



Best Practices

Building Records Retention Schedules

A good records retention schedule will include several type of information:

- Clear records series, descriptions of all types of information in the organization
- Retention times for each records series based on legal and operating needs
- The departments responsible for assuring compliance with retention times

Additional information should also be available, but may not need to be accessed by all users, such as:

- A complete and detailed listing of relevant legal citations
- Links tying the citations to the records series
- Business or operating retention requirements for each records series
- The medium or media in which the information exists
- Designations as to which records series contain vital or historical records, or both

Developing a sound and legally defensible records retention schedule usually requires extensive legal research, analysis of several data sets and strategic considerations:

What Kind of Information does the Organization Have and Use?

Best practices dictate that an organization's records retention schedule include all information in all media. The first logical step in the process of building a schedule is to evaluate current records systems and inventories to find out what kinds of information, record and non-record are being created and maintained, on what media and at which locations. This listing of information/document types is compiled by looking at existing inventories, departmental listings and indices of active and inactive hardcopy and electronic repositories, input from meetings with representatives of key stakeholders' departments or functions and additional meetings with representatives of functions that may generate different types of records in different locations.

The next step is reworking this listing of document types and rationalizing descriptions to eliminate multiple listings for the same record type, variant spellings for the same series, and similar redundant or confusing information.

How are Records Series Created?

Once record descriptions have been clarified, they are grouped into logical record series that will be treated identically for records retention purposes. Information or document types are usually grouped into records series according to two criteria:

- The legal and regulatory requirements affecting each record , and
- The similarity of purpose or similarity of use of the information contained on each record.

Using the two criteria, series are developed with clear and logical titles and descriptions that give intuitive information concerning the records in the series, but which also allow the entire series to be treated as a single item for purposes of retention and disposition. This clear and intuitive structure is also a foundation that can be expanded into an enterprise-wide records taxonomy, sometimes called the file plan, for indexing, managing and retrieving hardcopy and electronic or digital records.

How are Legal Requirements Determined?

Once the records series start taking shape, legal research is commenced to identify the applicable authorities that state the legally required retention periods of the records grouped into the record series. This research shows that legally required retention periods come from a variety of authorities:

- Domestic and international statutes and administrative regulations directly requiring some duty with respect to records retention;
- Statutes of limitation and repose, which help define the scope of risk for any activity or choice of options;
- Case decisions, which examine the real-life outcomes of the parties' actions, and on which many of our best practices are based; and
- Persuasive authorities such as SEC no-action letters and IRS revenue procedures that define the government's position on documentation of certain activities.

The research also looks at indirect authorities such as attorneys general opinions, which further define the legal climate and guidelines from applicable industry associations,

such as the World Health Organization or the Pharmaceutical Convention and Cooperation Scheme, or federal-like entities such as the European Union and Mercosur.

This collection of authorities serves to define the legal terrain on which records retention decisions will be made.

A close look at the retention requirements coming from the authorities gives rise to the need for additional analysis:

- A record series is often governed by the provisions of more than one law. In such cases, the citations emerging from the research are grouped, with laws governing similar records in the same group. The group is then analyzed, and a retention period and retention treatment chosen which accounts for the requirements of all laws in the group.
- Groups of laws, and their associated conclusions, are then assigned to record series, and, in most cases, the conclusions applied to all records in the series.

Upon completion of these research activities and analysis, the schedule and the specific records series are examined in light of industry practice, business needs, and organizational culture. In cases where the retention of records is not directly governed by laws, these factors, combined with authorities such as statutes of limitation, are used to derive useful and adequate retention periods. In cases where retention periods are governed by law, these factors may serve to extend retention periods beyond those minimums dictated by analysis of the citations.

The result of this multi-faceted and detailed approach is a schedule that substantially reduces the number of individual items to be scheduled. Hundreds or thousands of individual document types and titles are typically reduced to a smaller number of records series, with some records series including 50-200 types and titles. As many as four to five thousand applicable laws and citations can be consolidated into 50 or fewer groups. The result is a schedule that is short and easy to use, as well as legally sound. Detailed listings of individual record titles, records by department and other information can be supplied on additional reports, and used to expand the taxonomy or file plan, without making the basic schedule unnecessarily long and cumbersome.

Legal research should be developed from a variety of sources. PelliGroup updates our master database of domestic and international, federal, state and provincial requirements, through traditional law library searches, to CD-ROM databases, to paid and public internet sites, and our wide range of contacts in industry and government.

This database is complete and highly refined to meet the needs of our clients. When new clients come on board, or existing clients expand their business or move into new legal venues that require additional research, our experienced research staff quickly and effectively complete any additional research that may be required.