

Document Retention; Records Management and Legal Compliance

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Quality records management that includes document retention policies is essential in ensuring legal compliance and business efficiency.

Introduction

A quality document and records management system that facilitates effective record keeping in an organization must have the capacity to design, apply and enact document retention policies. TOWER Software's product TRIM enables an organization to carry out retention and disposal activities for paper and electronic documents in any format, in a planned and predictable way, and in accordance with legal requirements. It provides the functionality and in-built business rules that make first-class records management easy.

Compliance with the legal and regulatory framework in which an organization operates is a vital part of doing business. This is not a new concept. What is new, is the present level of non-compliance, often inadvertent, due to the current lack of control in the digital environment where most business documentation is being generated. There are numerous examples of mismanaged information in today's business world and it is not difficult for organizations to fall foul of the law which can result in heavy fines and damaging publicity. Recent legislation mandates greater care of all business critical information.

Lawsuits involving business information are increasingly dominated by 'digital fights' as opposed to paper fights, as lawyers find more and more of their useful evidence in digital form.¹ Organizations have frequently opted for purchasing inexpensive storage facilities for their digital output. This choice has encouraged a regime of 'no policy' and the retention of potentially incriminating information. It is more and more apparent that all documents and records, both paper and digital, produced within an organization in the course of business must be managed within a framework that recognizes, amongst other things, the relevant legal requirements.

Some lawyers suggest as a solution more discrimination in the information committed to electronic memory. This may alleviate the problem but it will not take care of the mass of possible digital evidence that organizations create. A philosophy of selective capture relies too heavily on individual judgement. An enterprise wide policy for defining exactly which documents and records are to be kept, and for how long, is essential. And to enact the policy, an organization requires a records management system that facilitates effective application of these policies to business records.

What are document retention policies?

From a legal perspective a document retention policy is "a set of guidelines that a company follows to determine how long it should keep certain records,



including e-mail and web pages. This is important for many reasons, including legal requirements that apply to some documents.ⁱⁱⁱ.

Retention policies may be designed in-house to meet business needs, laws and regulations or, in the case of government agencies, they may be defined by an archival institution or a Public Records Office.

Applying the decisions concerning which records to keep, why and for how long has traditionally been the work of archivists and records managers and is referred to as appraisal. Appraisal focuses on maintaining records to meet business needs, accountability requirements, and community expectations. The appraisal process examines the interests of all stakeholders. With the advent of digital information, there are more players involved and the traditional structures for ensuring that appraisal takes place and that retention requirements are correctly defined and applied has been neglected. The retention policies of an organization must be systematically applied in the creation, maintenance and storage of records, in other words, as part of the record keeping system.

Using TRIM to manage document retention.

1. TRIM includes the ability to import, define and apply retention schedules

Every organization has different records with differing retention requirements depending on their content. Records management systems such as TRIM provide for these requirements. TRIM enables you to specify the schedule according to administrative and regulatory (internal or external) conditions. The schedule can be defined to include the details of how long the record or file shall be retained, the source of the requirement, the unique number of the schedule and the retention or destruction trigger dates that control the operation of the schedule. The schedule may be automatically attached at the time of creation or later, when the decision about retention has been made.

2. TRIM manages the legal requirements associated with court actions and can prevent 'spoliation of evidence' charges'.

The policies and procedures which ensure that documents and records are managed according to organizational requirements prevents inadvertent destruction. The current widespread practice of managing e-mails in organizations by purging individual holdings on a routine basis takes little or no account of the actual requirements for evidence that may be stored in these holdings. This kind of action can have damaging legal repercussions. Appraisal of e-mail and the use of retention policies will prevent this. Documents can be inadvertently destroyed after the request from the court as been made. And this can result in prosecution. However, if documents can be seen to have been destroyed in accordance with a well-documented policy, the suspicion is removed that deliberate destruction has taken place in order to avoid possible legal consequences.

An essential feature of a retention policy is the ability to respond quickly and easily to an ad hoc request for preservation of documents. TRIM Context includes a feature called 'litigation hold' which enables an immediate

response to a court request by suspending the document retention policy for the duration of the hold. In this way documents cannot be inadvertently destroyed.

3. Retaining documents that are no longer needed may expose a company to unnecessary risk.

Sometimes referred to as "removing smoking guns"ⁱⁱⁱ, retention policies can control the existence of e-mails which turn out to be incriminating sources of evidence. Many of the recent cases that have come to court and caused embarrassment have been built on damaging e-mails.^{iv} E-mail can escape the attention of record keepers and retention requirements. As a frequent and everyday occurrence, and one which contains evidence of business decision making it is vital that policies for e-mail are applied. TRIM recognizes this and provides a user-friendly in-built integration of e-mail with the records management system. Storing e-mail and applying document retention may be completely automated if required and important business e-mails can be immediately transferred to the records management system. At the same time appropriate document retention and disposal policies are applied.

4. The integration of classification and retention policies meets business needs and saves money.

The application of document retention policies can lower the costs of any litigation involvement. Policies are part of an enterprise wide information and records management policy to ensure the proper administration of records. Only those documents that need to be kept are retained. Although the implementation of enterprise wide document and records policies may initially increase costs, in the longer term there will be significant cost savings.

TRIM Context provides document and records management in one system and through one interface. Classification tools such as the file plan and thesaurus and the facility to apply document retention schedules to the plan structure in TRIM enable seamless application of retention controls. Use of a classification plan means that documents are much easier to find and retrieve.

The application of retention policies to documentary evidence ensures that they are kept for the necessary period and not beyond their "use-by-date". This reduces the need for the costly 'discovery' process. Discovery requires an organization to search all its files to provide necessary evidence in the event of litigation. This job frequently falls to the IT department to carry out and staff may not know what is required. "It is unrealistic to assume that IT professionals can pay attention to all the nuances of litigation, manage the life cycle responsibilities associated with e-mail, and enforce an overall e-mail archive policy. Companies will be caught off guard by assuming that IT can shoulder this burden alone."^v The discovery process itself can be a very costly exercise for a company. Trying to discover the evidence "can become an economic and operational nightmare"^{vi}.

Conclusion

Software to manage records and information must provide in-built business processes and tools to manage records in a fully accountable way. It must

enable the routine application of document retention policies to records. TRIM is a proven, well-trying and tested, fully integrated solution that can meet any company's legal compliance requirements.

Quality records management has been the consistent aim of TOWER software for the 18 years of its history and its product TRIM continues to evolve to meet the International Standards in the field. . With more than 1000 sites worldwide, TRIM is a dominant player in the government sectors of Australia, the US, the UK and Canada and is the preferred choice in a range of leading organizations in government, utilities, resource and pharmaceuticals sectors.

About TOWER Software

TOWER Software delivers Electronic Document and Records Management (EDRM) Solutions, empowering organizations to take control of their corporate information assets. TOWER Software's award-winning TRIM Context® solution is a single, integrated platform that manages business information throughout its complete lifecycle. By relying on its proven domain expertise, strong strategic partnerships, and powerful solutions, TOWER Software enables organizations to maintain accuracy, maximize efficiency, and achieve and maintain standards compliance across industries, resulting in sustained competitive advantage. TOWER Software is a privately held company with operations in North America, Europe and Asia-Pacific. For more information, visit www.towersoft.com.



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ⁱ Jacobs, Jerald A., (May 1999). "Legal: Reducing Risks Posed by Electronic Records". Available online 1/07/03 at

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ⁱⁱ Weil Gall, Barbara., (September 2000) "Document Retention Policies: Legal Reasons to Keep E-mail, Web Pages and Other Records". Accessed online March 31, 2003 at <http://www.gigalaw.com/articles/2000-all/gall02000-09-all.html>

ⁱⁱⁱ Bartlett, David F., (June 2002) "Document Retention Policies in the Wake of Enron", Illinois Bar Journal accessed WWW on March 31, 2003 at <http://gouldratner.com/resources/articles/bartlettarticle.htm>

^{iv} Olsen, S., (May, 2002). "Email: When E stands for embarrassing". Available online 1/07/2003 at <http://news.zdnet.co.uk/story/0,,t269-s2110434,00.html>

^v Craine, Kevin., "Here Come the Lawyers. Is your IT Department Ready?" accessed online February 28, 2003 at

http://solution1.educomts.com/EASDownload/Press/hm_main1.asp

^{vi} ibid