

ACC GuideSM

Introduction to Modern Records Management

Sponsored by:

contoural 

Introduction to Modern Records Management

April 2022

Provided by the Association of Corporate Counsel (ACC)

1001 G Street NW, Suite 300W

Washington, DC 20001 USA

tel +1 202.293.4103

fax +1 202.293.4107

www.acc.com

This ACC GuideSM addresses global strategies for creating or refreshing a modern records management program. It is intended for the in-house counsel or other team members tasked with starting, updating, modernizing, or simply improving their company's records management program. It details the components of an effective program, as well as the steps required to execute a schedule once developed. In today's environment of electronic information, manual record management processes cannot keep pace with the sheer volume of electronic information being created and received. Smart strategies will enable companies to create effective programs that ensure compliance, reduce risk, lower costs, and increase productivity.

This material was developed by Contoural, Inc. Contoural is a sponsor of the ACC Information Governance Network and a sponsor of the ACC Legal Operations Network 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.

Contoural and ACC wish to thank members of the Information Governance Network for their support in the development of this Guide.

The information in this ACC Guide should not be construed as legal advice or legal opinion on specific facts, and should not be considered representative of the views of Contoural, Inc. or of the Association of Corporate Counsel (ACC) or any of its lawyers, unless so stated. This ACC Guide is not intended as a definitive statement on the subject, but rather to serve as a resource providing practical information to the reader.

This publication is independent from, and is neither affiliated with, nor authorized, sponsored, or approved by, Microsoft Corporation. Microsoft, Microsoft 365, Office 365, and SharePoint are trademarks of the Microsoft group of companies.

Table of Contents

I.	Introduction	4
II.	Why Are Records Programs Needed and What Do They Do?	5
A.	Companies Face Legal, Regulatory and Privacy Requirements for Their Documents and Data .	5
B.	Identifying and Managing Information with Business Value	7
C.	Companies Are Being Inundated with Electronic Information.....	8
D.	Warning Signs of an Ineffective or Non-existent Records Program.....	8
E.	Why Should In-house Legal Lead the Development or Refresh of a Records Program?.....	9
III.	Key Components of a Records Program	11
A.	Records Retention Policy	11
B.	Records Retention Schedule.....	12
C.	Data Placement Strategy	16
D.	Employee Behavior Change Management and Training	18
E.	Records Processes and Procedures.....	20
F.	Development of a Records Management Organization	21
IV.	Steps in Creating or Modernizing Your Program	22
A.	Create Your Steering Committee	22
B.	Define Your Target Maturity	23
C.	Create and Start Executing a Program Roadmap	24
D.	Conduct Pilots Followed by Rollout	25
E.	Remediate Legacy Data.....	25
F.	Develop Audit, Refresh.....	26
V.	Final Thoughts	26
VI.	About the Author	27
VII.	About Contoural	27
VIII.	Additional Resources	28

I. Introduction

Effective modern records management programs can be a tremendous boon to companies. Done well, these programs enable compliance, reduce risks, lower costs, and increase employee productivity.

During the past five years many companies have either created new programs or revamped older, tired, paper-based programs to better drive retention and disposition in today's digitally driven work environments.

This trend has accelerated in the past couple of years as companies are developing strategies to meet hybrid work-from-home (WFH) and emerging privacy requirements. Good records programs **not only drive compliance, but also enable information agility** to meet the demands of a changing world.

While they bring clear value, for the uninitiated or uninformed, these modern records programs are **a type of corporate quicksand**: a walk down what seems like a straightforward path quickly gets bogged down in policy, process, implementation, and emotions (often strong ones). Simple tasks such as determining what and how much email to either save or delete turn into long debates.

Worse, while the legal group may be given the task of updating the program, it becomes clear that these activities involve **technology, training, and organizational issues** seemingly out of their area of expertise.

What's the proactive in-house counsel to do? This Guide is intended for in-house counsel or other team members tasked with **starting, updating, modernizing, or simply improving their company's records management program**.

It details the components of an effective program, and then reviews the steps to build them out. It also suggests how savvy in-house counsel cooperate with and leverage the efforts of their peers in IT, Information Security, as well as the business units to make these not just "legal programs" but rather company-wide initiatives driven by a diverse team.

With a smart approach even stodgy, change-resistant, document hoarding companies can develop effective, modern, compliant, and productivity-enhancing records programs.

II. Why Are Records Programs Needed and What Do They Do?

Every day, companies create and receive large amounts of information in the form of **emails, files, social media, database transactions, paper, and other media**:

- Some of this information is subject to **legal and regulatory recordkeeping requirements** mandating they be retained and made accessible for a specified period of time.
- Some of this information contains **critical business value** that must be maintained to run the business.
- Much of this information **needs to be shared** and collaborated upon both within departments and across the organization.
- A portion of this information **may be highly sensitive** containing corporate confidential or information subject to various and ever-changing privacy laws that needs to be secured and protected.
- Finally, a significant amount of this information is **transitory**, providing no business value or quickly diminished value once initially viewed, that should not be saved.

Identifying, classifying, managing, accessing, and disposing of an organization's information is accomplished through records management programs.

A. Companies Face Legal, Regulatory and Privacy Requirements for Their Documents and Data

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
US State	Worker's Compensation – Employment Records	New York Employers	Current calendar year and for the preceding 3 calendar years
Industry-Specific	Equipment leak records	Air emissions: HazMat Oil & Gas	Federal – 3 years Texas - 5 years
Australia	Time and wage records	General	7 years
India	Payroll records	General	8 years
Ireland	Employee files	General	7 years post-termination

Figure 1. Sample of various legal and regulatory requirements. Any given organization faces thousands of different retention rules.

The average global corporation faces more than 30,000 legal and regulatory recordkeeping

requirements. Even privately-held companies not subject to Sarbanes Oxley face tens of thousands of recordkeeping rules. These include federal, state, provincial and industry-specific requirements/regulations. Companies with a global footprint face country-specific requirements adding a further layer of complexity.

These legal and recordkeeping requirements change over time:

- ***Legal and regulatory updates.*** Recordkeeping laws change. Retention periods are increased or less typically decreased, often as a result of broader regulatory shifts. The US Dodd-Frank Act, for example, increased the retention requirements for many record types in the financial services industry.
- ***Regulations may define new record types.*** New or existing regulations will define new record types that must be maintained. For example, the California Consumer Privacy Act (CCPA) and California Privacy Rights Act (CPRA) CCPA/CPRA now require the retention of records relating to data subject requests for a period of at least 24 months following the request. That record type didn't previously exist in California.
- ***Companies start creating or receiving a new type of record.*** The type of information – and records – that a company creates or receives changes over time, thus creating an “information drift.” Sometimes the company no longer creates or receives a particular type of record. Other times a new operation or business activity will result a new type of information that falls under retention requirements. This can be especially true when companies acquire new businesses.
- ***Changes in other compliance regimes impact records management.*** Other compliance regimes impact records management. One example of this are changes in privacy programs. The past five years have seen significant changes in privacy laws, many of which require that companies limit the duration that they retain personal information. Likewise, individuals have the right in many countries and states to have their personal information deleted or erased upon request. Records programs need to be synchronized with these privacy rules, ensuring that the expiration cycle set for such personal information does not run afoul of recordkeeping requirements.

Records programs are dynamic, and companies should keep abreast of these changes.

B. Identifying and Managing Information with Business Value

“I spent my first three months on the job searching through my predecessor’s email. I had to look for everything from offer letters to employee reviews, spending hours every week. What a nightmare.” – Vice President of Human Resources for Mid-sized High Technology Company

Modern programs **add business value**.

Poor information management doesn’t just create several legal, regulatory, and security challenges; it can also significantly **impact and decrease employee and group productivity**. Stores of email, files and other types of electronic information contain both significant amounts of at best low value or expired information and high-value business information.

For example, to say that all email older than two years should be deleted because these older emails have no value can both drive non-compliance as well as “underground archiving” by employees (i.e., employees creating their own repository outside of their inbox, for example on a file on a company server, or on an external drive).

Good programs target two types of records:

- **Information subject to legal or regulatory requirements** can be referred to as “Records” – with a capital “R.”
- **Information that has and continues to have high business value** can be considered “records” – with a lower-case “r”.

A common mistake. One common mistake organizations make is to focus their records program exclusively on “big R” records. Focusing only on the legal and regulatory aspects and ignoring business value tends to drive two programs. Focusing the formal records program only on “Big R” records increases the risk that employees also drive a shadow retention program by saving emails, files and documents on desktops, file shares, and even emailing this information home.

Without proper controls these “little r” documents accumulate in individual employees’ storage areas, driving up costs, risks and decreasing employee productivity.

Working with the business. Some companies fear that if they include “little r” records with business value as part of their records program, employees will use this as a license to save everything forever. The art of developing effective policies is **working with the business to determine their high-value information** and help them remove the clutter that can prevent them from accessing those “little r” records.

While this approach is a little counter-intuitive, companies that have expansive records strategies encompassing both “Records” and “records” benefit from this comprehensive approach as they accumulate significantly less unneeded information than those that only focus on legal and regulatory requirements. It is better to get everything “under the tent” so it can be managed, classified, secured, made accessible and deleted at the appropriate time.

The schedule update process is an opportunity to better harmonize management of records and content that have business value. It is a chance to build a consensus with the business units on what should be saved (and what should not). A **good cross-functional team** can decide on priorities and resolve conflicts.

C. Companies Are Being Inundated with Electronic Information

While many companies still have large stores of paper documents, **business is increasingly conducted through electronic media**. According to a [study](#) from UC Berkeley, more than 96% of all information in an enterprise is in digital format, and even 70% of all paper documents are copies of electronic documents. The average employee sends and receives more than 70 emails per day and creates or modifies 20 or more files per day.

Adding to this is the **pervasive use of social media** externally on platforms like Facebook, and **internal collaboration sites** such as Yammer. The resultant surge of data creation is raising new compliance challenges for many organizations. The pandemic has accelerated these trends, as Work From Home has accelerated the adoption of all-electronic environments. Even traditional paper-based records such as contracts have now given way to electronic signatures.

Electronic information data volumes are [doubling every three years](#). This data includes emails and files that contain records, privacy information, intellectual property, and other high value business information. On the other hand, **a large percentage of this digital “pile” is considered ROT (Redundant, Obsolete and Trivial) information**.

While the totals vary across companies and industries, on average more than 65% of an organization’s unstructured data, i.e., files and images, are expired records, records with little or no business value, or are convenience copies of documents managed elsewhere. Typically more than 70%, or in some cases as high as 90%, of an organization’s saved emails are non-records, expired records or information with little or typically no business value. This ongoing accumulation of unneeded or expired information creates unique risks and costs for companies.

D. Warning Signs of an Ineffective or Non-existent Records Program

How do you know if your records program is outdated and needs to be updated? Likewise, if you don’t even have a program, what are some indicators that you should develop one? Here are some clear warning signs:

- ***Increase in Discovery Risks and Costs*** – The ongoing accumulation of both paper and electronic information creates acute challenges when organizations face discovery obligations. First, the sheer volume and expanse of electronic information increases the **risks of being non-responsive to a discovery request** (i.e., missing a responsive document). Not knowing what a company has often forces it to look through everything. Second, the increasing volume and lack of controls significantly **increases discovery costs and impacts litigation strategies**.

- ***Struggles to Produce Information for Regulators in a Timely Manner*** – The past decade has seen a global increase in both industry-specific regulatory sweeps and increased enforcement of existing regulations, such as the US Foreign Corrupt Practices Act and the UK Anti-bribery laws. During an inquiry, regulators not only seek official records, but also any and all other documents or data that may be relevant to their investigation. When requesting documents, regulators may require documents to be provided within days.
- ***Data Breaches from Data Stores That Should Not Have Been Created*** – Criminal groups and activist disclosure organizations are targeting and breaching electronic data stores of many organizations. Many cyberattacks focus on over-retained or expired data – large stores of data that should have not been saved in the first place or deleted at the end of the applicable retention period.
- ***Challenges Establishing Ownership of Intellectual Property*** – Organizations continue to face challenges around asserting their ownership of intellectual property (IP) against competitors, well-funded non-practicing entities (“patent trolls”), and other litigants. Establishing ownership is often based on “organically” grown emails, files or other documents spread across the enterprise. Management and control of these documents are key to an effective IP strategy.
- ***Spiraling Record and Data Storage Costs, Especially for Offsite Paper Storage*** – Over-retention of paper and electronic information continues to drive up storage costs, often diverting resources from higher value projects.

To better address the shift over the last decade from paper to electronic media, in addition to taking a more comprehensive approach, organizations are moving away from a paper-centric paradigm and **taking a more electronic media-capable approach.**

E. Why Should In-house Legal Lead the Development or Refresh of a Records Program?

When faced with records management challenges, often the first question asked by in-house counsel is: **why me?** They wonder if and when they should be involved, and if they should just create a policy and schedule and then hand over execution entirely to another group such as IT.

Given the scrutiny paid to legal department budgets, it is fair to ask if in-house counsel needs to be the one to lead this implementation effort. The legal team should not own the entire program, but rather **be a catalyst** to put a modern one in place:

- ***Legal Experiences the Pain of Poor Information Management***
 - Not knowing what information resides where drives up **eDiscovery risks and costs** and creates **overly broad legal holds**.
 - Significant amounts of ROT data drive up **document review times and costs**.
 - Failure to retain and provide accessible records can make **dealing with regulators** more difficult.

- Privacy and other sensitive information stored in the wrong place can greatly increase the **likelihood of a data breach**. Legal, perhaps more than any other group, bears the consequences.
- ***Legal Owns Many Policy Components*** – In most companies, records retention and destruction, privacy, legal hold, and other key information management policies are the purview of legal. It is critical that these policies be designed holistically to be consistent, compliant, and executable.
- ***Legal Helps Avoid Risk*** – Part of the legal team’s charter is to proactively identify and avoid risks to the organization. Perhaps more than any other group, they must be forward-thinking, anticipate changes in the legal, regulatory, and business environment, and prepare the company to proactively deal with these changes.
- ***Legal is a Respected Voice to Senior Management*** – Legal exerts tremendous influence within an organization. Its voice is respected by both senior management and boards.
- ***Records Management is an Opportunity for Legal to Add Value*** – Companies often start executing records programs to address legal or compliance issues and find that these programs also drive employee productivity and cost savings. The nature of these programs often changes from something an organization needs to do, to something it wants to do. Spearheading these programs is a way for in-house legal departments to demonstrate value.

In summary, while Legal should not own a records program entirely, it is often its role to take the lead and get a practical, compliant program started.

III. Key Components of a Records Program



Figure 2. Components of a modern records program.

Development of traditional, old-fashioned records programs involved creating or updating a records schedule (based exclusively on legal and regulatory requirements), and then perhaps publishing a training guide.

Development of modern records programs that address not only a wider variety of compliance requirements, but also ever-growing quantities of digital information, requires more steps. While more work is required, the good news is that these modern programs will have a much bigger positive impact on the organization.

A. Records Retention Policy

There are **two main components** to a records policy: The actual records retention **policy** itself, and a **records schedule**, which is typically an addendum to the policy. A records policy is the “what” of the program, whereas the schedule is the “how.”

Typically less than ten pages, a policy should cover **records management objectives, scope, definitions, and guidelines**, including **legal hold obligations** and the consolidation of existing policies enterprise-wide.

It should also make clear **why** the organization needs a records management policy and the **types of**

records to be covered. It should also indicate whether electronic data, such as email, instant messages, and content generated from social media and collaboration tools – as well as drafts and convenience copies – are to be considered business records. It also needs to include the specific roles and responsibilities of the records management staff, legal department, other employees, and outside personnel who handle organizational records. The policy must also document provisions for violations of the policy.

Attributes of a good records management policy include the following:

- ***All Types of Electronic and Paper Documents are Included*** – Good policies cover **all** types of documents and records, including files, databases, and paper (or other physical format), e-mail, instant messages, and social media. They are comprehensive across the enterprise, including all types of electronically stored information, and all groups and functional areas.
- ***The Policy is Clear and Simple*** – Good policies and their corresponding records retention schedules tend to be simpler and, hence, easier to execute, especially for emails and files, and they can be more easily and consistently followed.
- ***The Policy Minimizes Manual Processes*** – Good policies are written to promote automation and minimize manual processes. Manual processes tend to be more expensive, and make it very difficult to ensure consistent compliance.
- ***The Policy is Legally Defensible*** – Records management policies and records retention schedules may be subject to discovery requests during the course of litigation. The opposing party will be looking to see **if the policy was comprehensive and if it was followed**. They will be looking to exploit any gaps between what you said you were going to do and what was actually done.

B. Records Retention Schedule

A records retention schedule **defines record categories**, the **records within that category**, and the **minimum retention period** for each category. Schedules may also contain **sample record types**, and list **legal citations** supporting the record period.

While it is typically an appendix to the policy, it is the heart of the program. The schedule **can be organized by business function**, with a number of record categories specified for each.

Using the **legal department as an example**, the schedule would typically include line items for business organization, board and shareholder meetings, company ownership and stock transactions, compliance, contracts and agreements, intellectual property, litigation matters (including pleadings, correspondence, and legal opinions).

In some cases, organizations may want to treat many records the same way for purposes of retention and destruction. These can be grouped together to reduce the number of items in the schedule.

There are **two types of retention periods**: time-based (i.e. 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 triggering 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.**

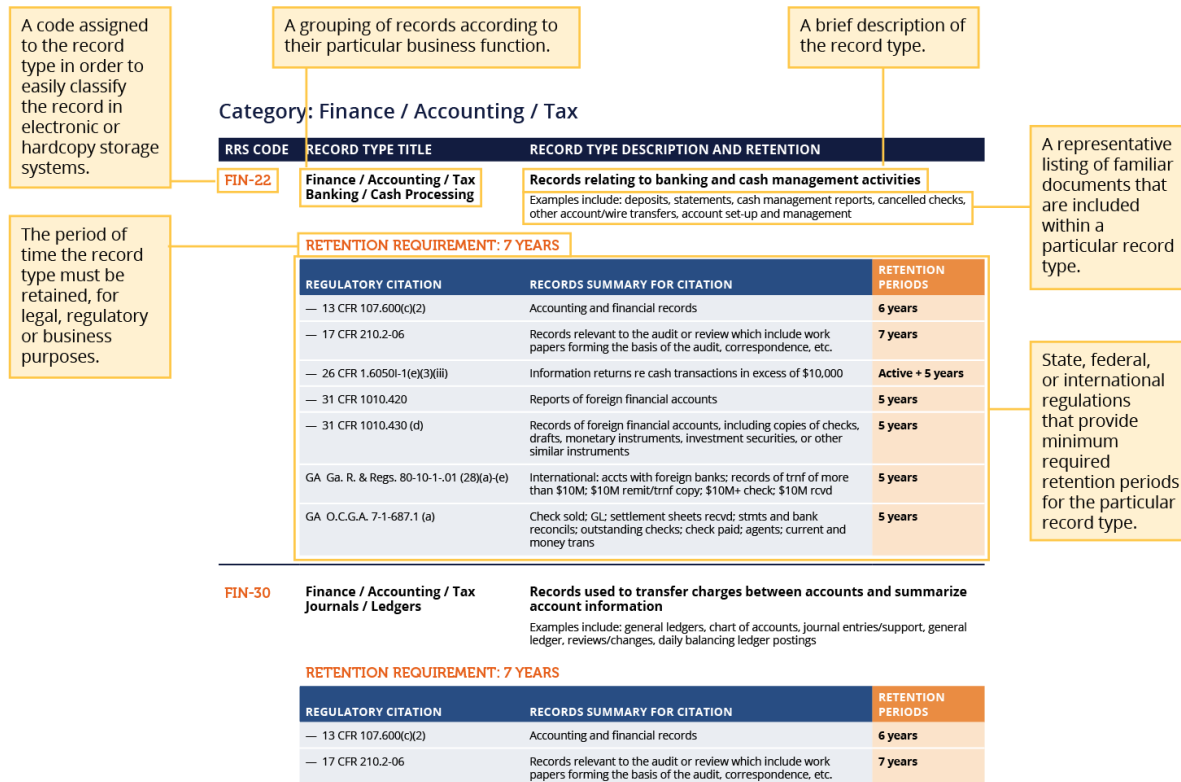


Figure 3. Sample schedule with legal citations. (Source: Contoural, Inc.)

Understanding and Applying Business Value to a Retention Period

Looking to combat ongoing unnecessary accumulation, many organizations look towards their records policies and schedules as a mechanism to defensibly delete unneeded documents and data.

In Legal and IT’s view, 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. The temptation is to create the schedule without input from the business.

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 in **policy discussions** and a consensus is reached.

Effective schedules seek to build a consensus on what to save (and what not to). 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.

In enforcing a retention policy, legal sometimes gets set up as the “bad gal/guy.” Business units claim that “legal is poking its nose in our business” or “encroaching on our territory” and therefore is unwelcome. The result can be rogue business units that either refuse to follow or push back on its retention 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 they need it all forever) can or should be classified as a “little r” record. Rather “little r” records need to be sorted out to **identify the limited amount of information that does have real business value**. Surprisingly, these business value records often do not generally increase overall retention significantly.

How often should a Records Schedule be updated?

Barring any new and significant regulation in its industry, a legal and regulatory review should typically occur **every 12 to 24 months**. Some are led to believe that more frequent updates of a schedule are required, but this effort is often better spent on implementation, training, monitoring and audit activities.

Some vendors offer perpetually updated, online schedules promising compliance. This approach creates more risk. While the online schedule will be updated weekly, the **corresponding training materials, system configurations, and day-to-day practices** will often quickly fall out of sync with the schedule.

This **gap** between what the schedule prescribes and your actual practices can and has been **exploited by litigators and regulators**, who may claim you purposely were not following your policy.

Finally, most legal and regulatory updates provide a significant amount of **grace period**, falling within the 12 or 24-month update period.

While you're at it, maybe an Information Types Inventory?

A first step in developing or updating a records schedule is to create a **detailed list of the types and location of information** across the company. This is called an Information Types Inventory (ITI) - a working list of record and information types, including departmental inputs on business requirements, and examples of documents.

The inventory process includes identifying (or validating and enhancing existing lists of) information types, identifying process outputs, and collecting record type examples during interview sessions.

While an ITI is useful in creating a schedule, it can also be leveraged for privacy, eDiscovery, and data security projects. It may be a good opportunity to use the work to develop a schedule for other areas.

Risks of “Out of the Box” Schedules

70% Common or Typical Records

- Finance
- HR
- Administration
- Regulatory

Record types that can be found in most companies. Less likely to be accessed often.

30% Company-specific Records

- Operations
- Sales/Marketing
- Intellectual Property
- Trade Secrets
- Business Value

Record types that are specific to this company, and likely to be missed by “generic” record retention schedules.

Figure 2. About 70% of the record types are common across companies and even industries. The remaining 30% are specific to each company and even business units within the company. Furthermore, these company-specific records play an outsized role in risk reduction and productivity.

It may be tempting to purchase an **“out of the box” records retention schedule** that contains common record types and adopt this as the schedule. This approach is **risky**.

About 70% of a company’s records, from payroll, finance and administration, do tend to be similar not only across companies but also across industries. “Out-of-the-box” schedules cover this 70% of records well. However, the remaining 30% tend to be very company or even business unit- specific, and vary widely even across companies in the same industry.

Furthermore, these company-specific records are much more likely to address intellectual property, trade secrets, critical operational information, and other highly valuable information. They are much more in play during sensitive phases such as litigation, regulatory inquiries, and maintaining institutional knowledge. In other words, identifying the first 70% of records is easy. **Identifying the remaining 30% requires more work but is much more important to get right.**

C. Data Placement Strategy

Once you have a policy and schedule, how to execute it? A data placement strategy combines both policy with technology to make records and document classification both faster and easier.

First, a number of records and document repositories are made available to employees. These could be a content management system such as OpenText, a cloud-based offering such as Microsoft 365 (formerly known as Office 365), or even a contract management application. Most corporations use a variety of repositories to hold different types of documents.

Second, each repository is configured with appropriate folders to hold different record types for various departments. This folder hierarchy is called a taxonomy.

Next, each folder in each repository is configured with retention rules, matching the requirements of the retention schedule:

- **Most systems can be programmed** such that when a user places a file, for example, in one of these folders, the system will retain it for a specified period (five years, for example) and then, assuming no legal holds are in place, it will automatically delete the record upon expiration of its retention period. This configuration is not limited solely to retention. The user can program the system to automatically tag each record or document for its proper data security classification, access controls, and collaboration features.
- There may be multiple repositories across the enterprise, and there may be many folders within each repository. Here's the trick, though: **Users should not see every repository and every single folder** – that's too complicated. Rather, these systems should have the capability of showing any given user the three or four places where their records and documents live.

When finally set up, **users only need to put their information in the right place,** and these pre-configured systems will enforce all the rules.

If this sounds complicated, that's because it is. Determining which files and emails go in which repositories, and mapping the retention schedule and other policies against the folders can be quite complex.

The overall goal of this approach is to **move the complexity away from the user and move it into the system.** It is much better that a few members of the execution team get a headache setting this up, thus making it faster, easier to execute, and simpler for everyone else.

Many companies are enacting smart, compliant, and automated deletion strategies. This approach removes the employee from the disposition process, and instead depends on **leveraging technology to dispose of records when the retention period expires**.

This automation is accomplished by **configuring IT systems with policy driven rules**. Modern content management systems, such as Microsoft 365, provide the ability to automatically **apply metadata tagging** (also referred to as **labeling**) based on where a record is stored.

In other words, these labeling systems allow a type of “drag and drop” tagging: Under this method, when employees drag and drop a file or email into a folder or specific location, the system automatically tags it. The **system can automatically tag and track** the document for multiple types of governance controls, including records retention requirements, data security classification, access controls and even legal hold capabilities. These **retention periods, security levels and other policy attributes are pre-configured** into each managed folder.

No action is required on the part of the user other than storing the document into the right folder; the system does the rest. Upon reaching the end of its retention period, employees don’t need to do anything. With such an approach, Microsoft 365 and other repositories will automatically dispose of documents once the expiration date has been reached, based on when the document was entered into the system. The old information simply fades away.

This “drag and drop” classification strategy requires more upfront work:

- The **records management and IT teams need to configure the managed folders** or other repositories with the records retention, data security and access rules.
- Ideally, a **complete Information Governance framework** should be configured, addressing retention, security, and access.
- Translating the records retention schedule, data security classification and access control policies into specific system configurations can be tricky, and requires collaboration between the records, security, and IT teams.

The upfront investment is worth it:

- Those companies that do take the time and effort to configure their systems for proper information governance may “suddenly” find classifying records, personal information, and other governed content much easier.
- Employees find the “drag and drop” approach easier. More information gets classified.
- And as discussed below, unneeded information gets deleted in a compliant manner. Information no longer accumulates. Personal information is properly secured and managed. Employees are more productive. Syncing policies and processes with these technologies pays big information management benefits for many.

D. Employee Behavior Change Management and Training

The organization now has the policies and processes, roadmap, tools, and technology in place, so its team thinks their work is done. Sorry, but no. 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. 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.

The goals of behavior change management include:

- ***Drive User Adoption*** – Drives program adoption by business units and employees.
- ***Communicate Messages that Resonate*** – Identifies key messages likely to resonate with employees.
- ***Sell Program as a Win*** – Messages program as a win for all employees, not a compliance burden.
- ***Test Consistency*** – Ensures messages and trainings are effective for all groups across the organization.
- ***Demonstrate Compliance*** – Demonstrates compliance with requirements and the company's intent to follow policies.

VEHICLE OPTIONS	DESCRIPTION	DELIVERY RESOURCE	AUDIENCE		
			Executives	Managers	Employees
Senior Leadership Playbook	John Smith provides regular information to Executive Committee and Senior Leadership, to build awareness and get feedback	John Smith	X		
Town Hall Play Books	High-level overview of Records Program rollout key messages relating to: Awareness, Timelines, and Training to pass on to XYZ employees during regular Town Hall meetings	BU Leaders / Managers		X	X
Departmental Meetings	5–10-minute presentations at scheduled departmental meetings	BU Managers		X	X
Computer-Based Training	30-minute module on records principles, new Policy and Schedule	iLearn	X	X	X
Online Messaging	Deliver different types of messaging (awareness building, how-tos, reminders, etc.)	Intranet	X	X	X

Figure 3. Behavior change management includes messaging, communication plans, training, and audit

Employees need to understand **what the policies are**, and they need to be **using the right processes**. They are now **aware of their responsibilities** and what the consequences are for non-compliance.

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
- understand 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**?

To ensure a successful change, it is key to identify what particular **audiences** need to be addressed, what platforms are available to deliver the training to the right audience, and what **messaging** needs to be developed.

E. Records Processes and Procedures

Although most records should be classified and managed through a routine automated process, companies will still need to set up a series of additional processes and procedures to capture, classify, manage, and dispose of records and **information that may be created or received outside of these everyday processes**. Figure 6 lists typical records processes and procedures.

Process	Description
Departing Employee Records Management Procedures	Provides guidance for dealing with the work-related records of departing or transferred employees, to ensure that the department/function does not lose any knowledge of the departing individual, or that potentially important documents are not abandoned, deleted, or otherwise lost as a result of the departure.
Email/Voicemail Management Guidelines	Recognizing that both email and voicemail can be discoverable documents in litigation or regulatory matters, these guidelines inform users on best practices for drafting, securing, and disposing of these messages.
Procedures for Managing Records during a Merger, Acquisition or Divestiture	When a company merges with or acquires another company, or divests itself of a business unit, there are always records of that organization that must be considered and organized. These procedures provide guidance on how to manage company records that are either acquired with a new company or divested with a departing business.
Paper Records Management Procedures	Procedures on proper onsite management and storage of paper records, as well as procedures on how to organize, box, and send paper records to offsite storage, as well as retrieve those records when they are needed onsite.
Records & Information Management Program Change Request	Procedures for requesting revisions to, and then revising the Records Retention Policy, Records Retention Schedule, or other records processes and procedures.
Records Program Compliance Audit	Procedures and audit checklists that enable a records organization to perform each year an audit of a business unit/department/ function's compliance with the company's records policies and the Retention Schedule. Includes an audit plan, audit checklists, and a remediation plan. These audits are important to demonstrate diligence to courts and regulators.
Records Clean-Up Day	Procedures and communication plans for conducting periodic "Records Clean-Up Days" within the company or individual departments/business units.
Annual Records Self-Assessment	An assessment process administered each year to departments/ business units/functions, to determine the current state of their records maturity.

Figure 4. Records processes and procedures.

Typically, the **biggest risk** with these types of processes is not lack of development, but instead that they were **not applied consistently** across the enterprise. This is particularly true for **foreign subsidiaries, acquired entities**, or applying governance to document and data sets preserved under **legal holds**.

F. Development of a Records Management Organization

Records management is a **bigger job than can be handled by a single department**. No one person or group has the expertise to address all the functional aspects of a records program. Collectively, a well-established team will be better positioned to get the job done.

When launching a records initiative, it is important to **create a cross-functional committee** composed of multiple stakeholders. Typical committee members include legal, IT, compliance, privacy, audit, risk, and sometimes HR and business units. Each stakeholder is primarily responsible for their area of expertise (legal still creates policies, for example), but these activities are done through an **integrated and coordinated plan**.

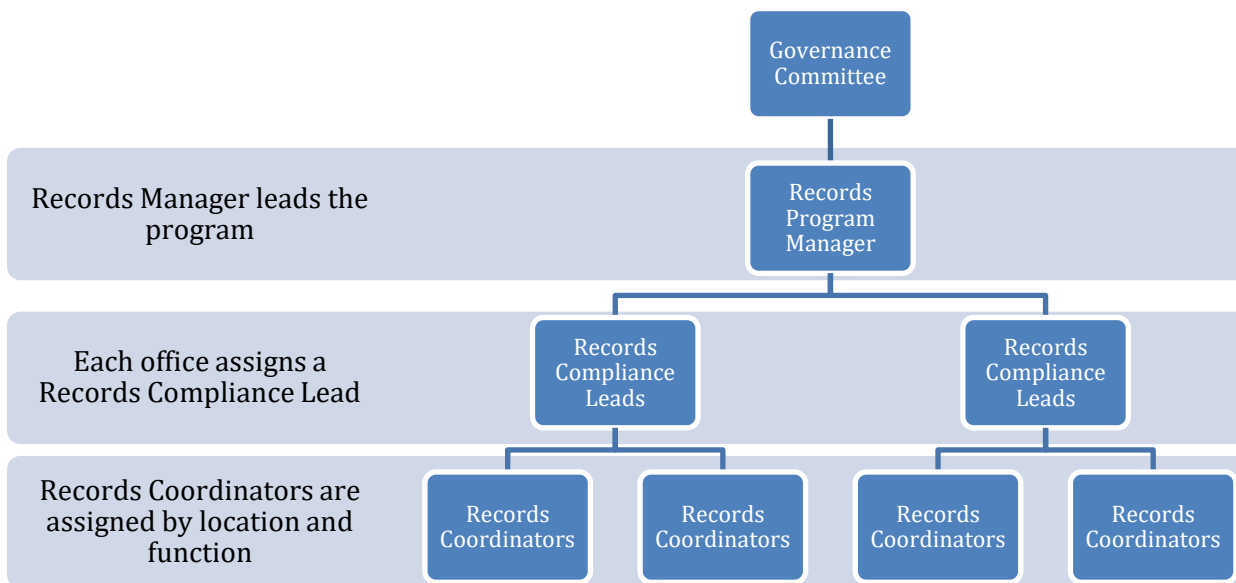


Figure 5. Sample records organizational structure.

The **creation (or update) of a matrix structure** regarding the strategic governing body (steering committee) will drive ongoing information governance or records management activities and organizational compliance.

The governance organization needs to bring together **diverse professional viewpoints** of various key business functions from across the organization. It also needs to ensure that there is good communication of requisite concepts, promote best practices for the management and control of the organization's information, establish cross-functional ownership, articulate goals, and business benefits, and define ongoing roles and responsibilities.

- **Establish Cross-Functional Ownership** – An organization must engage the representatives of business functions, such as information security, auditing, legal, compliance, and IT, to assist with the planning and execution of records program initiatives.

- **Articulate Goals and Business Benefits** – Clear and specific business-related program objectives must be defined that ensure the support and commitment of stakeholders.
- **Define Ongoing Roles and Responsibilities** – An organization needs to establish work expectations and responsibilities for the participants in the records organization. This process includes identifying subject matter experts, developing the criteria and process for selecting a records manager (RM) and coordinators (RC), communicating with and training RMs, RCs, and other employees with respect to their assignments, responsibilities, and anticipated timelines, and mapping RCs to functional areas and regional locations.

IV. Steps in Creating or Modernizing Your Program

A. Create Your Steering Committee

While an effective records program can be a big win for an organization, getting started can be tricky. How it is approached and with whom – decisions made early in the process – often dictate the success or failure of a program. While every organization is different, **successful programs share some common approaches**.

While the temptation may be to develop the strategy alone (or with a small group) and then engage other groups later in the process, it is better to **start with a larger group**. Although a larger group may seem unwieldy, it is better to be more inclusive earlier in the process than having an excluded group stall the initiative later on in the process.

In-house counsel, working with IT and others, should consider **forming an information governance steering committee**. Steering committee members can include:

- **Legal** – Records Management, Litigation.
- **Compliance** – Privacy, Audit, Risk Management.
- **IT** – Messaging, Infrastructure, Information Security.
- **Business Units** – For example, HR, Engineering, and Finance, with the final composition varying by organization.

Early on, the group should conduct **round-table discussions** to identify issues and generate stakeholders' buy-in.

The organization should also identify a suitable **senior management sponsor** (or sponsors) to whom the committee is accountable.

The group should also develop a **“charter”** that outlines the specific business issues to be faced, responsibilities of team members, and expected business benefits of the records program. Teaching

others about the benefits of records management can seem idealistic, but it is important to show how that these programs provide a win for them too.

B. Define Your Target Maturity

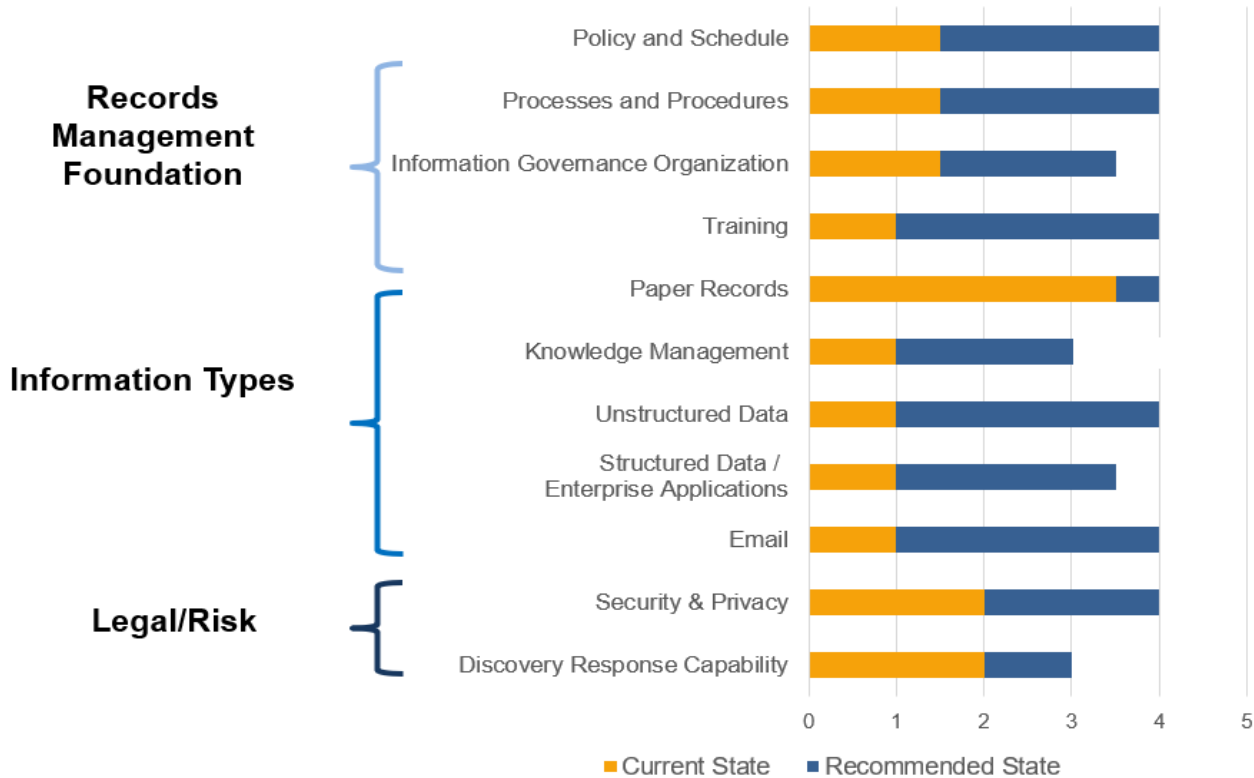


Figure 6. Choose the right program maturity for your company based on compliance, risks, size, etc. Identify your current and target states.

Records management requirements vary widely across industries and even across similar companies. **Different industries** face different records compliance requirements, as well as the volume of records created. **Size and geographical distribution** also vary widely.

Organizations should consciously **target the appropriate level of maturity** for their records program. A few corporations need a sophisticated and more expensive “sports car” level of program maturity; however, more organizations would be better off with a lower level “regular car” or even “golf cart” level program. The appropriate maturity is based on a combination of factors, including compliance requirements, litigation profile, industry practices, company size, culture, and budgetary constraints.

It is better to have a well-executed, albeit simpler approach than a more complex, difficult, and expensive “sports car” target that spends more time in the repair shop than being driven. Senior managers know this to be the case and savvy records professionals know that targeting the right level of maturity is key. Make a conscious choice based on these factors. When justifying a program, be sure to **explain the choice and the rationale** behind it.

C. Create and Start Executing a Program Roadmap

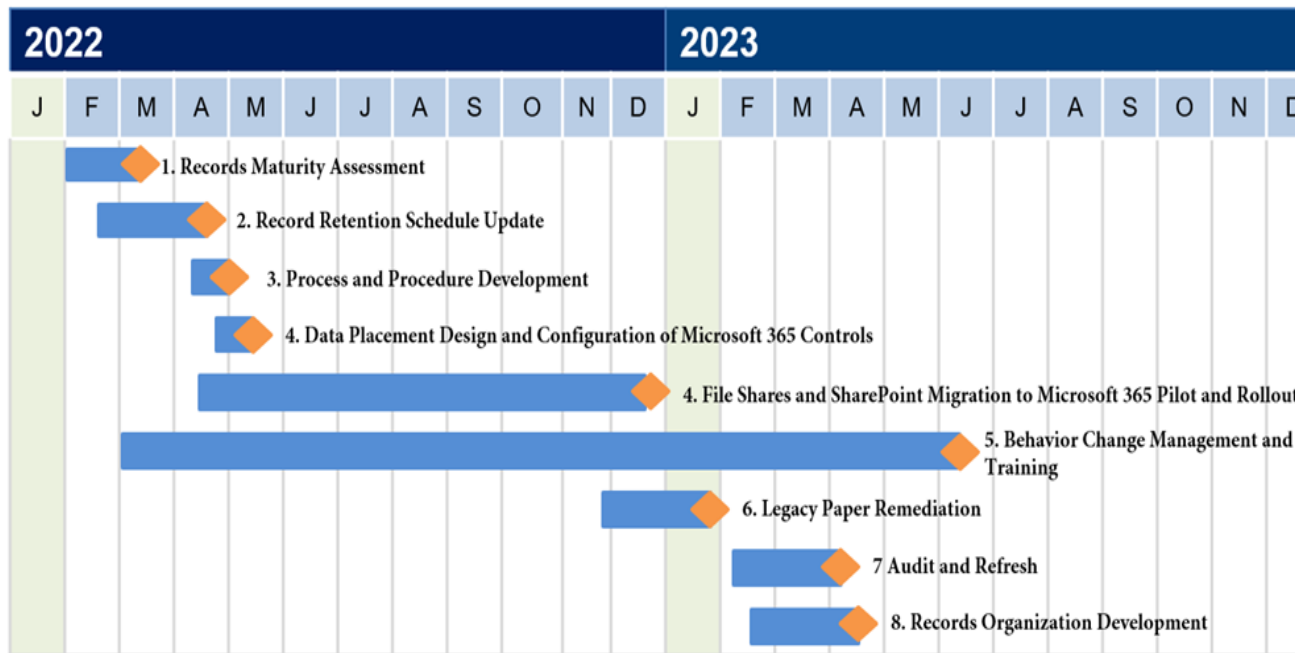


Figure 7. Sample records program roadmap.

There is a **temptation to simply start with a small component** and work on that, without worrying about some of the bigger picture details. But even small initiatives run across, and may conflict with, other program elements.

For example, companies wanting to dispose of files and other unwanted unstructured data may start with an electronic data deletion project. But before this can be done the records retention schedule may need to be updated. Then someone realizes that the legal hold process should be addressed so information under legal hold is not deleted.

Similarly, avoid creating one single, large project. Rather, to avoid getting stuck, **take a big picture view and develop a roadmap** that divides projects into smaller, more manageable pieces.

Develop a roadmap detailing **which projects** should be completed **in which order**, and **how long** the entire process should take. The timeline should factor in competing initiatives, funding, and the speed at which the organization can absorb change. Some smaller programs can be executed in a quarter or two. Larger and more complex organizations often have record program timelines that may span several years.

Perhaps most important, each project or small group of projects should offer an organizational “win” in which the enterprise witnesses the benefits of these types of programs. **Having wins early** and then throughout the process will help **build momentum and buy-in**, as opposed to hoping for an all-encompassing win at the end of a series of long projects.

D. Conduct Pilots Followed by Rollout

Deploying a records program involves synchronizing policies, processes, technology, and training. While developing the roadmap requires a big picture view, for deployment it is **often best to start small** and ensure these pieces fit together, and then roll it out to the larger organization.

A pilot program ensures that a company is ready to roll out the new process, procedure or technology to large groups or the entire enterprise, depending on the total size of the company, geographic distribution, and nature of the technology being deployed. This **may result in changes** to training materials, training, solution architecture, solution configuration (or even components), and backend support.

When implementing a new system for storing records, an organization should then plan and execute a **Proof of Concept (POC) and pilot testing periods**.

- The **POC** is primarily a **set of unit tests and some integrated tests**, as needed, to show that the features and functionality of the technology solution are working and are acceptable to the core team (typically IT and Legal/Compliance, and perhaps one business group).
- The **pilot testing period** is primarily about **the end-user experience**. It covers messaging, training, user productivity and behavior, online self-help tools, helpdesk support (both in IT and Legal), and the rollout process. This activity is designed to **test the entire solution** (policy, technology, and people), not just the technology itself. The Pilot should be long enough to ensure that the proposed approach works and is effective.

E. Remediate Legacy Data

It can be costly to hold on to information that is obsolete, expired, and not needed for legal, regulatory, or business reasons. Now that an organization has taken care of its new data on a going forward basis, it is time to go after the old, legacy data – both electronic and paper/physical.

The organization should **develop a defensible deletion plan** of legacy email, electronic documents, backup tapes, and paper and physical records and information, thereby reducing storage costs, and lowering the risk and expense of discovery. An organization must determine what needs to be saved and identify what can be disposed).

- The organization can develop policies that include both the business justification and process for deleting **electronic documents**, and establish consistent, repeatable, defensible processes that allow for the routine deletion of data not under a legal hold.
- **Paper and other physical records** need to be a part of the remediation plan as well. A plan must be developed for the disposition of inactive, boxed paper records and other physical media. This includes the identification of **owners, locations, and gaps** in current processes, as well as recommendations for the use of **internal resources versus third-party vendors**. A **standard operating procedure (SOP)** can be developed to guide records managers and other responsible employees in the execution of records scoping, sampling, and classification (e.g., what to destroy, keep or review).

F. Develop Audit, Refresh

It is important to examine regularly **user and system conformance** and compliance to intended rules, not only to confirm that the approach is working but also to provide program defensibility in the event it is challenged. Results of ongoing audits drive the regular re-examination and updating of policies, processes, and procedures.

Typical audit areas include:

- Records training
- Records compliance across various groups
- Proper classification of record types, ensuring correct retention periods
- Defensible disposition processes
- Legal hold implementation

Any weaknesses identified during an audit should be **remediated**. Likewise, audits should be an **ongoing process** to enable continued compliance.

V. Final Thoughts

Historically, a large part of launching a records management program was the development of a records retention schedule, which mostly entailed creating a schedule with legal and regulatory requirements, then publishing it.

Today's environment poses many legal, compliance, regulatory, privacy, data breach, and eDiscovery risks. In-house counsel worry about how best to protect and defend their clients in this new landscape. These risks necessitate developing modern records management programs. These newer programs are **larger and more complex**, but offer far more **value for the organization**.

Start smart:

- Create effective and implementable policies and schedules.
- Build a consensus with business units on what to save (and what to not save).
- Leverage technology.
- Execute employee change management.
- Clean up older, unneeded legacy data.

This smart approach will not only keep your program on track, but will also speed up adoption, better enable compliance, reduce risks, and make your employees more productive.

VI. About the Author

Mark Diamond is an industry thought leader in records management, 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 the 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; and Vice President of Worldwide Professional Services at RightWorks. He has also worked as a management consultant. He also served as Chair of the Storage Networking Industry Association's customer advisory board on data security. He sits on the board of advisors for several 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 and comments regarding this Guide. He can be reached at mdiamond@contoural.com and for more information, on Contoural's site at www.contoural.com.

VII. About Contoural

Contoural is the largest independent records management, Information Governance and privacy strategic consulting service. Contoural does not sell any products or take referral fees, store any documents, or provide any lawsuit-specific "reactive" e-discovery services, serving as a trusted advisor to its clients by providing unbiased advice. Contoural has more than 30% of the Fortune 500 as clients, across all industries, as well as federal agencies and local governments. Contoural offers a range of records management and Information Governance consulting services:

- Information Governance Assessments and Roadmaps
- Records Retention Schedule Development and Refresh
- Data Placement Strategy
- Employee Behavior Change Management and Training
- Legacy Data Remediation
- Personal Data Inventory and Data Mapping
- Privacy Policies, Notices and Procedures
- Privacy Incident Response Development
- Privacy Communications and Training

Contoural is a sponsor of the ACC Information Governance Network and the ACC Legal Operations Records Management Maturity Model.

VIII. Additional Resources

A. ACC Maturity Model Resources

[ACC Records Management Maturity Model](#), Legal Operations Network

[ACC U.S. States Privacy Capability Maturity Model](#), ACC Information Governance Network

B. ACC Guides

“Information Governance Primer for In-house Counsel” (2016), available at <https://www.acc.com/resource-library/information-governance-primer-house-counsel>

“Creating a Modern, Compliant, and Easier-to-Execute Records Retention Schedule” (2017), available at <https://www.acc.com/resource-library/creating-modern-compliant-and-easier-execute-records-retention-schedules>

“Executing Your Records Retention Policy and Schedule” (2018), available at <https://www.acc.com/resource-library/executing-your-records-retention-policy-and-schedule>

“Operationalizing the California Consumer Privacy Act” (2019), available at <https://www.acc.com/resource-library/operationalizing-california-consumer-privacy-act-united-states>

“Automating Your Records Management Program” (2020), available at <https://www.acc.com/resource-library/automating-your-records-management-program>

C. ACC Docket Articles

“Everybody’s Job, Nobody’s Job: The Best Way to Create an Information Governance Program Without Going Crazy,” Patrick Chavez and Mark Diamond, *ACC Docket* (April 2019), available at <https://www.accdocket.com/everybodys-job-nobodys-job-best-way-create-information-governance-program-without-going-crazy>

“Upgrading Your Traditional, Paper-centric Records Program to Be More Modern, Compliant, and Useful,” Andrea Meyer and Mark Diamond, *ACC Docket* (December 2018), available at <https://www.acc.com/resource-library/upgrading-your-traditional-paper-centric-records-program-be-more-modern-compliant>

“Building a Business Case for Information Governance,” Annie Drew and Mark Diamond, *ACC Docket* 32, no. 8 (Oct. 2014), pp. 26-40, available at <https://www.acc.com/resource-library/building-business-case-information-governance-program>

D. ACC Legal Quick Hits

“How to Prevent Employees From Saving All Documents Forever” (2020), *available at* <https://onlineed.acc.com/learn/course/internal/view/elearning/360/how-to-prevent-employees-from-saving-all-documents-forever>

“Nine Ways Companies’ Records Programs Sabotage Compliance, Raise Risks, Increase Costs and Lower Productivity” (2021), *available at* <https://onlineed.acc.com/learn/course/internal/view/classroom/1076/nine-ways-companies-records-programs-sabotage-compliance-raise-risks-increase-costs-and-lower-productivity-sept-16-2021>

“Using Native Office 365 to Manage, Publish, and Automatically Enforce Your Records Retention Schedule” (2020), *available at* <https://onlineed.acc.com/learn/course/internal/view/elearning/357/using-native-office-365-to-manage-publish-and-automatically-enforce-your-records-retention-schedule>

E. ACC Webcasts

“Creating a Records Retention Schedule That Does Not Create Problems (And Actually Solves Them)” (2020), *available at* <https://onlineed.acc.com/learn/course/internal/view/elearning/645/creating-a-records-retention-schedule-that-does-not-create-problems-and-actually-solves-them>

“Introduction to Modern Records Management” (2021), *available at* <https://onlineed.acc.com/learn/course/internal/view/elearning/644/introduction-to-modern-records-management>

F. ACC Information Governance Network Resources

“Information Governance – Glossary of Terms” (2019), *available at* <https://www.acc.com/resource-library/information-governance-glossary-terms>

“Employee Behavior Change Management Programs for Information Governance,” *Quick Overview*, (2017), *available at* <https://www.acc.com/resource-library/employee-behavior-change-management-programs-information-governance>

“Creating a Data Classification Standard,” (2017), *available at* <https://www.acc.com/resource-library/creating-data-classification-standard>

G. Contoural Whitepapers

“Reducing Your Offsite Paper Storage Risk and Cost,” *White Paper*, (2018), *available upon request at* <https://www.contoural.com/white-papers/> on Contoural's website www.contoural.com

“Defensible Disposition: Real-world Strategies for Actually Pushing the Delete Button” *White Paper*, (2014), *available upon request at* <https://www.contoural.com/white-papers/> on Contoural’s website www.contoural.com

“Stop Hoarding Electronic Documents,” *White Paper*, (2012), *available upon request at* <https://www.contoural.com/white-papers/> on Contoural’s website www.contoural.com

