RIM 101 | Managing Risk and Designing an Effective Information Management Plan

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SCCE
Society of Corporate
Compliance and Ethics

SESSION 601

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Session Objectives

1 Understand the implications of poor or no record management practices

2 Understand the essential elements for designing a legally defensible records retention plan

3 Provide a roadmap for the design and implementation of a defensible record retention plan

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POOR OR NO RECORD AND INFORMATION MANAGEMENT PRACTICES

RISKS AND CONSEQUENCES

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GENERALLY ACCEPTED RECORDKEEPING PRINCIPLES

- ACCOUNTABILITY - A senior executive (or a person of comparable authority) to accountable for overseeing the record and information management program

- TRANSPARENCY – A documented record and information management program, that is verifiable, auditable and easily available to all employees and as appropriate, interested parties.

- INTEGRITY – Assurance that the record and information assets for the organization have a reasonable guarantee of authenticity and reliability.

- PROTECTION – Assurance that an appropriate level of protection is in place to protect record and information that is confidential, personal or confidential, essential to business continuity, or that otherwise require protection.

- COMPLIANCE - An record and information governance program that is designed to comply with applicable laws, other binding authorities, and the organization's policies.

- AVAILABILITY – Record and information assets maintained in a manner that ensures their timely, efficient, and accurate retrieval.

- RETENTION - Information assets that are retained for an appropriate time, taking into account its legal, regulatory, fiscal, operational, and historical requirements.

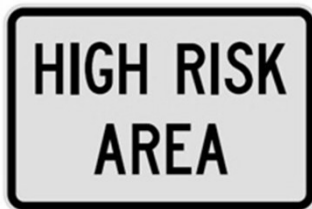https://www.arma.org/page/principles

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THE RISK: OVER-RETENTION

‣ Danish DPA performed an audit of a taxi company and found that the taxi company had implemented a data retention policy but had failed to follow it

‣ The DPA has reported the Company to the police and has recommended a penalty fine of DKK 1.2 million (USD1,801,440) for violation of the GDPR, including for not deleting information when it was no longer necessary for the purpose it was collected for

https://gorrissenfederspiel.com/en/knowledge/news/recommended-fine-of-dkk-12-million-to-taxa-4x35-for-violation-of-the-gdpr

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THE RISK: NO RETENTION PLAN

HIGH RISK AREA

· The French Data Protection Authority (The "CNIL") fined French real estate service provider for data security and retention failures

· On June 6, 2019, the CNIL announced that it levied a fine of €400,000 (USD$448,315) on the French real estate service provider, for failure to (1) implement appropriate security measures, and (2) define data retention periods for the personal data of unsuccessful rental candidates

https://www.huntonprivacyblog.com/2019/06/11/cnil-fines-french-real-estate-service-provider-for-data-security-and-retention-failures/

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THE RISK: IMPROPER DISPOSAL

- A medical center in Florida loaded documents on a truck and sent it to a local landfill, but the documents were not shredded or marked up before handing them off. The door of the shipping unit was not properly secured, and in transit, some of the papers simply blew out into the road

- So far there have been two suits against have been filed against the medical center and Lee County.

  https://www.uspcnet.com/2016/03/17/data-security-its-not-just-about-digital-records/#.XTYXBuhKjD4

THE RISK: POOR RECORDKEEPING PRACTICES

Los Angeles Times

BUSINESS

PG&E falsified gas pipeline records for years after deadly explosion, regulators say

In this Sept. 9, 2010, file photo, a massive fire from a pipeline explosion roars through a neighborhood in San Bruno, Calif. (Paul Sakuma / Associated Press)
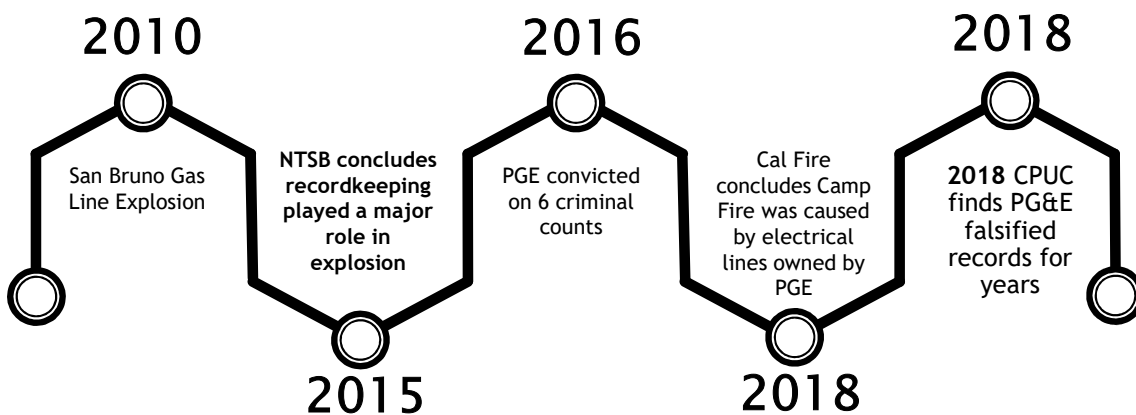
The New York Times

California Says PG&E Power Lines Caused Camp Fire That Killed 85

PG&E power lines caused the Camp Fire, California fire officials concluded. Justin Sullivan/Getty Images

THE RISK: POOR RECORDKEEPING PRACTICES

2010
San Bruno Gas Line Explosion

NTSB concludes recordkeeping played a major role in explosion

2015

2016
PGE convicted on 6 criminal counts

Cal Fire concludes Camp Fire was caused by electrical lines owned by PGE

2018

2018
2018 CPUC finds PG&E falsified records for years

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GENERALLY ACCEPTED RECORDKEEPING PRINCIPLES

- ‣ ACCOUNTABILITY
- ‣ TRANSPARENCY
- ‣ INTEGRITY
- ‣ PROTECTION
- ‣ COMPLIANCE
- ‣ AVAILABILITY
- ‣ RETENTION

PG&E's
Generally Accepted
Recordkeeping Principles
Score

0 out of 8

https://www.arma.org/page/principles

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Every 2 days we create as much information as we did from the beginning of time until 2003.

Source

https://barnraisersllc.com/2012/12/38-big-facts-big-data-companies/

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Everyday

- We send **16 million text messages**
- **156 million emails are sent**; worldwide it is expected that there will be 2.9 billion email users by 2019
- **15,000 GIFs** are sent via Facebook messenger
- There are **154,200 calls on Skype**
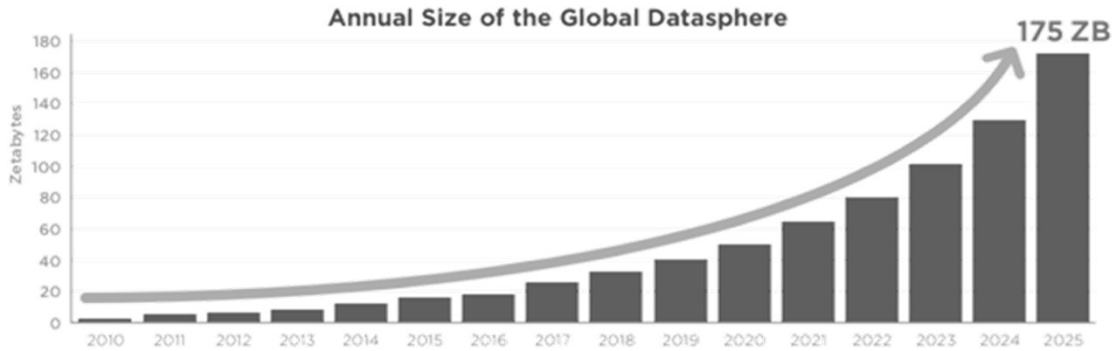- **2.5 quintillion bytes of data** created each day

https://www.forbes.com/sites/bernardmarr/2018/05/21/how-much-data-do-we-create-every-day-the-mind-blowing-stats-everyone-should-read/#74bac28660ba

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GLOBAL DATASPHERE WILL GROW TO 175 ZETTABYTES IN 2025

Figure 1 – Annual Size of the Global Datasphere

Annual Size of the Global Datasphere

175 ZB

Source: Data Age 2025, sponsored by Seagate with data from IDC Global DataSphere, Nov 2018

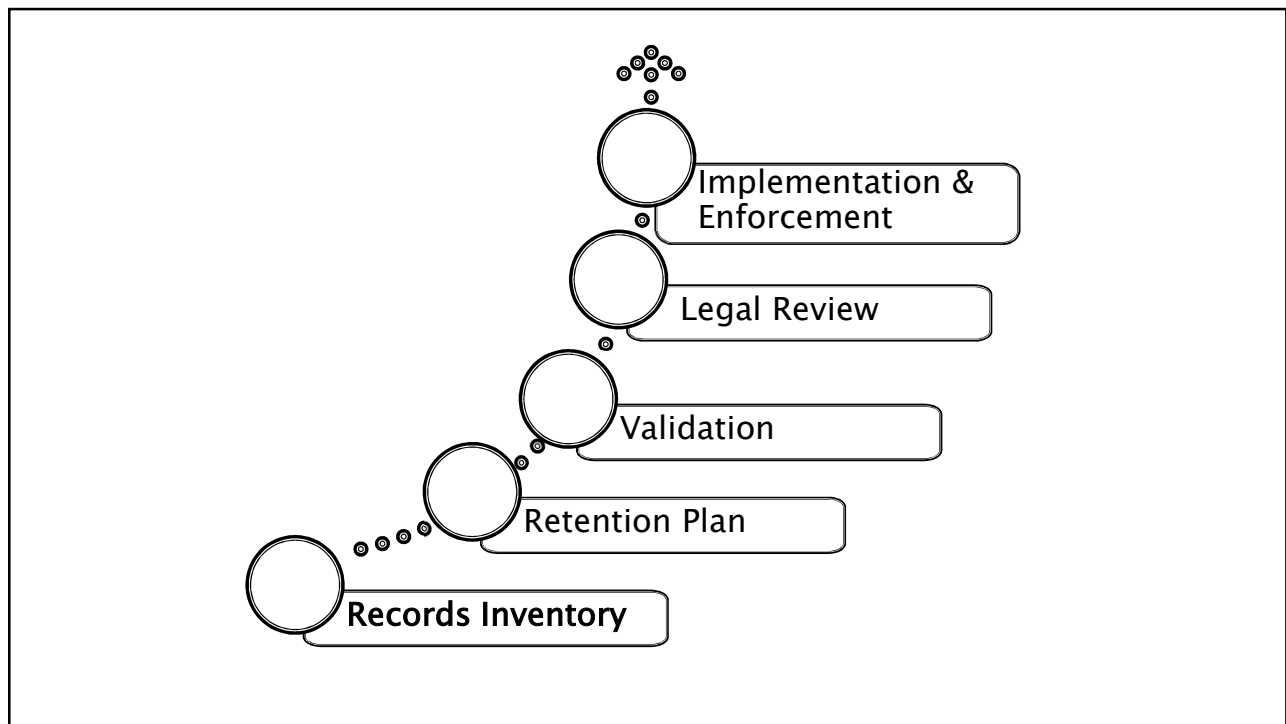https://www.seagate.com/files/www-content/our-story/trends/files/idc-seagate-dataage-whitepaper.pdf

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TAKE CONTROL OF RECORD & INFORMATION MANAGEMENT

DON'T LET IT CONTROL YOU

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Implementation & Enforcement

Legal Review

Validation

Retention Plan

Records Inventory

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STEP 1 - RECORDS INVENTORY

WHERE? WHO? WHAT? HOW? WHY? WHEN?

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STEP 1 – RECORDS INVENTORY

IDENTIFY MAJOR RECORD GROUPS

| Advertising Records | Customer Profiles
| Audit Reports | Daily Sales
| Brand Strategy | Financial Filings
| Benefit Filings | Fleet Administration
| Budget Records | Inventory
| Contracts | IT Projects
| Credit Card Processing | Rental Documents
| Customer Complaints

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STEP 1 – RECORDS INVENTORY

IDENTIFY ENTERPRISE APPLICATIONS

| Outlook
| Oracle
| Workday
| TeamMate
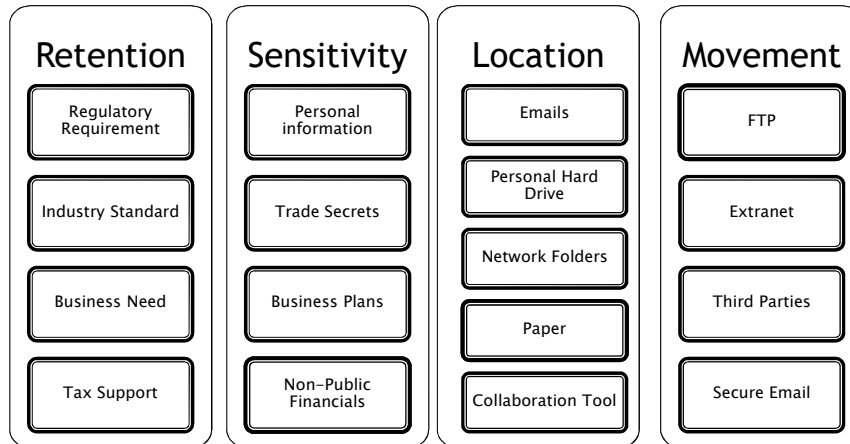| Sales Force
| Workforce Management
| Point of Sale
| Advantiv

Work with the Technology Group
- Review backup practices
- Review other related policies

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STEP 1 – RECORDS INVENTORY
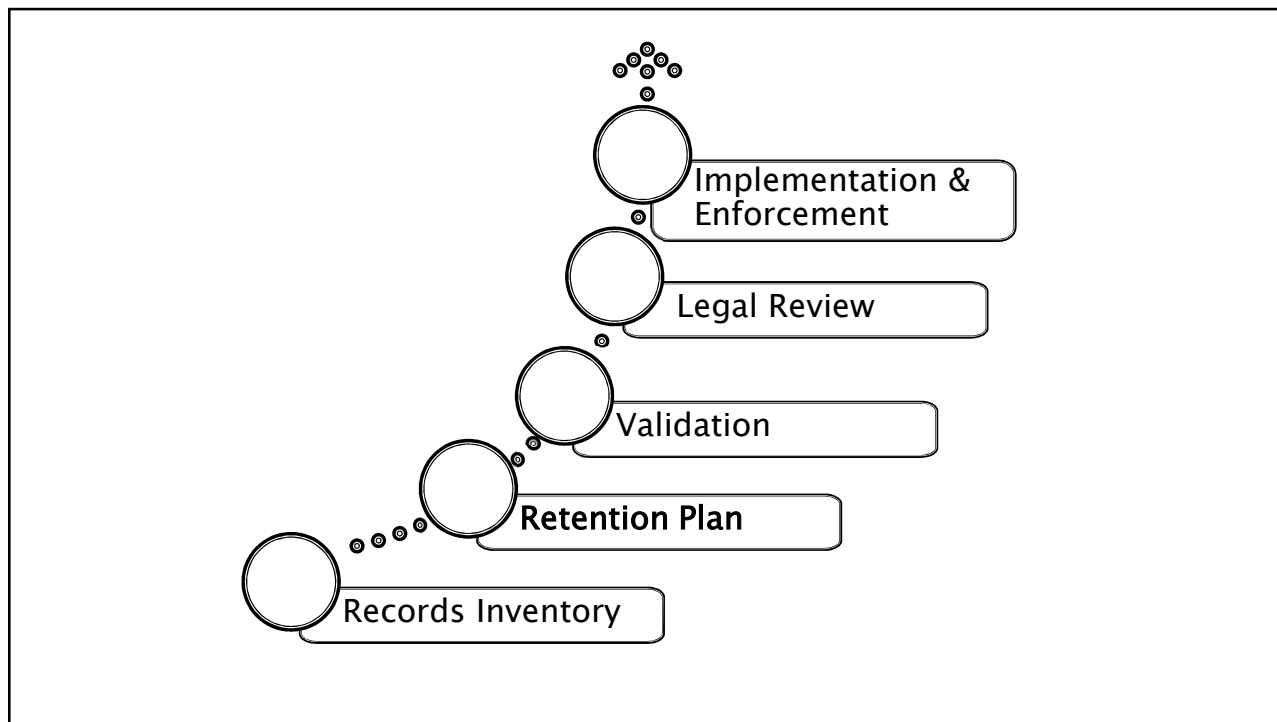
REGULATORY / DATA CLASSIFICATION REQUIREMENTS

Retention	Sensitivity	Location	Movement
Regulatory Requirement	Personal information	Emails	FTP
Industry Standard	Trade Secrets	Personal Hard Drive	Extranet
Business Need	Business Plans	Network Folders	Third Parties
Tax Support	Non–Public Financials	Paper	Secure Email
		Collaboration Tool	

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STEP 1 – RECORDS INVENTORY

What else?
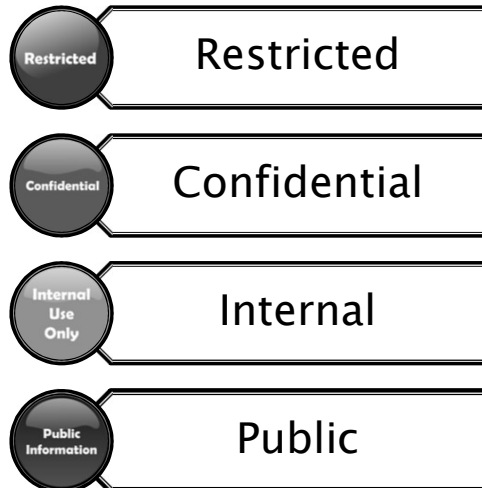Did you capture it all?

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STEP 2 – DESIGNING YOUR RETENTION PLAN

Record Class Code	Record Class Title	Record Class Description	Record Type Examples	Retention Requirement	Global Exceptions
Human Resources - Employment					
HRE1000	Drug and Alcohol Testing	Records related to drug and alcohol screenings required of individuals applying for a position at the Company, as well as periodic and random testing, regardless of lab test results (i.e. negative or positive). **ACT** means while either at the **applicant denial** or while the employee is **actively employed** by the Company.	Chain of Custody Forms for Drug and Alcohol Testing, Lab or Test Results, Related Correspondence for Drug and Alcohol Testing	ACT + 6 years for hired applicants ACT + 3 years for rejected applicants	
HRE2000	Recruitment and Selection	Records related to personnel requests, job applications testing, advertising, position descriptions, interviews, etc. for the Company and its subsidiaries. **ACT** means while the employee is **actively employed** by the Company.	Applications, Help Wanted Ads, Reference Checks, Candidate Evaluations, Skill Assessments, Personnel Requisitions, Resumes, Job Postings. Records may include any testing of an applicant's skill set including Company employees who apply for open positions.	ACT + 6 years	

Make it easy to understand

Define what triggers the retention

Give examples

Adopt best practice for retention

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STEP 2 – DESIGNING YOUR RETENTION PLAN

- Secure Disposal
- Vital Record
- PCI Data Security Standards
- GDPR
- SOX
- FACTA
- GLBA
- HIPAA
- ITAR

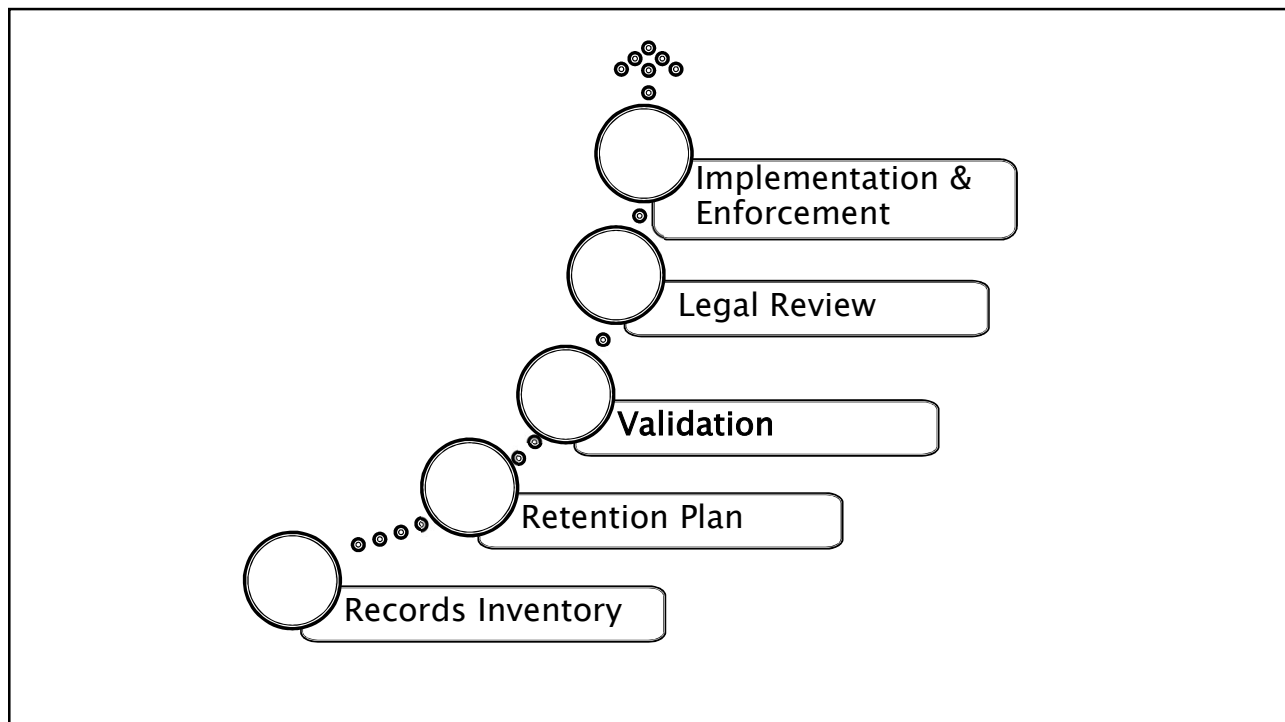|	
Restricted	Restricted
Confidential	Confidential
Internal Use Only	Internal
Public Information	Public

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STEP 2 – DESIGNING YOUR RETENTION PLAN

- Additional Considerations
  - Go digital or not
  - Publish
    - a global, organizational wide schedules, or
    - function or business unit specific schedules
  - Format
    - Is it easy to use
    - Is it searchable
    - Is it printable

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STEP 3 – VALIDATION – PICK YOUR TEAM

- Accounting
- Claims Operations
- Compensation & Benefits
- Compliance
- Corporate Security
- Data Center Operations
- Facilities & Properties
- Financial Planning & Analysis
- Financial Technical Accounting

- Fleet Administration
- Human Resources
- Information Security
- Internal Audit
- Internal Reporting
- IT
- Legal
- Marketing
- Operations

- Payroll Accounting
- Privacy
- Purchasing/Procurement
- Risk Management
- Safety & Health
- Sales
- Strategic Procurement
- Tax
- WHO ELSE??

STEP 3 – VALIDATION – SET EXPECTATIONS

‣ Have a kick off meeting

‣ Introduce your project team

‣ Describe scope of project

‣ Explain what has been done to date

‣ Talk about any significant updates you've may have come across

‣ Lay out what you need from the reviewers

‣ Present your timeline

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STEP 3 – VALIDATION – SAMPLE TIMELINE

‣ Business Review
  ◦ Kick off early February
  ◦ Feedback due back to Corporate Records by Friday, February 28

‣ Second round review (if necessary)
  ◦ Commence on March 3
  ◦ Final Feedback due back to Corporate Records by Friday, March 21

‣ Policy and Retention Schedule to Outside Counsel for final validation on April 1

‣ Policy submitted to EMEA Works Councils (where required) June 1

‣ June/July/August – Training Development/Translation

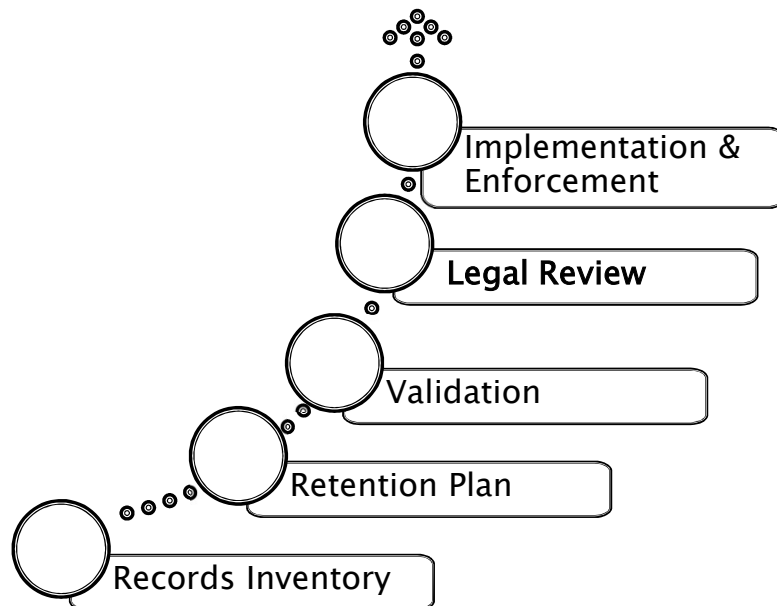‣ Rollout Policy & Retention Schedules – Q4

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STEP 3 – VALIDATION – PROVIDE LEADERSHIP

‣ Put someone in charge of collecting feedback and incorporating into a master document

‣ Decide who will mediate disagreements

‣ Discuss any required outside reviews that may be required, i.e., litigation counsel, work's councils, etc.

‣ Explain retention process for research and feedback

‣ Update the team when significant changes are agreed to

I am in charge

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Implementation & Enforcement

Legal Review

Validation

Retention Plan

Records Inventory

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STEP 4 – LEGAL REVIEW

‣ For the most part, retention periods stated in regulatory or statutory requirements are considered minimum retention periods – the shortest period of time a record must be held

‣ Legal reviews the risk of not maintaining the records beyond that period; for example, looking at the statute of limitations or identifying conflicting regulations

‣ Depending on legal advice, a decision may also be made to eliminate records before the prescribed minimum retention period has run

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Implementation & Enforcement

Legal Review

Validation

Retention Plan

Records Inventory
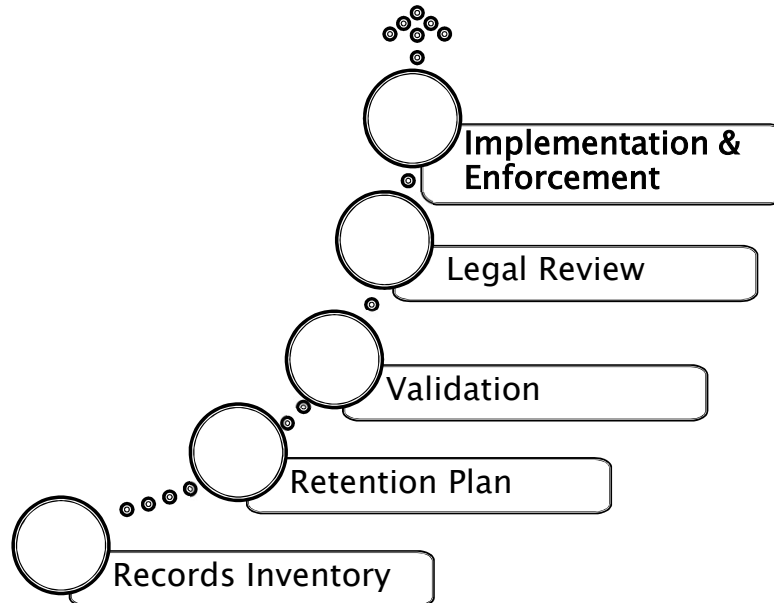
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STEP 5 - IMPLEMENTATION AND ENFORCEMENT

▸ Build a Records Coordinator Network

- Business Area Representatives
- Local Champion
- "Feet on the Street"

▸ Keep Your Network Healthy & Growing

- Stay in Touch
- Provide Incentives
- Encourage Learning

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STEP 5 - IMPLEMENTATION AND ENFORCEMENT

▸ Develop a Communication Plan

- Internal website
- Social media
- Email
- Posters
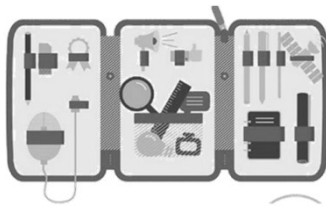
▸ Build Your Tool Kit

- Internal website
- Blogs
- Job aids
- Posters & flyers

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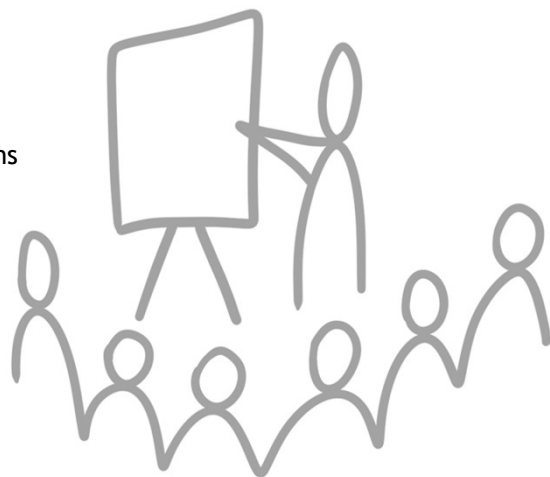
STEP 5 - IMPLEMENTATION AND ENFORCEMENT

- ‣ Engage your Executive Champion to kick off new or updated program with Senior Leadership Team
- ‣ Cascade information down through the organization
- ‣ Partner with IT, Legal, Information Security, Privacy, Internal Audit and Tax to help promote the program - a solid record management program supports their efforts

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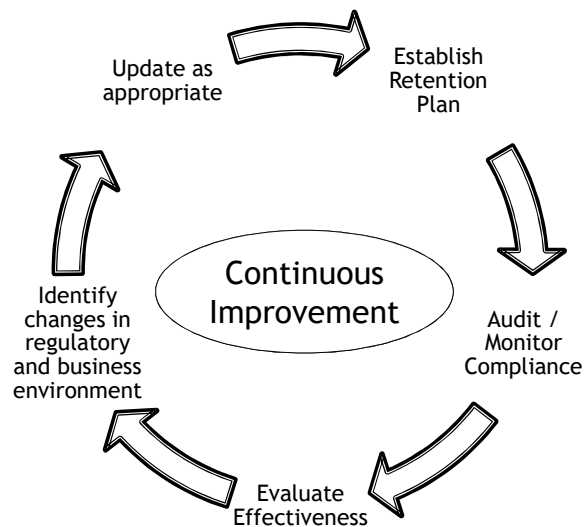## STEP 5 - IMPLEMENTATION AND ENFORCEMENT

- ‣ Training
  - ◦ In person is always best, but if not
    - · Video Conferences
    - · Web-based training, followed by live sessions on the phone
  - ◦ Role-based Training
    - · Identify higher risk facilities or functional groups
    - · Identify your audiences
    - · Customize the training

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STEP 5 - IMPLEMENTATION AND ENFORCEMENT

Update as appropriate

Establish Retention Plan

Continuous Improvement

Audit / Monitor Compliance

Identify changes in regulatory and business environment

Evaluate Effectiveness

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PROGRAM DEVELOPMENT CHECK LIST

- ‣ Complete a records inventory
- ‣ Build policies from industry-specific standards
- ‣ Build retention schedules from industry best practices
- ‣ Partner with subject matter experts
- ‣ Build a network of records coordinators
- ‣ Develop a "Tool Kit"
- ‣ Communicate and train business people
- ‣ Routinely dispose of obsolete records
- ‣ Audit the program
- ‣ Assess, Monitor and Update as needed

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Jacki Cheslow, CCEP, CCEP–I, CRM

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ADDITIONAL READING

- Everything Electronic Records Management (ERM), Howard Loos, CRM, IGP www.armahawaii.org

- How to Design a Legally Defensible Records Retention Plan, www.armannj.org, Jacki Cheslow, CRM, CCEP, CCEP-I, Robert Fowler, CIPP US, Jennifer Finnegan Smith, Esq.

- Records Management in the Digital Age: Challenges and Solutions - Electronic Discovery & Data Management Task Force www.drinkerbiddle.com.

- Iron Mountain Records Management Best Practices Guide – www.ironmountain.com

- How to Design, Develop, Deploy, and Maintain a Records Retention Program – www.aim.org

- Generally Accepted Recordkeeping Practices, www.arma.org

- 7 Ways to Take Control of Your Records Management Program, www.accesscorp.com

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CONTACT INFORMATION

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SESSION 601
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*DON'T FORGET TO COMPLETE
YOUR SESSION EVALUATION*

Thank you

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