Ten Essential Elements of a Successful Electronic Records Retention and Destruction Program

Organizations today are finding themselves under increasing pressure, both legal and regulatory, to properly retain or delete documents. While policies and procedures for paper records may seem adequate, many companies find it difficult to translate those policies and requirements to electronically stored information such as e-mail messages and electronic document files. This article outlines ten key elements for a successful electronic records retention and destruction program:

1. Electronic Records Retention Assessment
2. Policy Business Drivers Analysis
3. Records Retention Policy
4. Records Retention Schedule
5. Records Retention Cost Model
6. Records Retention Execution Plan
7. ESI Survey Data Map
8. Enterprise Litigation Hold Process
9. Electronic Records Management Training Program
10. Retention Policy Audit and Refresh Process

1. **Electronic Records Retention Assessment**
The first essential step in creating and implementing a records retention policy is to assess the current record keeping practices in the context of business requirements and industry best practices.

A good records-retention assessment helps the organization to formulate a comprehensive program that responds to all the important business drivers – not just a narrow view from one functional perspective. And it helps prevent costly mistakes that can occur when companies jump into technology selection without a good understanding of the business requirements. While checklists, survey forms and worksheets can serve as useful tools, a good assessment typically requires structured interviews with a number of stakeholders and subject-matter experts in functions such as Legal, IT, Finance, HR and other major business operations.

The point of the assessment is not just to identify record types and locations, but to understand the business needs and actual behaviour patterns of employees who create, manage and destroy records in paper and electronic formats. Interviews can also help begin or continue the process of education and consensus building around records management requirements and best practices.

2. **Policy Business Drivers Analysis**
To frame and explain the records retention policy, many companies analyze the policy business drivers. This can provide context for executives and managers throughout the organization, on the business reasons for the policy that is being implemented and enforced. This context helps to build consensus and improve compliance when the policy is implemented. From a legal and regulatory perspective, it is also important to document the
reasoning behind the records retention and deletion policy. This documented rationale can help explain and defend the policy if it is questioned.

Business drivers for records retention are often grouped and considered in three general categories:

1) Regulatory compliance – meeting the record keeping requirements of laws, regulations, industry standards and other societal expectations.
2) Litigation readiness – decreasing the costs and risks of litigation by preparing the organization to effectively find, manage, review and produce relevant documents.
3) Operational needs – enabling increased productivity, reduced costs, or operational efficiency through better management of business records.

3. Records Retention Policy
Every organization should have an up-to-date records retention policy that covers the retention and destruction of all types of business records. The lack of an official policy can undermine the credibility of the evidence presented in litigation. And a policy that is obsolete, or that is not communicated and implemented, can become a legal liability as well.

Beyond the legal implications, an up-to-date and well-communicated policy provides guidance to employees that can help them make appropriate decisions – whether those involve retaining records that the business needs, or destroying records that are no longer required. A records retention policy specifies the overall philosophy of records retention across the entire organization.

4. Records Retention Schedule
Typically referenced by the records retention policy, or included as an appendix, the records retention schedule (RRS) specifies the amount of time that each record type should be retained. It should provide a reasonably detailed, comprehensive list of all record types within the scope of the records retention policy. The schedule is generally broken down by department, with a number of record categories specified for each. Taking the legal department as an example, we would typically find line items in the retention schedule for business organization, board and shareholder meetings, company ownership and stock transactions, compliance, contracts and agreements, intellectual property, litigation agreements, pleadings, and 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. The retention schedule defines the minimum required retention period for each record category, typically measured in elapsed years after the record becomes final or inactive. In some cases, the retention period may start with a future event, such as “life of the contract plus 7 years.”

In the interest of the efficiency and effectiveness – particularly for electronic records – it is wise to limit the number of different retention periods that employees and systems must manage. Many organizations are moving to a simplified system based on broad retention categories – sometimes called “big buckets” – and a limited number of retention periods (e.g., one year, five years, 10 years, and indefinite retention). Such a simplified scheme is much easier for employees to comprehend, especially when it must be implemented in a framework such as an e-mail inbox. It can also be easier for automated processes to implement.
5. Records Retention Cost Model
Next, it is essential to consider the financial implications of the selected records retention policy and schedule. Although some retention systems may prove financially infeasible, most organizations find that the benefits of a records retention program far outweigh the costs of implementation. This is especially true if one considers the financial impact of not complying with critical regulations, of performing an unsuccessful document search as part of a legal action, and especially of failing to adequately protect documents during a litigation hold. Each of these three scenarios has been known to cost millions of dollars even for moderately sized organizations.

6. Records Retention Execution Plan
The records retention assessment report typically identifies a number of recommended actions to address key findings and implement improved practices. These recommendations should be prioritized in terms of their business impact, and the high-priority recommendations should be further articulated in a detailed execution plan.

The records management program execution plan may include selection and implementation of information technology systems for records management, archiving and disposition. Systems for archiving and managing e-mail messages, attachments, and electronic document files are often identified as high-priority components of a comprehensive plan. In many cases, the recommendations will include improvements to manual processes for handling of paper records, or the elimination of paper records through scanning or electronic capture.

The execution plan should also address organization and staffing requirements, and provide a roadmap for training employees, auditing compliance, and refreshing the policy and schedule.

7. Electronically Stored Information Survey Data Map
With more and more business records being generated and retained in electronic form, it has become increasingly important for organizations to understand the systems and media where each type of record may be located. This understanding is important for proper retention and management of records in the normal course of business, since the appropriate policies and practices will reflect the strengths and limitations of particular record keeping systems and media.

8. Enterprise Litigation Hold Process
In addition to the daily retention and destruction of records, all organizations should establish a well-defined process to issue and manage a litigation hold request at the onset of litigation. Once the legal hold or “records freeze” has been requested, relevant records must be preserved and protected from destruction or alteration until the hold is released. Once litigation commences – or becomes reasonably foreseeable – a company may have an obligation to preserve all relevant documents and information. This obligation extends beyond the records defined in the retention schedule, and may include all copies of records, and any other potentially relevant information.

9. Electronic Records Management Training Program
Merely documenting a records retention and destruction policy and program is not enough. An organization must also educate its employees to ensure that process will be followed. Implementation of a records retention program goes far beyond any electronic systems and automated processes. The behaviour of individuals and organizations is equally critical. Therefore, employees must be trained to understand their part in the overall
records retention system, both at the outset and in periodic communications, refresher training and certification where appropriate. Legal experts say that a failure to effectively train employees in the proper implementation of a records retention policy can put an organization under even more risk than a failure to create the policy in the first place.

The records retention training plan must include coverage of the reasoning behind the records retention system, the scope, schedule, methods of retaining business records, and the litigation hold process. Participation in the training should be mandatory, and records of the training may become critical to the defence of the business if the policy is brought under scrutiny.

10. Retention Policy Audit and Refresh Process
The final crucial element of a records retention program is a process through which compliance with the records retention policy is assessed and any deficiencies are addressed. Like training records, policy audit reports can become crucial if the effectiveness of the system is questioned. An organization that can produce evidence showing that they were conscientious in enforcing their policy, even if it was not always successful, will be in much better shape legally than one that fails to do this.

As the system is audited, it is likely that overlooked elements and outdated systems will be brought to light. Therefore, the records management organization must have time and resources allocated to updating the records retention schedule and data map, and perhaps even the policy itself. Any changes must be propagated throughout the entire program, especially when it comes to training and auditing processes.

Conclusion
Records retention has become a more complex undertaking with the rapidly increasing volume and widespread proliferation of electronic messages and documents. At the same time, it has become an area of increased corporate risk and management focus. An effective electronic records retention program can help reduce the risks, and also lower the direct and indirect costs of inefficient records management practices and systems.

By focusing on the ten essential elements of a successful electronic records retention and destruction program, organizations can better meet the regulatory, legal and operational requirements that impact business records and information. These ten elements thus provide the foundation for an effective records management program that will help the enterprise ensure compliance, reduce risks, improve productivity, and lower costs.

Written by: Fazila Nurani, B.A.Sc.(E.Eng.), LL.B., CIPP/C
September 2011

OTHER RESOURCES:

1. Template privacy-related policies and procedures: Visit http://www.privacyCD.com to learn about PrivaTech’s Privacy Documentation Suite CD-ROM.