



IRCH Methodology for Creating Legally-Defensible Retention Schedules

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Topics

- Creating Legally-Defensible Retention Schedules
- Defending the Retention Schedule and Procedures in Court
- Questions Previously Submitted

IRCH Approach to Creating Legally-Defensible Retention Schedules

- Complete legal research
- Legal group methodology
- Consistency in retention
 - Similar records treated similarly
 - A “World View” toward retention
- Clear linkage between records and legal research
- Systematic approach to updates.

A World View Toward Retention – Since mid-1980's

- A “standard” way of looking at records
 - General business records - standard
 - Industry-specific records – custom, then standard
- A consistent view of record “purpose” – what used for, not what it is:
 - Contract: all contracts, lease, purchase order, etc.
 - Advertising: quasi-contract
 - Stock Ownership: contract + regulated activity

XYZ Organization

Legal Group Index With Legal Research

Code	Subjects / Description	Legal Requirements	Legal Considerations	Total
LRBR Code	Citation	Period	Industry / Subjects	

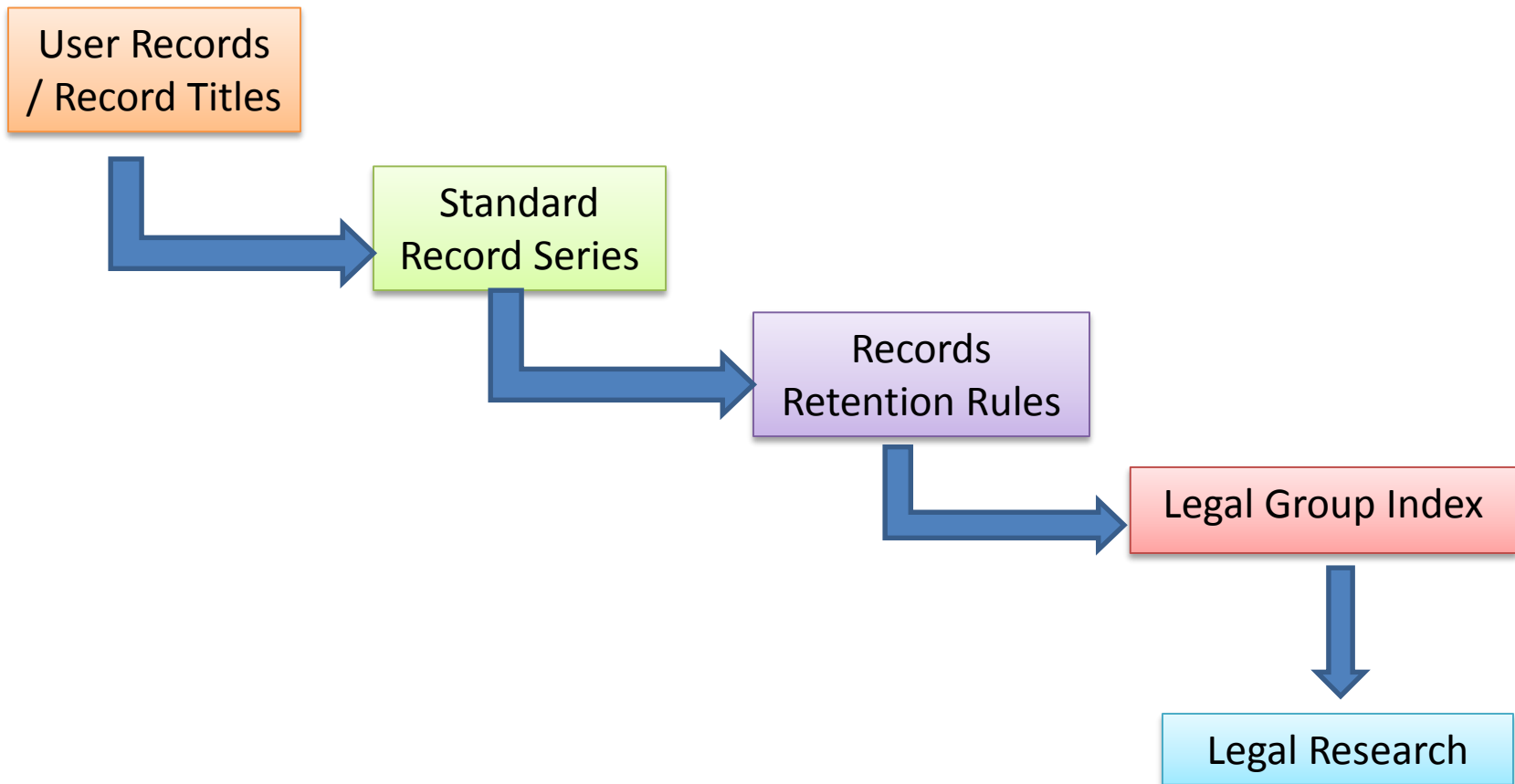
ACC000	Accounting / Tax General	6	3	6
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Includes tax assessment or specific tax requirements for accounts payable, accounts receivable, etc.

Legal Requirements

AR 126-0020-00 010	ACA 26-18-506	6	general / tax: general
AR 220-0010-00 010	GR-80	6	general / tax: general
KY 207-0010-00 010	903 KAR 1:180	6	general / employment: unemployment compensation
ME 136-0010-00 020	36 MRSA 135	6	general / tax: income
ME 220-0010-00 010	CMR 18:125:305	6	general / tax: sales
MI 110-0090-00 010	MCL 206.455	6	general / tax: income
MI 250-0010-00 010	MAC R421.115	6	general / employment: unemployment compensation
MN 120-0025-20 010	MS 294.10	6	general / tax: general
TN 230-0070-00 010	TCRR 1320-5-1-.80	6	general / tax: sales
AK 208-0010-00 010	8 AAC 85.020	5	general / employment: unemployment compensation
AR 210-0010-00 010	010 02 CARR 001 s.13	5	general / employment: unemployment compensation
CO 205-0010-00 010	Regulation 7.1	5	general / employment: unemployment compensation
FL 210-0005-00 010	FACA 12-19.006	5	general / tax: income / currency transactions
HI 220-0010-00 010	HAR 12-5-13	5	general / employment: unemployment compensation
IA 116-0020-00 010	IC 422.50	5	general / tax: sales
IA 220-0015-00 010	IAC 701-11.4	5	general / tax: general
IA 245-0015-00 010	IAC 871-22.3(96)	5	general / employment: unemployment compensation
IL 170-0160-00 010	820 ILCS 405/1801	5	general / employment: unemployment compensation
IL 220-0010-00 010	IAC 2760.115	5	general / employment: unemployment compensation
KS 250-0010-00 010	KAR 50-2-2	5	general / employment: unemployment compensation
MT 220-0010-00 010	MAR 24.11.701	5	general / employment: unemployment compensation
NC 210-0010-00 010	Regulation 4	5	general / employment: unemployment compensation
NH 105-0032-00 010	NHRS 77-E:10	5	general / tax: income
NJ 154-0015-00 010	NJSA 54:10A-14.1	5	general / tax: income / corporation
NJ 212-0005-70 010	NJAC 12:16-5.4	5	general / employment: unemployment compensation
US 226-0390-00 010	26 CFR 1.414(l)-1	5	general / tax: income / deferred compensation
US 240-1626-40 010	40 CFR 63.654	5	general / environment: air pollution / general requirements

Linkage Between Records and Legal Research



Defending the Retention Schedule and Procedures in Court

- IRCH-developed retention schedule has never been challenged in court.
 - Opposing party quickly realizes futility
 - Significant support for retention schedules
- Conclusion: A legally-defensible retention schedule will be upheld.

Normal Expert Witness Procedure

- Identify expert
- Check conflicts
- Expert consults with attorney
- Expert reviews pleadings, depositions, documents
- Expert writes report with opinions
- Testimony: deposition and/or trial

Defending a Retention Schedule

- Explain schedule and supporting documentation – in effect at time in question
- Explain prevailing retention practices
- Explain retention procedures
- Explain controlling law retention period
- Show compliance with schedule/procedures
- Demonstrate consistency and systematic development and implementation

Other Expert Witness Cases

- Destruction of records when litigation in progress or imminent.
- Failure to produce records after subpoena
- Support for retention program
- What is a record under an agreement
- Self-destruction of email after short period
- Why records should be destroyed
- Bad government recordkeeping practices

Questions

- Record Classification – The Bucket Theory
- Unmanaged Information, “Big Data” & Retention
- General Email Procedures
- Global Retention Schedules

Record Classification Strategy

Small Buckets



200-300 buckets

Big Buckets



100 buckets

Record Classification Strategy

- “Small Buckets”
 - Traditional record series describing organizational records
 - Users select from few 100’s of items
 - Classification / Retention in one entry
- “Big Buckets”
 - Like a limited set of retention rules
 - Users select from 100 or fewer items
 - Classification requires additional index entries

Fewer Buckets per Group

Accounting



20 to 25 buckets

Human Resources



30 to 40 buckets

Joe & Sally



10 to 15 buckets

Record Classification Strategy

- “Fewer Buckets Per Group or Person”
 - Includes all the advantages of records series and retention rules
 - Departments / Groups select relevant items for the Record Series
 - Users select from 10 – 35 items; full list can be searched
 - Systems may not support, yet
- Answer: The right number of buckets per group or person

Unmanaged Information and Records Retention

- **Retention cannot be applied to unmanaged information**
- Managing unmanaged information
 - Identify “records”
 - Move records to “recordkeeping system”
 - “Classify” records – assign record series
 - Retention applied indirectly through record series
 - Destroy the rest

“Big Data” is Unmanaged Information

- All the problems/concerns of unmanaged information
- Advocates want Big Data for long periods
 - Undermines retention program
 - Disaster in litigation
- One solution
 - Remove “personal identifying information”
 - Converts previous records to misc. data

Electronic Mail - Problem

- Email is unmanaged information
- Tool of communication
- Informal content
- Rarely any procedures or controls, except mailbox size
- Most are not “records” of the organization
- In litigation, all “recorded materials” subject to discovery
- Restrictions reduce efficiency of employees

Electronic Mail - Value

- Important:
 - Records: 0 – 5%
 - Work-In-Progress: 10 – 30%
- Junk: 65 – 100%

Electronic Mail – Retention Recommendations

- Define email as “non-record material”
- Employees must manage E-Mail “records”
 - Identify records.
 - Assign record series code plus retention period;
 - Store in electronic filing system or print and store in paper file; shared server not good substitute
- Self-destruct email in 30-45 days
- Recycle backups in same 30-45 days

Global Retention Schedule – Options

1. Complete international legal research
2. US + Canada legal research + international review.

Option 1: Complete International Legal Research

- Methods
 - Subscription services
 - International law firm
- Expensive
- Native language versus English translations
- “Custom and practice”
- Management of legal research
- Differences in retention periods

Option 2 (Preferred): US/Canada Schedule Plus International Review

- Develop US/Canada retention schedule as base
 - Retention Manager has complete research
 - English language with common retention
- Send schedule to foreign offices who will forward to local attorneys for review.
- Local country attorney may recommend longer retention for records in country; not shorter
- Central RM does not manage exceptions.

Thank You

**INFORMATION
REQUIREMENTS
CLEARINGHOUSE**

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