



Making the Records Retention Decision – Advanced Subjects

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Topics

- Structuring the Records Retention Schedule.
[See April 2015 Webinar]
- Determining scope of legal research.
 - Regulated activities
 - Relevant jurisdictions
 - Competing/Conflicting laws

Topics (continued)

- Records retention periods
 - Types
 - Abbreviations
 - Records retention “arithmetic”
- Retention Values
- Determining legal retention
 - Legal Requirements
 - Legal Considerations
- Determining User Retention

Structuring the Retention Schedule

[April 2015 Webinar]

- Small Buckets
- Big Buckets
- Right Number of Buckets

Record Classification Strategy

Small Buckets



200-300 buckets

Big Buckets



100 buckets

Right Number of Buckets

Accounting



20 to 25 buckets

Human Resources



30 to 40 buckets

Joe & Sally



10 to 15 buckets

Why Record Series Structure Matter?

- The “right” record series match properly to the “relevant” legal research.
- The “right” type and number of record series improves implementation and user access
- The “right” records series ensures that records included in program and legal compliance
- IT primarily wants fewer, simpler categories – simplify electronic records programs

Determining Scope of Legal Research – Regulated Activities

- General
 - Tax
 - Employment
- Industry-Specific Activities – financial services, power, petroleum, manufacturing, etc.
 - Collateral Industry Activities – Tax, Employment, Environment, Health and Safety
- You follow the laws for a regulated activity only if they apply to your specific activities.

Determining Scope of Legal Research – Relevant Jurisdictions

- Offices
- Employees
- Taxes
- Manufacturing / Production facilities
- Storage facilities
- You follow the laws in a jurisdiction only if you have activities or a physical presence there AND the laws apply to your activities.

Competing/Conflicting Laws

- You must comply with ALL the law that apply to you.
- If two or more laws affect your records, you must comply with them ALL.
- Thus, you need to identify ALL the relevant laws that apply to you.
- Then, you sort out the legal conclusions

Records Retention Periods - Types

- **Creation**: 6. From the time records created.
 - Generally from end of fiscal year - accounting
- **Event**: ACT+6. While the event is in progress plus a period of time – contracts, employment, etc.
- **Indefinite**: IND. Some long period that cannot yet be determine that's at least as long as the longest legal requirement. Review periodically.
- **Maximum**: MAX3. No requirement to keep records but cannot be kept longer than numerical period. Cannot be used if there are any legal requirements.

Records Retention Abbreviations

- 6 = 6 years; [blank] – years; M – months; D – days. Retention normally in years.
- ACT – active; event should normally not be described in abbreviation. Separate “event.”
Most events obvious.
- SUP – superseded.
- MAX – Maximum
- IND – Indefinite; not Permanent

Records Retention Arithmetic

- Periods: 6 and 7. **Total: 7**
 - Pick Longest Number. No CY.
- Periods: ACT+1 and 6. **Total: ACT+6**
 - Longest “Event” + Longest Number
- Periods: ACT+1 and ACT+3. **Total: ACT+3**
- Periods: ACT+6 and IND. **Total: IND**
 - IND longest retention period
- Periods: MAX3 and 6. **Total: Not Allowed**

Retention Values

- Value
 - Legal – longer of these two values
 - Legal Requirements
 - Legal Considerations
 - User / Operational
 - Historical
- Retention: Longest using Records Retention Arithmetic

Determining Legal Retention – Legal Requirements

- Laws you must follow or be subject to fines, penalties, loss of rights.
- Objective . . . Mathematical.
- You select the longest legal requirement
 - Exception: Two requirement types: ACT+1 and 3;
 - Total: ACT+3 (Actual: 1-9s)
- Possible to create exception where large difference – e.g. US: 6; Switzerland: 10.

Determining Legal Retention – Legal Considerations

- Laws that may influence retention but are not legal requirements
- Examples:
 - Limitations of action – period to sue
 - Requirement to keep with no period – 3 years
 - Actions that will never occur – tax evasion
- Subjective: Select a reasonable period – often less than requirements but could be longer

Legal Considerations -- Limitations of Action / Statutes of Limitation

- Cover all types of legal action: contracts, personal injury, property, etc.
- They do not establish legal or retention requirements – Don't treat as requirements!!!
- Legal actions will occur before the longer statute of limitations periods -- Contracts:
 - Longest: 15 years; some 10; most 6 years or less
 - Normal start: Within 1-3 years of breach

Determining Legal Retention – Legal Considerations

- Selecting legal considerations period
 - Tax Audit: 3 or 4
 - Limitation of Actions: ACT+6. Likely period for litigation.
 - Contracts: ACT+6. Advantage to keep records a little longer
 - Hazardous Material Manifests: IND. Risk too high if don't keep records (3-year requirement)
 - Requirement to keep, but no period stated: 3

Determining User Retention

- Organization Retention Goal: Comply with the law and reasonable user needs.
- Never ask users “how long to keep records”
 - Why: Generally give wrong answer
- Reasons users want long periods
 - They’re important so records are important
 - “Just in case”
 - Don’t want to be wrong

Strategy for User Retention Period

- Organization determines retention; not users
- User provide subject-matter expertise to Organization's retention decision
- Ask
 - What do you do? Describe the steps to complete your activities.
 - What records do your create or receive?
 - When have you needed the records after 3 years? 5 years? What if they did not exist?

Total Retention

	Example 1	Example 2	Example 3	Example 4
Legal	6	ACT+1	ACT+1	ACT
User	3	3	3	3
Historical	0	0	IND	0
TOTAL	6	ACT+3	IND	ACT+3

Final Observations

- Retention determined by precise methodology – not “feels good” or “just in case”
- Full legal research required to ensure legal compliance
- Structure of record series determines structure of legal research
- Organization controls the retention schedule
- Good retention methodology is defensible

Thank You

INFORMATION REQUIREMENTS CLEARINGHOUSE

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