

Best Practices in Records Management: Practical Guidelines for Achieving Compliance

Records management is more critical than ever before, and many companies are raising questions about how their program performs. Answering questions about records management standards and performance is often easier said than done. This paper discusses tools that records managers can use to:

- Demonstrate practices for responsible records management.
- Assess records management programs.
- Benchmark program performance against other companies.
- Communicate the strengths and weaknesses of their program to internal audiences.

BACKGROUND: RECORDS MANAGEMENT MATTERS NOW MORE THAN EVER

Records management occupies an increasingly important role in organizations, due to:

More stringent laws and regulations such as Sarbanes Oxley and the Patriot Act

Recent corporate scandals led to new laws, and a strong linkage between corporate ethics and records management. The result is an increased cost of risk that goes beyond fines, settlements, and litigation costs: Executives are now personally liable, and non-compliance creates a lack of trust that may impact corporate share prices.

The volume and complexity of records resulting from increased technology

Technology has impacted records management in several ways. Organizations now have a greater volume of records to manage, and the management of electronic records depends heavily on employee cooperation. The expanding number of electronic records demands more resources within organizations, including time and storage space. In addition, the courts expect organizations to access and retrieve electronic records in the same timeframe as traditional hardcopy records.

Heightened levels of litigation and regulatory investigation

Regulators are imposing new laws to safeguard against potential fraud in the interest of protecting the public. Regulators are also investigating organizations with a new level of intensity. The Courts, through Rule 26 and other recent precedents, have shifted the financial burden to the defendants for discovery expenses.

The increased importance of records management has led organizations to examine their own practices, often for the first time in many years. When organizations evaluate their records management program in today's climate, they often find more questions than answers.

Many records managers have in turn approached Iron Mountain with questions like:

What are the standards for a records management program-how do I know what my company should be doing, and whether we're meeting or exceeding minimum standards?

Our program may never be perfect, but what is "good enough?" How do I demonstrate good faith efforts?

How does our records management program stack up against other companies? Where can I get benchmarking data to make comparisons?

To meet growing customer demand for guidance and advice on records management standards, Iron Mountain launched a comprehensive Best Practices program.

Best practices in records management are rooted in pragmatism: The intent is to enable companies to define a practical records management program for achieving compliance, and not necessarily to establish a "perfect" records management program. In records management, best practices function as guiding principles for designing and implementing a compliant program. Best practices provide value for every organization-whether the goal is a consistently average program or a "5-star" program.

In records management, consistency is everything. Records management should be viewed like any other compliance program: The primary objective is to be able to project an image of good faith-not necessarily to have a perfect program. Organizations should be able to prove they've made a good faith effort to consistently develop, implement, and oversee a compliant program. If a program is consistently applied, issues that arise in the future are less likely to be viewed as malicious and more likely to be seen as an isolated problem.

The Best Practices program offered by Iron Mountain has various benefits for organizations:

- **Standard definitions:** Comprehensive definitions of standards for records and information management programs.
- **Risk Assessment tools:** A methodology for assessing records and information management programs to determine how well existing rules and processes perform, and to identify areas of risk.
- **Benchmarking data:** The opportunity to compare Risk Assessment data from a single organization to overall and industry averages.
- **Customized solutions:** Documented solutions matched to an organization's records and information management programs.
- **Continued improvement:** A continuous improvement path as needs change and evolve.

DEFINING BEST PRACTICES

Iron Mountain plays a critical role in shaping and delivering records management programs for leading companies. As a leader in the records management industry, Iron Mountain launched an initiative in June 2003 to establish best-in-class behaviors for records management. The Best Practices initiative drew on Iron Mountain's own experience and intellectual capital, and involved outside advisors and thought-leading customers.

THE FIVE ESSENTIAL COMPONENTS OF BEST PRACTICES

Iron Mountain defines five areas as essential components of Best Practices in records management.

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| <i>Retention</i> | A legally compliant records and retention program ensures that records are kept as long as legally and operationally required, and that obsolete records are disposed of in a systematic and controlled manner. |
| <i>Policies and Procedures</i> | Along with a legally compliant records retention schedule, policies and procedures are the foundation of an effective records management program. Policies and procedures should address the handling of records in accordance with operational and legal requirements. |
| <i>Disposal</i> | All records should be disposed of in a regular, systematic and secure manner and in accordance with an approved records retention schedule. |
| <i>Indexing and Access</i> | Records must be properly indexed to ensure timely and accurate retrieval. Security controls must be in place to ensure proper access and maintenance of confidentiality requirements. |
| <i>Audit, Compliance and Accountability</i> | Determines overall organizational ownership of program initiatives and standards, business unit implementation, audit and oversight, and end-user accountability of policies and procedures. |

For each Best Practice area, Iron Mountain provides guidelines for building and maintaining solid records management programs. These guidelines provide actionable direction for organizations seeking to improve their programs. (For more information on the Best Practices guidelines, refer to the Resources section of the Iron Mountain Web site at www.ironmountain.com)

Risk Assessment tools and benchmarking data

To enable organizations to start applying Best Practices, Iron Mountain offers a records and information management Risk Assessment. The Risk Assessment provides a process and tools for individual organizations to determine how well their records management program performs relative to Best Practices standards. The centerpiece of the Risk Assessment process is a 24-item questionnaire organized around the five essential components of Best Practices. By completing the questionnaire, an organization can score its performance in each best practice area and determine the overall health of its current program.

Action must follow awareness to reduce risk

Many organizations say laws such as Sarbanes-Oxley, Gramm-Leach-Bliley Act and HIPAA have led to greater interest in records management and compliance. Looking forward, most organizations also claim they are very committed to the continued improvement of records management. At the same time, many organizations acknowledge that their current initiative lacks consistency. Despite an awareness of potential risk, organizations wait for a "trigger event," such as an audit or litigation, before discovering or taking action to correct problems in their records management program.

Awareness of potential compliance issues-and the intention to address issues-are steps in the right direction, but don't address the problem. Unless organizations take action to address shortcomings, there is no reduced risk for the organizations and its executives. By providing standards and tools, Iron Mountain gives organizations a means to systematically act on concerns and threats posed to litigation, audits, and new laws.

Many organizations find the assessment component of the Best Practices program particularly useful for communicating to senior management. For companies trying to increase visibility and funding for records management, Iron Mountain's Risk Assessment provides quantitative data and benchmarking comparisons that get the attention of internal audiences like senior management.

SELF-HELP: SEE HOW YOUR PROGRAM PERFORMS

Iron Mountain's Best Practice guidelines and Risk Assessment process enable companies to evaluate their program strengths and develop a roadmap for achieving consistency and compliance. For organizations that aren't sure if their program will benefit from the Best Practice guidelines established by Iron Mountain, the process can begin internally by looking at what your organization does today and asking basic questions like:

Records Retention:

Are retention periods applied to all records in your organization, including electronic records?

Are you properly preserving records that have long-term historical value?

Policies and Procedures

Are your records management policies and procedures integrated throughout your entire organization?

How are the policies communicated to your employees?

Disposal

Does your company follow a systematic procedure for destroying records?

Are processes in place to ensure records disposal is temporarily ceased in the event of a litigation, audit, or investigation?

Access & Indexing

Can you quickly and efficiently locate records needed for business decisions?

How are electronic records classified to ensure proper deletion?

Audit, Compliance & Accountability

Who has oversight responsibility for the Records Management Program within your organization?

How are Records Management Program components monitored for compliance?

Internal communication

Does IT have a clear understanding of how electronic records should be handled?

Are employees informed about records management policies and procedures?

IN CONCLUSION

If your answers to these questions suggest shortcomings in your current program, consider contacting Iron Mountain for a copy of the recently published "Records Management Best Practices Guide" or to participate in the Risk Assessment program. The world of records management is changing and companies must continually evaluate the effectiveness of their programs. The best form of regulation is self-regulation. By proactively addressing your records management program in each of the five Best Practice areas for all media, you will be able to ascertain how close you are to "good faith efforts". The next step is taking action. Organizations who have evaluated themselves against Iron Mountain's Best Practices standards, applied these guidelines to their programs and reviewed benchmarking comparisons realize a meaningful improvement in their records management program.

Regulations At A Glance

The Sarbanes-Oxley Act, introduced July 30, 2002, applies to all U.S. public companies and non-U.S. public companies that have issued securities in the U.S. public markets and are required to file periodic reports with the Securities and Exchange Commission.

The USA Patriot Act, Public Law No. 107-56 (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism) introduced October 26, 2001, contains measures to prevent, detect, and prosecute terrorism and international money laundering.

Federal Rule of Civil Procedure 26 was amended in 1993 to create a mandatory disclosure requirement. Although most federal district courts initially adopted the amended rule, a provision was adopted in December 2000 that compelled all federal district courts to comply with the mandatory disclosure rule.

Gramm-Leach-Bliley Act 15 USCS § 6801 (2002) 106 P.L. 102, 113 Stat. 1338, 1999 Enacted S. 900; 106 Enacted S. 900

Health Insurance Portability and Accountability Act of 1996 ("HIPAA") 42 U.S.C. 1320d-6