

Defensibly Downsizing Your Data

Minimize Risks, Reduce Costs, Meet Obligations

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Today's Speakers



Eric Evans
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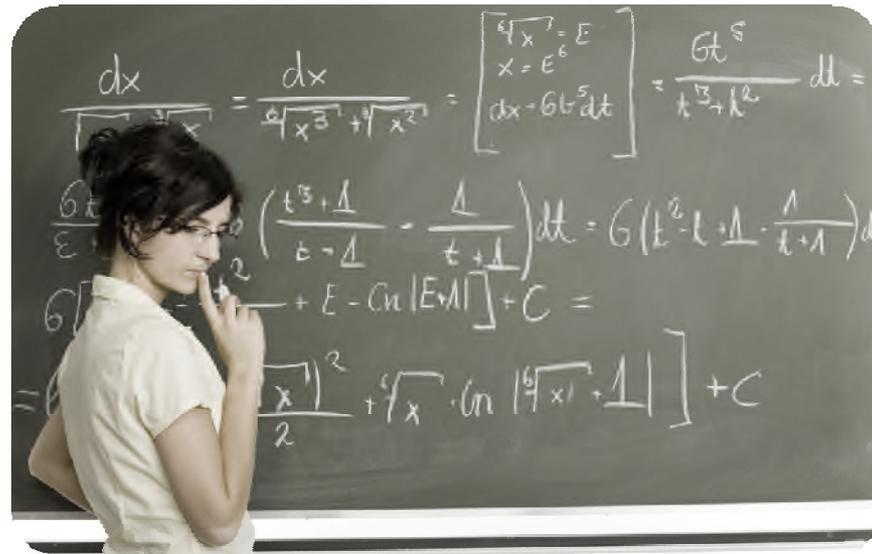


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Jordan Lawrence

WHAT MAKES DELETION DEFENSIBLE?

First...

Show Your Work



Second...

It's OK to delete things.

But, you have to know what
you're deleting.

ABC Company's Retention Schedule

Record Category	Retention Period	Legal Regulatory Requirements	Custodian
EEO-1 and EEO-2 Employer Information Reports and Affirmative Action Reports	Retain 10 years. CONSIDER retaining until superseded by filing of new relevant report.	FIRRM. Federal law requires the retention of EEO reports until the filing of new annual reports. 29 C.F.R. § 1602.7 (2009).	Human Resources
I-9 Immigration Forms	Retain for 3 years from the date of termination of relevant employee.	Retain for longer of either employment + 1 year OR 3 years after hire. 8 C.F.R. § 274A.2(b)(2)(i)(A) (2009).	Human Resources
Employee Benefit Plan Records (Plan Statements and Descriptions, Annual Reports)	Retain 7 years. CONSIDER retaining for 6 years after the filing of the post-distribution certification following the plan's termination or frozen plan's termination.	FIRRM. Federal law requires these records to be retained for the LONGER of 6 years after either the filing of the plan OR 6 years after the filing of the post-distribution certification following the plan's termination. 29 U.S.C. § 1027 (2009) (concerning retention of records relating to employee benefits); 29 C.F.R. § 4007.10 (2009) (concerning retention of pension plan records subject to ERISA); 29 U.S.C. § 4041.5 (2009) (concerning retention of plan termination records subject to ERISA).	Human Resources
Employee Benefit Records (Claim Records, DBRA Records, 401(k) Records, Life Insurance Distribution Records)	Retain 7 years (concerning employee benefit claims records). CONSIDER retaining for 6 years after the filing of the post-distribution certification following the plan's termination or frozen plan's termination.	FIRRM (for employee benefit claims records). NSB Policy (for DBRA reports). Federal law requires these records to be retained for the LONGER of 6 years after either the filing of the plan OR 6 years after the filing of the post-distribution certification following the plan's termination. 29 U.S.C. § 1027 (2009) (concerning retention of records relating to employee benefits); 29 C.F.R. § 4007.10 (2009) (concerning retention of pension plan records subject to ERISA); 29 U.S.C. § 4041.5 (2009) (concerning retention of plan termination records subject to ERISA).	Human Resources
Employee Account Records (Files and Records Relating to Employees, Officers, and Directors, Thrift Plan A1 Reports)	Retain permanent.	NSB Policy.	Human Resources
Employee Benefit Plan Annual Reports (Form 5500s) and Supporting Documentation	Retain for the LONGER of 5 years after discontinuance of relevant plan OR 6 years after relevant filing.	Retain 5 years after discontinuance of relevant plan. Retain 6 years after relevant filing. 29 U.S.C. § 1027 (2009) (concerning retention of records relating to employee benefits).	Human Resources
HIPAA Compliance Records	Retain for the LONGER of 6 years after termination of relevant employee OR 6 years after termination of relevant plan.	Federal law requires these records to be retained for the LONGER of 6 years after either the filing of the plan OR 6 years after the filing of the post-distribution certification following the plan's termination. 29 U.S.C. § 1027 (2009) (concerning retention of records relating to employee benefits); 29 C.F.R. § 4007.10 (2009) (concerning retention of pension plan records subject to ERISA); 29 U.S.C. § 4041.5 (2009) (concerning retention of plan termination records subject to ERISA).	Human Resources
HIPAA Disclosure Records	Retain for the LONGER of 6 years after the creation of the record OR 6 years after the program to which the record relates is no longer in effect.	Retain for the LONGER of 6 years after the creation of the relevant record OR 6 years after the program to which the relevant record relates is no longer in effect. 45 C.F.R. §§ 164.105(c), 164.316(b), 164.530(j) (2009).	Human Resources

The Key to Defensibility



Courts Appreciate Defensible Information Governance

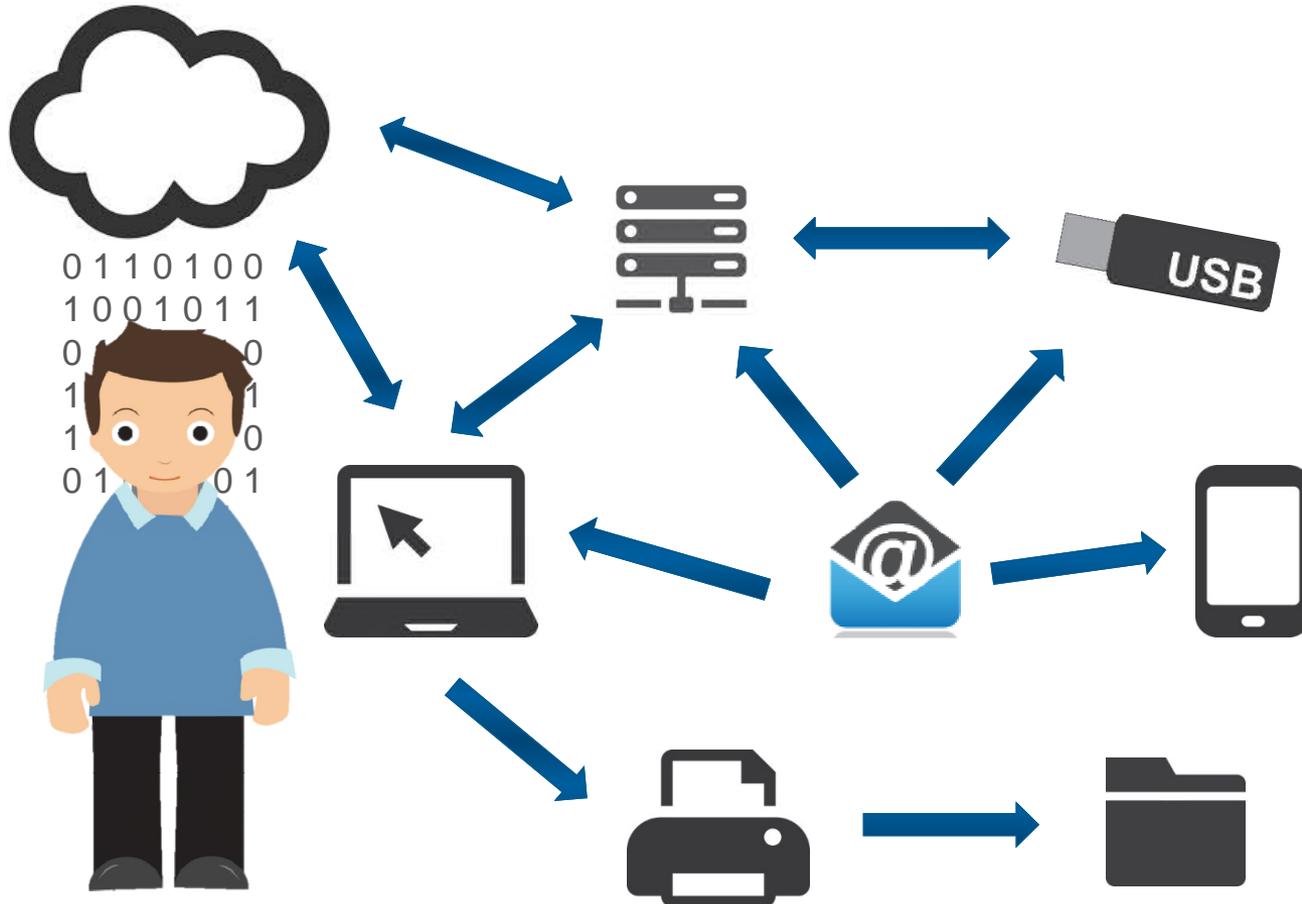
- Courts recommend that organizations **manage** their information
 - Keeping everything is **not** managing information
 - Courts expect large organizations to have policies and processes in place to manage their information efficiently
- Federal Rules of Civil Procedure amendments, effective in December 2015, should give a safe(r) harbor to organizations that manage information
 - Limits on the scope of discovery in FRCP 26(b)(1), with focus on proportionality
 - Focus of severe discovery sanctions on actors who **intentionally** destroy evidence, not inadvertent destruction through auto-delete and employee negligent non-compliance
 - However, still some consequences for inadvertent destruction of evidence (e.g., additional discovery from other sources)

What Do You Have?



Accident/Incident Records
Advertising Records
Benefit Records
Budget Records
Contracts & Agreements
Coupon Records
Credit Approvals
Customer Information
Customer Orders
Employee Medical Files
Gift Card Functions
Payment Records
Sales Receipts

Where Is It?



What Are the Requirements?

BUSINESS NEEDS



SENSITIVITY

Corporate Sensitive

PII

Customer Data

Intellectual Property

Bio Metric

Patient Health Info.

Personal Financial

Sensitive EU

REQUIREMENTS

DOL

FSMA

GLB

HIPAA

OSHA

PCI

SEC

State Privacy Laws

Customer Information

Best Practice Retention:
3 Years Customer Care Standard

Customer Information

Best Practice Retention:
3 Years Customer Care Standard

Customer Service (Perm)

Direct to Consumer (10 Years)

Finance & Accounting (7 Years)

Sales | UK (5 Years)

Sales | Japan (Perm)

Wholesale (Perm)

Customer Information

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Wholesale (Perm)

Financial Information

Credit Card #'s
Debit Card #'s
Billing History
Credit History

Personal Information

Name
Gender
Date of Birth
Email Address
Marriage Status
Physical Address

Customer Information

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Financial Information

Credit Card #'s
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Billing History
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Personal Information

Name
Gender
Date of Birth
Email Address
Marriage Status
Physical Address

Demandware, Excel,
M19, OBIE, Slingshot

Applications

Inbox, Laptops, Shared
Drives, Tablets

Electronic Files

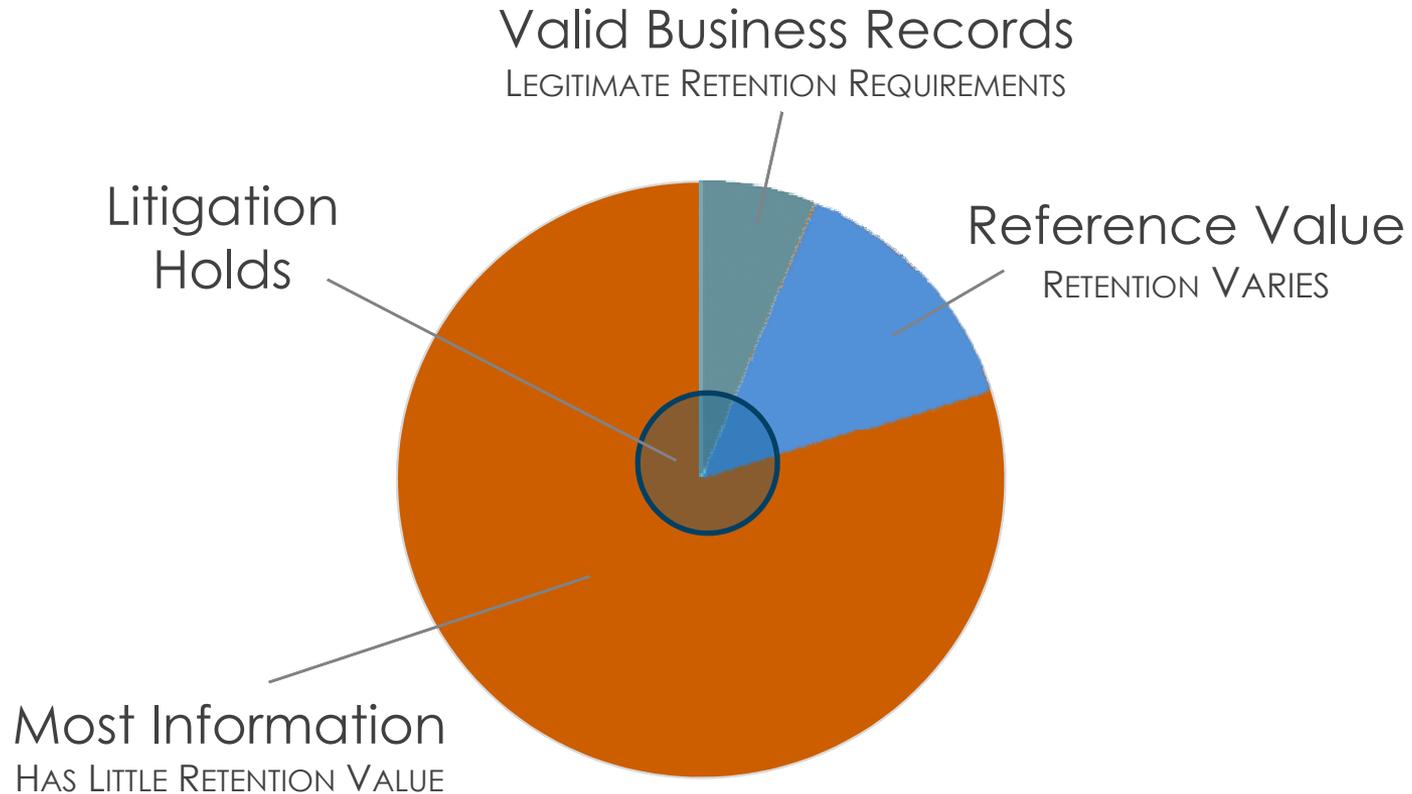
Documentum, Laptops,
Shared Drives, Workstations

Email

Iron Mountain |
Personal File Cabinets

Paper

Retention for All Information



Actionable Retention Schedule

Area: Human Resources			
Record Type	Retention	Authority	Trigger
Affirmative Action Files <i>Includes job descriptions and work force analysis.</i>	2 Years	29 CFR 1620.32	Closed
Benefit Folder Official documentation for employees' enrollment in medical, insurance and 401K plans. Includes beneficiary cards, designation records, outplacement benefit notices, statements of health benefits, contributions, cobra records.	6 Years	29 USC 1027	Closed
Disability Records <i>Includes short-term and long-term disability.</i>	6 Years	29 USC 1027	Date of Claim
Drug Screening Records <i>Includes testing results and reporting.</i>	3 Years	29 CFR 1627.3	Terminated
EEO Compliance Records <i>EEO-1, EEP-2 and annual affirmative action reports.</i>	10 Years	Legal Consideration	Calendar Year
Medical Files <i>Includes medical records, doctor notes, authorization for treatment.</i>	5 Years	29 CFR 1904	Terminated
Payroll Records <i>Payroll changes, check registers, deductions, earning reports, attendance records, time sheets, incentive awards, reconciliations, reports, etc.</i>	8 Years	State Payroll	Calendar Year
Personnel Files <i>Personnel files including employee reviews, appraisals, disciplinary actions, status changes, compensation agreements, employee agreements, non-disclosure agreements, non-compete records, exit interviews, etc.</i>	8 Years	State Payroll	Terminated

But What About Email?

- Almost every email is **not** a record
 - Designate records based upon **content**—and most emails don't have much content
- Most email has **no** intrinsic value after a couple of weeks
 - Value, if any, is in the **content** of an email, including metadata
- By default, email is **not** legally required to be retained
 - Only if it's a **record**, subject to a **legal hold**, or subject to a **regulation**
- Email sitting on a server is **not** a record management system
 - It's just a pile of **stuff**
- Auto-delete function and other similar technical limits on retention of email re-enforce these principles

So How Do I Decide What to Keep?

- Define a **policy** that:
 - Obtains **value** from **content** of email
 - When value of content obtained, **delete the email**
 - Unless it's a **record**, subject to a **litigation hold**, or subject to a **regulation**
 - Optimizes risk for your business
 - Any decision on email involves some risk—optimize the risk for your organization
 - Keeping everything forever involves risk, too
 - Addresses **future** needs, not **past practice**
 - Technological changes, business practices, legal landscape
 - Need time and commitment to change **culture**

Deletion Strategy for Email

NON-ESSENTIAL COMMUNICATION



INBOX = 180 DAYS



SENT ITEMS = 180 DAYS



DELETED ITEMS = 2 DAYS

BUSINESS NEED COMMUNICATIONS



18 MONTH RETENTION
(ALL DEPARTMENTS)

DEPARTMENTAL EXCEPTIONS



6 YEAR RETENTION | HR



7 YEAR RETENTION | LEGAL



7 YEAR RETENTION | TAX

Leverage Technology

Site Actions ▾ Browse Page Martyr Hansen ▾

Human Resources

Home Audit Human Resources Search this site... I Like It Tags & Notes

RECORDS **NON-RECORDS**

Use this site to submit and find important documents that should be stored for long term archival. Submitted records are automatically placed in the correct library and folder based upon the properties you fill out.

2XH6QRKZMAV7-1-1 Find by Document ID

Submit a Record

Record Libraries

- Affirmative Action Files
- Benefit Folders ← **6 Years**
- Benefit / Pension Plans
- Disability Records
- Drug Screening Records ← **3 Years**
- EEO Compliance Records
- Medical Files
- Payroll Records
- Personnel Files

Personal Libraries

- Charlie Smith
- John Crecls
- Kevin Doyle
- Mark Provo
- Mike Winkler
- Ross Cotton
- Tyler Green

18 Months

Shared Libraries

- Human Resources Shared
- Process Improvement

Use this web part to teach visitors to the Records Center about records management and organizational compliance.

Add information about records management topics, such as:

Add links to other organizational compliance sites, such as:

My Records Pending Submission

Be *Sure* That You Can Impose Legal Holds

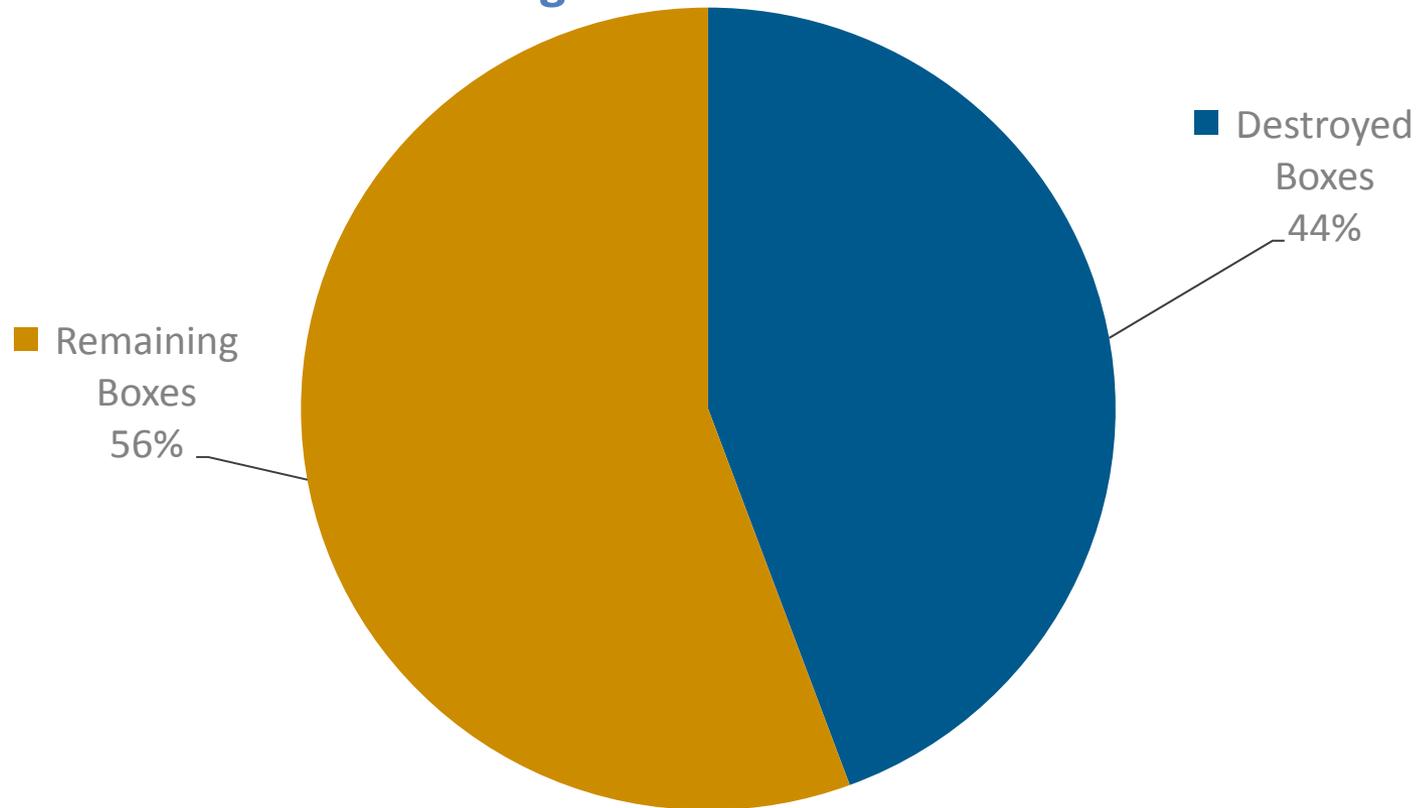
- Be sure you can **suspend** your policy and any automated tools
- Quickly identify custodians with information subject to the hold
- Consider tools to automate legal holds
- Record the steps taken to impose and enforce the hold
- **Immediately** turn off auto-delete for anyone subject to the hold
- Collect **later**, if it comes to that

Technology Can Help With Holds, Too

- Most large organizations have some legal hold process in place—and courts increasingly expect it
- Automation helps manage risks and costs
- Increasing automation means that a manual process can end up looking unreliable
- Technology in-house helps control costs
- Technology helps focus preservation and collection on **relevant** information
- More focused preservation and collection means less stuff to process and review—which means a better production for less money

Eliminate Obsolete Paper Records

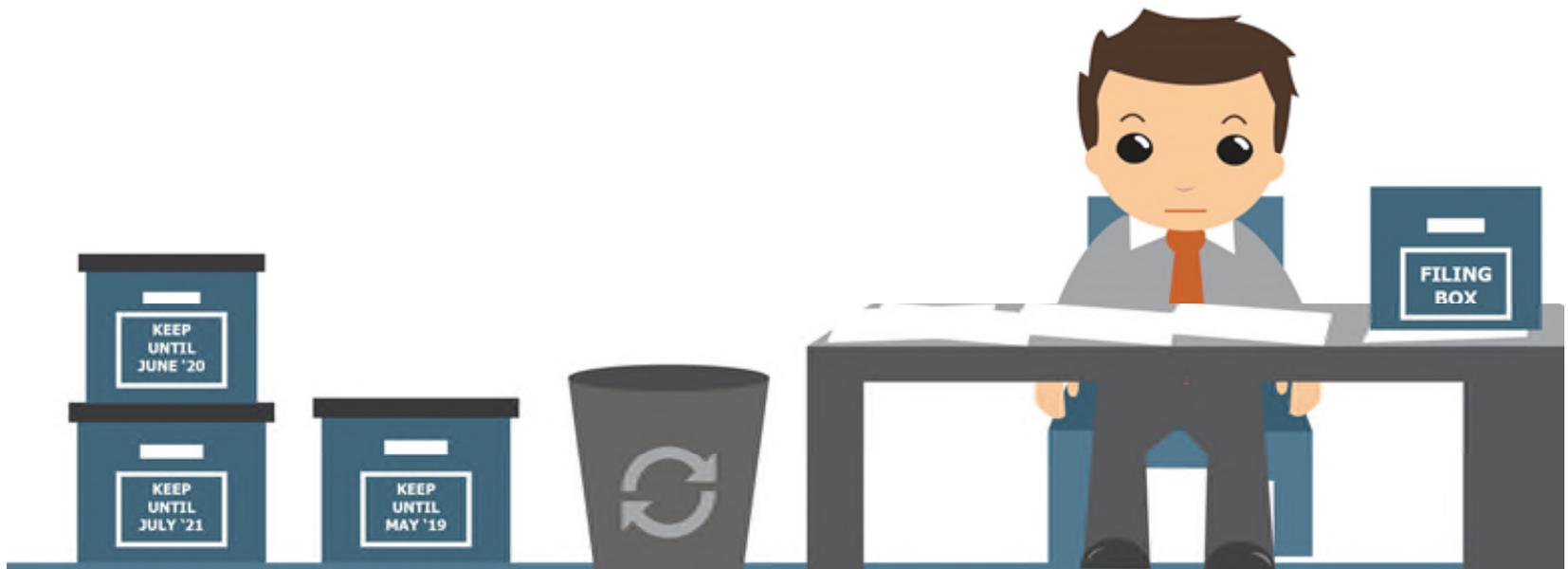
44% Of Boxes Eligible for Immediate Destruction



Training

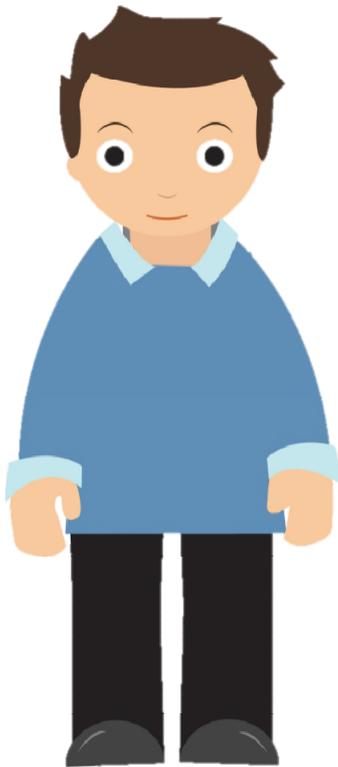
ABC Company's Records Management Training

PROPER DISPOSAL OF PAPER DOCUMENTS



Build Your Audit Trail

Require Regular Policy Attestation



Subject: 2013 Records Retention Policy

As a first step to implementing ABC Company's new Corporate Records Program, we are asking employees to begin disposing of general information (non records) as defined in our records policy in a routine and consistent manner. This includes paper, email and electronic files within your department/area.

General information is defined in the records policy as information that is not vital to the day to day operations of ABC Company. Some examples of General information include, but are not limited to the following:

- Extra copies of documents kept only for convenience
- Personal email, spam and other non-business email
- Articles, magazines, industry publications, reference material
- Promotional materials from vendors
- Drafts and preliminary working papers
- Personal papers that may be kept in an employees work area but were not created or received in the course of business and do not relate in any way to the employee's duties
- Drafts of documents/emails once the final versions are completed

Please ensure that any information containing personally identifiable or corporate proprietary information is disposed of securely. For paper records use the available shred bins within your department.

This will serve as a first step towards the full implementation of the records policy. Specific directives to dispose of records per the approved retention schedule will be distributed 1/16/2013 to achieve full compliance with the records policy and retention schedule.

Further information, including answers to frequently asked questions, is available from the Records Management page on www.abccompanyretentionquestions.com or by contacting: Tom Webster.

Thank you for your participation in this important process.

Tom Webster at twebster@abccompany.com

[Yes, I am in compliance](#)

Consistency

- ✓ Consistently **enforce** the policy
- ✓ Establish **consequences** for non-compliance
- ✓ Issue, monitor and enforce **legal holds** when litigation is reasonably anticipated
- ✓ **Dispose** of non-records and expired records according to schedule
- ✓ Maintain and dispose of records in accordance with **privacy** and **confidentiality** obligations

MAYER • BROWN

Jordan Lawrence®

Thank You For Joining Us.

*Any questions, please email
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