate	Integration with Records Management functions only	+ Schedule integrated with data security classification policy	+ Record classes integrated	+ Part of a well-designed Information Governance framework

Defensibility

Both a retention policy and schedule must be defensible, in the event they must ever be defended in court or to regulators. Defensibility also means ensuring employees are in compliance with the policy and schedule. In order to measure compliance, you will need to develop some level of auditing practice to determine user knowledge and compliance with the policy and schedule.



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, distributed, and integrated

Maintenance

A schedule is a living, breathing document that must be periodically reviewed and updated. As new record types are created, old record types become obsolete, and legal citations change all the time- not to mention new recordkeeping regulations that come into play.

Can the schedule be easily maintained?

IMMATURE	LIMITED	ESSENTIAL	PROACTIVE	ENABLING
Once finalized, policy and schedules are not updated or only updated after many years	Retention periods and citations are updated on a regular basis, but new record types are not identified	Retention periods and citations are updated on a regular basis, and new record types regularly identified	+ Retention for business value increased or decreased as part of regular schedule maintenance	+ New media types are proactively assessed for records impact and included in the schedule

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.

Conclusion

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

Additional Materials Available

For more information on unstructured data management and M&A integration strategies, visit Contoural, Inc. at www.contoural.com or contact info@contoural.com. Contoural offers white papers, case studies, and webinars providing in-depth guidance on information governance, records management, and data integration best practices.

About Contoural

Contoural is the largest independent provider of information governance, privacy, and AI governance strategic consulting services, including records and information management, governance policies, litigation readiness and control of sensitive information. The company does not sell any products or take referral fees, store any documents, or provide any “reactive” eDiscovery services. Serving as a trusted advisor to more than 30% of the Fortune 500, non-profits, and public sector organizations, Contoural offers a range of record management and information governance services, including:

- M&A Data Integration
- Records Retention Schedule/Data Retention Policy Development
- Global Records Citations Research
- Business Justification Process
- Assessment and Roadmap
- Personal Information Inventory
- Privacy Risk-Driven Policies and Notices
- Privacy-Enabled Incident Response
- Data Placement Strategy and Rollout for Unstructured Files and Semi-Structured Email Data
- Structured Data Retention and Remediation Strategy
- Employee Behavior Change Management and Training
- Fractional Privacy Manager
- AI Governance

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335 Main Street, Suite B, Los Altos, CA 94022
650.390.0800 | info@contoural.com | www.contoural.com

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