Compliance & Ethics *Professional*

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by Walter E. Johnson, MSA, DBCM, CHC, CRCMP

Corporate hoarders: Implementing a record retention and destruction program

» Learn to recognize the visual indicators of a potentially ineffective record retention program.

» Questions that potentially indicate an ineffective record retention program should be asked.

» The compliance officers should know how to implement a record retention program.

» Generate buy-in for a record retention program implementation by sharing audit findings with leaders and the board.

» It may be challenging to introduce a record retention program and change hoarding behaviors.

I n the past decade, television watchers have seen their share of network shows focusing on hoarders. Individuals watching these shows witness hoarding of figurines, shoes, clothes, pets, and in some cases, anything that crosses a threshold. Some hoarders fail to acknowledge a problem exists.

The hoarder becomes the subject of a television show because a relative or friend continuously expresses their concern for the hoarding and yet, the behavior remains unchanged. Have you noticed the hoarder doesn't admit there is a problem? The hoarder continues to accumulate and generate excuses for hoarding. Helpless, relatives/friends seek professionals for assistance.

During these shows, professionals assess the situation and provide a resolution. From my perspective, the professionals provide a two-stage resolution. The first stage is short-term and focuses on the physical. Physical resolution may be retrieving and donating clothes to charities or rescuing pets and finding new owners. Although completion of the first stage provides what it is visibly acceptable, it isn't until completion of the second stage that there is a chance of preventing reoccurrence. The second stage is long-term and focuses on the mental. In other words, the professionals address the behavior by getting the hoarder to acknowledge the behavior, understand the root cause, and accept the need to change behavior to prevent regressing to the hoarding.

Signs of corporate hoarding

Similar to hoarders on television shows, there are hoarders in business. Have you ever walked by an unoccupied cubicle that has boxes, file folders, and/or loose documents collecting dust? Have you ever wondered what was in the box sitting in the corner of the conference room that has been there

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for months, perhaps years? Have you ever viewed a shared drive that has several folders or files named after outdated initiatives or previous employees?

Corporate hoarders retain documentation, paper and/or electronic, for an indefinite period without seeking appropriate guidance or the appropriate retention period and destruction protocol. This term does not include documentation retained for indefinite periods deemed necessary by attorney/client privilege and potential litigation.

Corporate hoarding impacts revenue tremendously. According to a recent market report from IBIS World, document management services is a $5 billion industry.[1] This does not account for corporate revenue spent purchasing file cabinets and larger servers prior to transitioning to a document management service. Similar to the television shows, corporate hoarders don't admit there is a problem. In many cases, their actions support an unspoken belief of unlimited revenue to provide never-ending server, onsite cabinet, and offsite storage capacity.

When dealing with corporate hoarders, the compliance officer is the professional who generates awareness by getting the hoarder to acknowledge the behavior, understand the root cause, and accept the need to change behavior. As a compliance officer, there are several approaches to assessing the corporation's risk level. The indirect approaches tend to be subtle and casual; the direct approaches communicate that a major problem exists and immediate resolution is necessary. A compliance officer opting to begin will the subtle approach will need to transition to a direct approach to obtain progress.

In a subtle approach, the compliance officer conducts a site visit to observe visible signs of hoarding and in passing, asks a random question to operational leads and/or subject matter experts. Here are a few possible questions:

▶ How often does your department send documents to the documentation management site?
▶ Does your department maintain a log of documents retained at the document management site?
▶ How long does your department maintain documents onsite before sending them offsite for retention?
▶ Does your department have a record of documents destroyed by the documentation management site?
▶ Do retention periods vary or remain consistent for your department records?

At minimum, a response to one or two of these questions will indicate the potential risk level.

Acknowledge the behavior

The dictionary defines hoarding as "*to accumulate for preservation, future use, etc., in a hidden or carefully guarded place: to hoard food during a shortage.*"

Physical file hoarding

Hoarding occurs with physical and electronic files. Dumping and capacity issues lead to hoarding with physical files. Here is an example of dumping: A manager submits his resignation and provides a two-week notice. During the two weeks, he takes his personal belongings home and disseminates tasks with supporting documents within his unit. The manager leaves the organization. The organization hires a replacement manager. To welcome the new manager, the staff takes all remaining office items, such as files, binders, and company promotional items, and places them in two boxes before the start date. The two boxes are put in a storage room for future reference. This is the unit's unwritten policy

for preparing office/cubicle space for new employees. A future investigation uncovers that the storage room contains more than 50 boxes for employees who left the organization.

Here is an example of capacity: A department has 20 file cabinets to manage organizational accounts. After purchasing three cabinets last year, all cabinets are at full capacity. The department considers scanning documents older than 3 years. Using existing resources to scan will significantly impact daily operations. The department decides to use the organization's document management vendor. The staff places all documents older than 5 years in boxes and ships offsite to the vendor's warehouse. The staff attaches labels indicating a retention period of 25 years. A future investigation uncovers that the statutory retention period for the accounts is 4 years.

Electronic file hoarding

An organization has multiple departments sharing a server. Within the departments, there are multiple users. Users share and create files and folders within the designated section of the server. Some folders have names of initiatives and operations, others have employees' names. As these employees transition, the files remain on the server. There is an assumption that replacement employees will review the documents and purge them as deemed necessary. Who will review these files? Who is responsible for reviewing these files? Employees decide to keep these "just in case" they need them in the future. The replacement employee can

review them to see if the files are necessary. This becomes an unwritten policy. New employees are responsible for reviewing the previous employees' files to determine what is and isn't necessary for them in the assumed role. A future investigation uncovers that the department purchased new servers with increased storage capacity three times in the past 5 years. The equipment and back-up support are valued at $60k.

In both categories, employees decide to retain information so that it is available for future use. The intent appears harmless, but it jeopardizes the organization.

> There is an enormous challenge with disorganized hoarders. Disorganized hoarders may or may not be able to quickly locate information they maintain.

Understand the root cause

Actually, the root cause of corporate hoarding is lack of accessible tools, education, and training. Employees are uncertain what documents to retain and uncertain of the duration. Additionally, employees do not know the appropriate process for document destruction.

Document hoarders are either organized or disorganized. There is an enormous challenge with disorganized hoarders. Disorganized hoarders may or may not be able to quickly locate information they maintain. This creates a challenge for colleagues seeking information when the hoarder is unavailable. In fact, the organizational risk escalates when the information pertains to litigation. For example, Morgan Stanley received an initial $1.5 billion judgment for failure to produce emails in a timely manner. Although later reversed, this example illustrates the risk potential of ineffective record retention and destruction program.

In many cases, an organization will have a stand-alone record retention policy that is often very wordy. Employees become lost in the translation from the policy to the application. The outcome is that employees will resort to their initial behavior of retaining every record until they receive different instructions.

Accept the need to change behavior

Reckless retention practices pose regulatory and revenue risks for the organization. To achieve acceptance and effectively implement a record retention program, the compliance officer must obtain unquestionable support and commitment from the board of directors.[2]

After conducting a risk assessment, the compliance officer should include record retention as an agenda item at the next board of directors meeting. The presentation should include metrics that reflect the initial findings and potential solutions. The success of the program relies on the board of directors' commitment, so explain the risks from varying perspectives to obtain buy-in.

Achieving buy-in means the compliance officer is ready for the next level— management, which is the link to ensuring front-line employees receive the message and comply. Failure to achieve commitment at this level leads to an ineffective program. The compliance officer must clearly communicate program expectations and disciplinary actions for non-compliance.

Implementing a record retention program is not easy. It is not a task every employee volunteers to do. Additionally, it is not a

task that managers volunteer an employee to complete. The reward for an effective record retention program is not immediately tangible. Determining whether to use resources to generate new revenue or prevent future expenses is a tough decision for many. Competing priorities containing higher risk and revenue impact will likely exist. Depending on the size and complexity of an organization, implementing a record retention program can be extremely challenging.

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Proposed tools

Employees need to have simple tools applicable to their daily operations.

Record retention policy
Foremost, organizations need to have a record retention policy. When newly appointed compliance officers realize that their organization lacks a record retention policy, they need to develop one. If the organization has an existing policy, the compliance operations committee should conduct regular reviews to ensure relevance. Reviewing every two years, or as often as new regulations require, should be a goal. The policy should be from a broad perspective that addresses your business and industry, and you should be ready to hand over requested/subpoenaed files to the government, regulatory entity, or auditor.

Departmental guidelines

The second tool is department-, segment-, or unit-specific guidelines. If possible, the guidelines should be short and accessible to all departmental employees. The content must be direct, from an employee perspective, and

relevant to their specific jobs. The document should have the following categories: document name, description of record, format (e.g., electronic, paper, audio/video, magnetic), record location, owner, retention period, and location details. Front-line employees need this tool; it is instrumental to an effective record retention program. For example, a "blank" document is kept onsite for 2 years, retained in a warehouse for 5 years, and destroyed afterwards. Another example is "blank" documents that are retained in two formats, electronic and paper. The electronic form is kept on the shared drive for 7 years and then destroyed. The paper version is kept onsite for 2 years, offsite for 5 years, and then destroyed.

Record retention log

Then there is a monitoring tool. This is department specific, also. When a department sends records to a document management service, they should record the information in a database or at least, a spreadsheet. The information must contain details regarding the records retained offsite for easy retrieval. For example, a department sends a box containing files to a document management service for retention. The department will update their log to include the box tracking number, folder/file names, file type, dates, and retention period. To maintain integrity and data consistency, departments should assign one or two resources to be responsible for the log. All employees should know the regulatory guidelines associated with their department's documents.

> In 2012, a man found boxes and bags of children's medical records in dumpsters.[3] Although this case is two years old, there are a few investigations of medical records found in dumpsters in 2014.

Document destruction guidelines

Instructions for appropriate document disposal are the final tool necessary for an effective record retention program.

Why is implementing destruction guidelines important? In 2012, a man found boxes and bags of children's medical records in dumpsters.[3] Although this case is two years old, there are a few investigations of medical records found in dumpsters in 2014. When retention periods end, employees require instructions to appropriately discard records.

Appropriately disposing documents should not be complicated. Simply said, disposal for document "A" requires disposal by completing action "A" after the retention period. When employees lack the ability to apply the policy to daily operations, activities similar to the mentioned incident occur.

Document destruction guidelines should address the process for disposing documents onsite and offsite. For onsite documents, organizations use recycling and shredding equipment and/or execute a business associate agreement with a vendor that offers external shredding services.

Typically, the business associate leaves specially-designed bins that are secured by lock on the organization's premises. Some organizations designate a secure bin per department, but others provide a secure bin or two per floor. Distribution varies by organizational complexity, size, and resources. Depending on the terms of the agreement, the vendor may retrieve documents weekly,

bi-weekly, or monthly. Some vendors have mobile shredding equipment and are able to shred onsite. Other vendors have to transport the items to their facility for destruction.

For offsite documents, document management services usually dispose of them when the retention period ends. Some vendors send notices 30-45 days prior to the destruction date. Employees who maintain the record retention log should know this process and secure confirmation when disposal is complete. It is important to update the record retention log to indicate the documents' destruction date.

Document management services offer a variety of accommodations. It is important that the compliance officer, compliance operations committee, and departmental subject matter experts understand the arrangements. Employees should know the destruction process for their department.

Some organizations have destruction guidelines incorporated into their record retention policies. Other organizations have destruction guidelines as stand-alone policies. In some cases, there are stand-alone policies and references in the record retention policy. The compliance officer must determine what is appropriate for their organization.

Prevent regressing to hoarding

Hoarders present an enormous challenge. Many are reluctant to change; others embrace change, but revert to hoarding behavior. To prevent regression, there must be continuous engagement throughout the organization.

The compliance officer must include the record retention program as a standard agenda item. This is appropriate for both the board of directors and the compliance operations committee meetings, and leads should report the following information:

- ▶ Amount of records onsite
- ▶ Amount of records offsite

- ▶ Amount of records in transition from onsite to offsite facility
- ▶ Amount of records scheduled for onsite destruction
- ▶ Amount of records scheduled for offsite destruction

Additionally, they may report risks and/or challenges encountered while compiling the information, if applicable.

To promote messaging consistency, the compliance officer should update the new employee orientation and annual compliance training to include the record retention and destruction programs. The training sessions should include scenarios and links or attachments that employees can reference and immediately incorporate into their practices.

Although the compliance operations committee will discuss monitoring activities regularly, the compliance officer should incorporate auditing the retention program into the organization's annual compliance work plan. For example, Compliance may conduct random audits, focusing on different departments every 3-6 months, to ensure proper retention and timely disposal. These audits should include review of the record retention schedule and log. Findings can be a topic in the compliance operations committee meeting.

Encourage employees to report retention and/or disposal practices that are inconsistent with policy. Distribute the Compliance Hotline information while mentioning the organization's non-retaliation policy. Reassure employees that the Compliance Office responds to all reports and is committed to conducting investigations.

Summary

An effective record retention and destruction program engages all levels of the organization. Similar to the television shows, hoarding is not

completely eliminated, but there is a drastic change in behavior. Moments before the television show ends, there is an update that shows the hoarder monitoring their behavior. They have family and/or friends who conduct random visits to detect regression. Preventing regression becomes a collective effort. Does this sound familiar?

The compliance officer can influence change by promoting the program, ensuring tools are relevant, conducting random audits, providing frequent communication, and requiring regular updates on retention efforts throughout the organization. The compliance officer is not alone; this is a collective effort. The compliance operations committee, management, and departmental subject-matter experts must assist with detecting, changing, and preventing regression of hoarding behavior. ✳

1. IBISWorld website: Document Management Services in the US: Market Research Report. September 2013. Available at http://bit.ly/1sU725H (requires purchase to read)
2. Debbie Troklus and Greg Warner: *Compliance 101, Third Edition, 2011. Health Care Compliance Association*
3. Jami Ostroff: "Children's medical records found in Dumpster to be shredded." December 19, 2012. *NPG of Idaho, Local 8 News.* Available at http://bit.ly/13AKtfO

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