



# THE INFORMATION MANAGEMENT DIGEST

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A Service of WesTex Document, Inc.

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## RECORDS RETENTION SCHEDULES

Perhaps no other area of records management is as important in overall program management, or as fraught with risk as records retention scheduling. This article will explore the essential elements of a records retention schedule and how this activity is incorporated into overall records system design and program implementation.

### Legal Justification

The primary driver for records retention scheduling is legal protection. Courts have held that enforcing arbitrary records destruction orders can leave an organization defenseless in litigation. *Carlucci vs. Piper Aircraft* is a classic example. In 1984 the United States District Court dealt harshly with Piper Aircraft following the arbitrary destruction of records materials. Senior District Judge William J. Campbell concluded "the defendant engaged in a practice of destroying engineering drawings with the intent of preventing them from being produced in lawsuits." . . . "the selective destruction of records even prior to litigation with the intent of preventing potentially harmful records from being available during litigation is construed as a deliberate violation of the rights of the other party in discovery." Therefore, one goal of an effective records retention program should be the systematic retention and destruction of documents on a consistent basis, and during the regular course of business. It is also important to note that the retention schedule should be inclusive of all records regardless of media type. Electronic records, digital images, microforms and audio-visual records are also subject to subpoena and discovery.

Of course, some companies respond to the situation raised in Piper by retaining all documents permanently. This can be equally hazardous. In commenting on



issues related to statutes of limitations, Information Requirements Clearing House, a records retention software and consulting firm, makes the following comments. "Traditionally, lawyers have advised their clients to "retain records forever in case we are sued". As a result, the development of effective records retention programs have sometimes been thwarted based upon the mistaken belief that records must be kept for long periods in case they may be needed in litigation. With the increase in modern day litigation and the increased use of discovery to obtain relevant documents from adverse parties, this traditional adage related to records retention may prove to be more harmful than helpful to some organizations." Keeping all records, or retaining records too long can have equally damaging effects during the discovery process, since not all records will present the organization in the best light.

### Economic Justification

An effective records retention program will also save organizations money in three important ways:

- Reduction of overall records volume: Retention schedules clearly identify the retention periods for various records materials and provide a uniform

process to review these records that have reached the end of the period of retention with an eye towards destroying them.

- Shifting of records to less expensive storage environments: A well designed records retention schedule also identifies the ideal environment for those records. When records are active and retrieval frequency is high, records materials are kept close at hand in order to facilitate retrieval. As reference frequency falls, the schedule stipulates housing these semi-active or inactive records offsite in order to lower overall storage costs.
- Labor and time savings during litigation or audit:

Should the organization become involved in litigation or audit, there are tremendous labor demands regarding records retrieval. With a well organized system and an effective retention schedule in place, discovery or audit can be conducted much more rapidly and with lower labor costs. Those records which have been destroyed in the regular course of enforcing the retention schedule can be clearly demonstrated to the court or auditor.

### Preparation

In order to create an effective retention schedule for the organization, it is first necessary to identify all departments, their record types, their reference rate, time span of records, purposes or descriptions, and how the records are currently housed. This information is usually captured on a records inventory form. There are many good examples of records inventory forms on the Internet. Here are a few examples:

University of Cincinnati:

[www.archives.uc.edu/recmgmt/invent.pdf](http://www.archives.uc.edu/recmgmt/invent.pdf)

Environmental Protection Agency:

[www.epa.gov/records/tools/toolkits/6step/form1.htm](http://www.epa.gov/records/tools/toolkits/6step/form1.htm)

National Synchrotron Light Source

[www.nsls.bnl.gov/organization/esh/qa/documents/QF-039.doc](http://www.nsls.bnl.gov/organization/esh/qa/documents/QF-039.doc)

The other key area of preparation is making sure there is a firm commitment from top management for engagement in retention scheduling. The process, whether conducted in-house or outsourced to a records retention consultant, will be resource intensive from both a financial and labor standpoint. It will also be necessary to commit the resources of the corporate counsel and external auditor or accountant in order to solicit their input to the development of the schedule and to review the draft once it has been completed.

### Legal Research

Once all records series have been identified through the inventory process, it will be necessary to research any statutory requirements that mandate a retention period. These references may exist at the national, state or

even municipal level. In some instances there may be differing retention requirements at the national and state level. If so, schedules usually defer to the longer retention period of the two.

Depending upon the number of records series identified in the audit, this process could take many months to complete. It is a good idea to put project management tools to work during this process in order to accurately track progress toward milestones, resource allocation and any obstacles encountered during project phases.

Most federal research is conducted through a search of the United States Codes. The Codes of Federal Regulations or CFRs are updated through a publication titled The Federal Register. Periodically, Federal Register rules are incorporated into the Code of Federal Regulations, but the newest requirements (such as those imposed in Sarbanes Oxley legislation, for example) will be contained in the Federal Register until they are incorporated. These resources are available online and are largely searchable by text. The Code of Federal Regulations can be accessed through [www.gpoaccess.gov/cfr/](http://www.gpoaccess.gov/cfr/)

The Federal Register is also available online at [www.gpoaccess.gov/fr](http://www.gpoaccess.gov/fr)

State statutes are especially important for industries regulated at the state level. Most states have placed statutes online. Copies are usually available in the public library or in university libraries. As with federal statutes, supplements are issued annually for both legislative activity and state agency rule making. These should also be consulted in order to locate the most current references. The book Information and Records Management suggests the search terms "records," "recordkeeping", and "limitations of action."

Case law can also influence retention periods. Fortunately, there are specialized research tools such as LEXIS and Westlaw which provide text based searching of case law. These are subscription services available at [www.lexisnexis.com/](http://www.lexisnexis.com/) and [web2.westlaw.com](http://web2.westlaw.com).

Additional considerations in legal research include statutes of limitations or limitations of actions which establish a finite time limit on possible litigations. While these are not retention periods, as such, they can provide additional guidance in the establishment of retention periods where no statutory reference exists. Tax laws and possibilities of audit are also a key area of consideration. For this reason, official opinions of corporate counsel and the external auditor or accountant to the organization should be solicited and incorporated. These key persons should also be a part of the final

review team that approves the retention schedule.

One final area of consideration for records which have no other reference is the length of time the records could retain some operational use (in market research, organizational analysis or strategic planning) and also the historical significance of some records. Those records which help document the founding of the organization, which document key milestones, or which illustrate major changes in the organizations structure may be valuable from both a historical and public relations aspect.

### **Schedule Development**

Once legal research has been completed it is then possible to draft the actual retention schedule document. There are many different ways to structure the schedule. The standard records retention schedule form is structured as a table. A narrative form uses descriptive prose to define the records series before establishing the retention period. Some retention schedules are also prepared in an outline form. Here are three examples of retention schedule forms that can be found on the Internet:

Standard Retention Schedule Form: State of Washington Auditor's Office

<http://www.secstate.wa.gov/archives/doc/AUDI-TOR%2012%202002.doc>

Narrative Retention Schedule Form: Kansas State Historical Society

<http://www.kshs.org/government/records/stategovt/stategeneralretentionschedule.htm>

Numerical Outline Schedule Format: State of Texas Retention Schedule

<http://www.tsl.state.tx.us/slrn/recordspubs/rrs2.html>

Note that the following information is found on most retention schedules:

- Description of the record series
- Department or sub-group associated with the record
- The total retention period
- The period that records are active and retained onsite
- The period that records are inactive and retained off-site
- Migration or sampling requirements if the records is digital
- Vital Record – Yes or No
- If Vital, how protected (duplicated, etc.)

### **Final Thoughts**

While the records retention schedule is a central pillar upon which a systematic records and information management program is built, the schedule must be designed by those with expertise in this practice area. Failure to recognize existing government mandates or insufficient legal protection could result in huge dam-

ages from litigation. For this reason, many companies choose to hire specialized records retention consultants to develop the actual schedule. Many commercial information management facilities either employ a consultant or have a relationship with a consultant who can assist you in this area. There are also some off-the-shelf products available to assist you with legal research. Among them are Retention Manager 3 produced by Information Requirements Clearing House <http://www.irch.com> and Retention 6.1 produced by Zasio Enterprises <http://www.zasio.com/>. Even when using these professional tools, care should be taken to construct a retention schedule that is customized to your business. Because no two businesses are alike, neither are their retention schedules if they accurately reflect records generated on all media types and operating areas.

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## **ARMA International Announces "Essentials of RIM" Certificate**

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- Vital Records and Business Continuity

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# Is Your Emergency Plan Ready for the Next Disaster?



Depending on your frame of reference, the end of August was a day of relief or you were looking at days of clean up. Some of the pundit's jokingly refer to the earthquake as having occurred on the well known "Bush's Fault Line" - but these same writers ran out of their offices and news stations in full panic just before

2:00 PM along with Federal workers. Hurricane Irene was ignored by many and many suffered and were tragically killed because they believed "it won't happen to me."

Reporters quickly searched out the infamous concrete block walls after the earthquake that routinely develop large cracks or in some cases collapse when exposed to rumbling earthquakes. The rigid building material simply does not do well with the 10,000 mile per hour earthquake shock waves so they make excellent photos for page one of the newspaper and the evening news. Reporters rushed to the beaches to show us the surf while flooding in-land destroyed businesses and lives.

So here we are in September with closed bridges, and overpasses, power outages for days or weeks, businesses damaged, airports closed down and trains stopped running

as experts tried to determine what to do in an emergency. As one blogger wrote: "I was so confused. I broke out my own front window, grabbed my big screen TV and ran out on the front lawn! Can you blame me? I was confused!"

What you should see in the headlines is "no one died" and "business as usual after Hurricane Irene." Company's that have a well thought out and written emergency plan are much more likely to still be in business today after such a alarming month of disasters. Plans for earthquakes, wind and flood damage just isn't on most business radar and they are now struggling to stay in business. But others are open the day after these disasters because they had a solid plan in place.

WesTex Document Inc's owner is an expert and consultant in Homeland Security. For under a thousand dollars he can help you develop your business emergency plan. Give him a call today, and get your business ready, it is the best insurance you can have.



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