



RECORDS POLICY DEVELOPMENT

Developing a Sound Records Policy

Legally and ethically, firm records must be complete, trustworthy, accessible, admissible in court and stable throughout their entire lifecycle. Records are most often documents, but can also consist of other forms of content including images, e-mail, audio-visual files or even web content. Therefore, a records policy must address not only the lifecycle from inception to retention and disposition, but both the physical and electronic assets of a firm.

This guidance paper is intended to provide a roadmap for a successful records policy project and to outline the five essential steps required to carefully prepare, plan, and execute this aspect of your records and information management program. Throughout this document we discuss in detail the value of:

- ✦ Securing executive buy in and support
- ✦ Identifying processes, methods and approaches being utilized to manage all forms of records at all stages of workflow
- ✦ Gathering and analyzing relevant documentation
- ✦ Understanding how technology impacts the records & retention strategy for a firm's electronic records
- ✦ Defining what is considered a firm record
- ✦ Recognizing where processes and workflow might need updating to meet firm records policies and standards
- ✦ Determining who will play what role in the enforcement of records and retention policies
- ✦ Developing an implementation plan
- ✦ Testing the policy or elements of the policy with pilot groups

As the integrity of company records touches each and every aspect of a firm in one way or another, it remains critical that a records policy not only account for all of a firm's information related materials, but also recognizes the human resources responsible for managing these vital physical and digital resources.

Once a firm has performed the first crucial step, securing executive buy in, Vendor Direct Solutions may guide it through the rest of steps needed to be taken to fully execute a Records Policy.

5 ESSENTIAL STEPS TO DEVELOPING A SOUND RECORDS POLICY

- 1 Securing Executive Buy In
- 2 Identifying and Documenting Existing Firm Workflow Processes
- 3 Understanding Potentials and Limitations of Information Technology
- 4 Determining Firm Records Definitions and Standards
- 5 Testing, Enforcing and Maintaining a Records Policy

HOW VDS CAN HELP

While it is true that the most legally sound retention policy documents are usually authored by attorneys, these authorities often consult with entities such as VDS to build if not clarify the actual processes associated with retention rules governing the records of the firm. This is because a firm retention policy is most defensible and useable when it involves the recognition of processes required to execute and enforce it.

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1. Securing Executive Buy In

If executive management doesn't recognize the intrinsic value and financial importance of records, it becomes difficult to communicate to employees in your firm that records management is an operational asset and that retention plays a critical role in your long-term risk management strategy.

When developing, implementing and enforcing a records policy in a law firm setting, executive buy in can be complicated by certain elements which at first, seem beyond the control of a records manager. Specifically, variances in the executive line of command particular to each firm's power structure, compounded by unique firm culture can throw roadblocks in the way of even the most well planned records policy and retention plan initiative.

Building support for a successful records retention plan and program simply by characterizing it as a money saving proposition, while an attractive approach, is not necessarily the most convincing argument.

Building support for a successful records policy and retention plan simply by characterizing it as a money saving proposition, while an attractive approach, is not necessarily the most convincing argument. The value of a records policy is the fact that it is a risk management activity which, if enforced properly, can benefit the firm not only by protecting it against potential lawsuits, but also by better supporting physical and e-discovery efforts that may need to be undertaken as a result of litigation.

Recognizing strategic partners and project champions in your firm is paramount. Consider the individuals in the following positions when garnering support:

Risk Management Attorneys
A Managing or Directing Partner
Chief Information Officer (CIO)
Director of IT
Chief Operating Officer (COO)
General Counsel
Best Practices Committee

Communicating the value of an effective records policy involves speaking to firm executives and partners about the importance of preventative measures that should be taken to protect their financial interests and reputation which they have worked so hard to establish through the years. However, addressing or watering down the issue as a "rather be safe than sorry" strategy, neglects the very real possibility of litigation, and the complexity of the steps that must be taken to avert liabilities related to ineffective management of client and firm files, both paper and electronic.

Once a firm has secured executive buy-in from the appropriate decision makers, it must move onto the next task of identifying and documenting existing workflow processes. The purpose of gathering and analyzing this type of information is to ensure that the official records policy is not only thorough, but will work for your end users,

having taken into account their current practices and needs.

2. Identifying and Documenting Existing Firm Workflow Processes

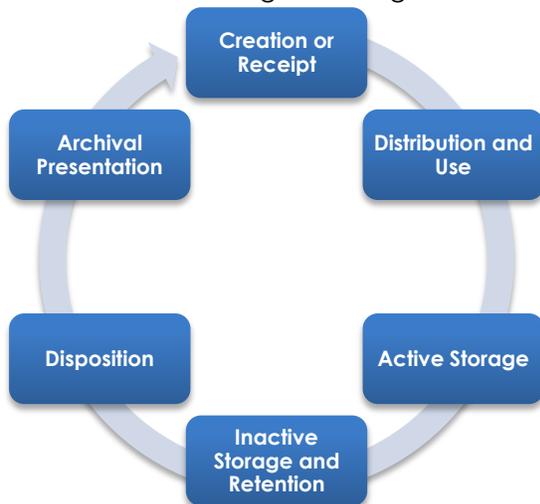
Developing records policies and then expecting to enforce them without first fully understanding the intricacies of a firm's workflow processes is a common mistake. If a records policy is to be comprehensive, it must consider exactly how end users are utilizing physical files, digital documents, e-mail and related unstructured data.

However, collecting available documentation simply "perceived" as relevant to a records policy by one or two individuals is usually insufficient. A careful examination of existing firm procedures, both current and past, is necessary to ensure that the retention plan is not only accurate but practical and balances firm goals with unique workflow patterns.

VDS believes that conducting focus groups and gathering extensive information and understanding from the right individuals allows firms to build a records policy that not only accommodates their workflow, but complements it. **During this analysis process, firms often find many surprises as well as unique practices that cannot be governed by a vague bullet point in a records policy or even in the retention plan.**

This type of analysis is often done in collaboration with a dedicated team which would typically include individuals in various roles, dependent on the firm's structure and approach and may involve Risk Management Attorneys, Department Heads, Office Administrators, Records Manager, IT staff, paralegals and legal secretaries.

A well conducted analysis involves recognizing exactly how a firm's most important records are preserved and managed throughout their life cycle from creation to archival and/or eventual



People to Speak With:

- All Practices Groups
- Administrators / RA's
- Records Manager(s)
- Secretaries & Staff

Issues to Cover:

- What do groups and individuals consider as their "official/go to" source or record?
- Are their multiple media types?
- How many different forms of records are they using?
- Why are the current processes being utilized?
- What is the end user's objective?
- Who is touching and processing, profiling or storing the record at what stage?

HOW VENDOR DIRECT CAN HELP

Vendor Direct could direct and focus on an independent analysis in each Office

The Records Management Team at Vendor Direct understands the value in asking the correct questions about records workflow. This is done in order to elicit the feedback needed to assist policy development authors in crafting each aspect to ensure it is workable for end users and addresses the practices in place – whether that means incorporating them or changing them.

3. Understanding Potentials and Limitations of Information Technology

Modern records policies must address the intricacies of Electronically Stored Information (ESI) if they intend to be relevant and thorough. However, in almost every legal environment, retention of electronic documents, images and related materials is often neglected if ever enforced, even when a firm has established a clear written policy governing this data. The reasons for this may stem from a lack of communication between IT staff and the traditional records management and/or risk management employees of a firm.

Common components of ESI

EMAIL

DATABASES

SPREADSHEETS

DOCUMENTS

FAXES

AUDIO VISUAL FILES

IMAGES & PDF'S

METADATA

WEB CONTENT

INSTANT MESSAGES

VOICE MAIL

Most firms that have invested in robust records, document and information management products are equipped with sufficient tools to support the document life cycle rules and retention schedules of physical files that are tracked electronically as well as ESI. Unfortunately, few firms utilize these resources. Therefore, a firm's retention plan must take into consideration not only its electronic inventory, but also establish the necessary steps to ensure that technology is actually being used to follow document life cycle rules and retention policies precisely as dictated. It must provide that in the event rules are not being followed, that non compliance is brought to the attention of the individual(s) responsible for enforcing firm-wide retention policy in a timely manner.

ESI has quickly become the most common target of discovery efforts and court orders today and is often the most vulnerable aspect of a firm's information management program precisely because it is the most complex. Conversely, this type of data is also the most manageable when properly monitored and governed by a solid retention policy.

Nevertheless, simply keeping ESI until it reaches capacity is often the path chosen by most IT departments, and one that causes more aggravation than the benefits of a "keep everything" strategy affords the firm. E-Discovery efforts are often complicated by this approach and can be mitigated and in some cases eliminated by concentrated retention policies which address this complex issue.

This complexity itself is naturally tied to the nature of electronic documents, which can reside not only on a company's server, but also within the personal folders and inboxes of users throughout the firm or enterprise. The challenge here is establishing rules which not only address the main repositories of ESI but also the numerous areas in which this data can exist outside the control of IT, areas which must also be addressed in the retention policy. Although creating a data map may alleviate this issue to some degree, IT and the firm cannot rely on it entirely to identify all the records which must be governed by the retention policy.

HOW VENDOR DIRECT CAN HELP

The VDS Analysis will focus on understanding how all the firm's current technology is integrated and working in relation to end user activity.

4. Determining Firm Records

Responsible records management processes and retention policies play a critical role in the development and maintenance of a firm's overall risk management strategy but only if the firm has a clear understanding of what it considers or defines as a record of value.

The ability of an organization to recognize and control weaknesses within their records and information management program also relies on establishing these definitions and allows it to mitigate occurrences of non-compliance with state and federal regulations so that it may avoid legal infractions and negative publicity.

Firms must establish criteria for a document or file to be classified as an official record. These criteria must provide concrete, specific guidelines to meet long term objectives, yet be flexible in order to allow for exceptions common to day to day workflow in a normal business environment.

A thorough evaluation of a firm's records involves reviewing and analyzing data regarding specific records series and inventories, examinations of existing documentation and applying retention rules specific to those records.

A firm's records can be classified by their fiscal, legal, administrative and historical importance and value. Additionally, retention periods associated with each record series or value must consider the legislative and regulatory requirements, operational necessities, and archival value to the firm.

While firms may not be subject to the records management polices specific to the industries charted below, it is incumbent upon them to meet the retention requirements information they manage on behalf of their clients.

Regulation	Industry Impacted
Sarbanes-Oxley	All publicly-traded companies
Section 17a-4	Financial Services
HIPAA	Healthcare
FERPA	Education
Gramm-Leach-Bliley	Financial Services

Key Concepts to Consider:

- Identifying the key events that trigger the beginning and end of retention periods
- Classifying records by business function, series or value or combination thereof
- Ensuring compliance with vendor contracts, company warranties and other contractual relationships
- Considering legal impacts specific to each jurisdiction in which the firm is or has been active or intends to be
- Identifying retention periods to maximize purging projects, including offsite storage
- Limiting the retention of personal information

HOW VENDOR DIRECT CAN HELP

VDS RIM Specialist can participate on the Records Policy Team to guide and ensure that you are addressing all areas and applying Life Cycle Rules specific to the practices and approaches currently in place.

5. Testing, Enforcing and Maintaining an Effective Records Retention Policy

A records and retention policy is only as effective as the individuals tasked to test, enforce and maintain it on an ongoing basis. Even the most well researched and documented policies are absolutely useless unless they are treated as an essential operational element of overall firm governance. Naturally, testing, enforcing and maintaining the continuity of this policy is a tedious and arduous task that is often interrupted. For these reasons, VDS believes that the management of a retention policy is often best entrusted to a committed team of individuals who can weather changes in firm culture, human resources and unforeseen events which may affect firm records.

While it is true that the most legally sound retention policy documents are usually authored by attorneys, these authorities often consult with entities such as VDS to build if not clarify the actual processes associated with retention rules governing the records of the firm. This is because a firm retention policy is most defensible and useable when it involves the recognition of processes required to execute and enforce it.

VDS does not advertise the cost saving advantages of a well designed and enforced records policy throughout its consulting efforts, because although considerable, these benefits come second to the importance of risk management. There exists a certain obligation on behalf of any firm and its consultant(s) to establish legally sound procedures and policies which not only reduce risk and satisfy ethical obligations but reflect responsibility and commitment to excellence in respect to the integrity of the client record and for the benefit of the judicial system.

However, initiatives that intelligently pinpoint best practices with financial benefits certainly bring the most total value to any organization and certainly law firms.

About Vendor Direct Solutions

Vendor Direct Solutions provides flexible onsite facilities management resources as well as short-term, project and consultative based approaches to back-office support needs, including retention policy development, integration of records management systems and other information management applications on your network to help tackle the ever-increasing population of information faced by law firms today.