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MANAGING ELECTRONIC RECORDS

**METHODS, BEST PRACTICES,
AND TECHNOLOGIES**

Robert F. Smallwood

Foreword by Robert F. Williams

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MANAGING ELECTRONIC RECORDS

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METHODS, BEST PRACTICES,
AND TECHNOLOGIES

Robert F. Smallwood

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For my dearly departed brothers:

*William Scott Smallwood
David Bruce Smallwood*

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FOREWORD

This book is timely: There continues to be a strong need for comprehensive resources addressing the diverse issues and challenges of managing electronic records.

This need has grown over the twenty-plus years I have co-chaired the only national conference focusing exclusively on electronic records management (ERM). I am pleased to welcome and applaud Robert Smallwood's comprehensive book on managing electronic records as an excellent, profound information resource.

The need for this book is founded in the "sea change" that the management of electronic records has undergone—and continues to undergo—as society and business have moved full on into the digital age.

Consider just five of the component changes:

1. The historic function has evolved from materials management to risk mitigation.
2. An increasing focus on the broader tenets of information governance (IG).
3. The very nature of what constitutes records has expanded greatly to include metadata, e-mail, messaging, social media, cloud use—and it continues to evolve.
4. The volume of records being created and needing to be managed has grown exponentially.
5. The use of records to resolve legal disputes has expanded from primarily "proving the positive" to "proving the negative."

Bottom line: The sea change resulting in the digitization of business records has created a whole new world regarding what is managed, why it is managed, how it is managed, and who is responsible for the management process. And increasingly, as the goal of managing records has become more focused on risk mitigation, the sphere of solution buyers has expanded to include project managers and professionals in risk management, compliance, IG, and law.

From all these manifestations of change, Robert Smallwood, in collaboration and consultation with a number of leading practitioners, has come forward with a comprehensive and authoritative resource on the management of electronic records never before available. Robert's book is a pioneering resource with focus and quality. It presents not only a "big picture" perspective of the issues and problems but also quite specific recommendations from an operational perspective—providing insights and assistance not only for students, young professionals, and newly assigned project leaders, but also for seasoned records management, risk, legal, and compliance professionals.

This book is a huge undertaking that few have both the vision to take on and the perseverance to make a reality. It is a much-needed resource that will facilitate education on electronic records management issues and help in achieving the implementation of successful solutions. Bravo!

Robert F. Williams
Cohasset Associates

PREFACE

After more than five years of e-records research, and an intensive year of detailed research, consultation, collaboration, writing, and editing, this book has come to fruition. It represents a truly collaborative effort by a number of experts and highly skilled practitioners in electronic records management (ERM) and the broader information governance (IG) field. I am fortunate to know them: Some of the contributors I have known for decades; and this is a lesson for students and young professionals—that lasting business relationships are a vital resource that can yield career rewards over the long term, but also offer lasting friendships that are a reward in themselves. This is only possible if you immerse yourself in your chosen field and strive for excellence day after day, year after year, and hold respect for your work and the work of your colleagues. No one can know everything, but if you know key people who have specific expertise, you can always find the answers you need. Of course, you will also need to be able to return the favor.

We strove to extensively document our work so that researchers, analysts, practitioners, teachers, and students wishing to delve further into particular topics will have a head start in knowing where to find additional information. This was a difficult and tedious process, which yielded over 600 citations. We tried to distill the massive amount of information into clear, understandable, actionable terms. We also to confirm and document methods, best practices, standards, and technical information from a variety of sources, both public and private, from books, blogs, magazines, interviews, government portals, and consulting work product; and also, to include expertise from around the world to make this book truly a global resource.

Writing it was a challenging series of research and analysis tasks undertaken and represents a collective mountain of effort—and many, many mornings of waking before dawn to study, consult, collaborate, and write. It would have been easier and less stressful to give up, but we pressed on.

The result is the most comprehensive and current resource on the topic of ERM ever produced, which will hopefully afford those relying on this information an easier road as they implement ERM and IG programs.

This book will assist records managers, CIOs, IT managers, compliance and risk managers, and others involved in records management and information governance to make intelligent, informed decisions. For those seeking to implement an information governance program that includes electronic records management, bulk pricing for the book and e-book are available. Please visit: www.electronic-records-management.com.

— Robert F. Smallwood

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I would like to sincerely thank my colleagues for their support and generous contribution of their time and expertise, which made this book possible, and improved it greatly:

Many thanks to Lori Ashley, Barb Blackburn, Barclay Blair, Charmaine Brooks, Ken Chasse, Monica Crocker, Charles M. Dollar, Seth Earley, Marc Fresko, Steve Goodfellow, Gordon Hoke, Ulrich Kampffmeyer, John W. Orth, Bud Porter-Roth, Jon Pyke, Paula Lederman, Craig Rhinehart, and Robert F. Williams.

I am truly honored to include their work and owe them a great debt of gratitude.

MANAGING ELECTRONIC RECORDS

PART ONE

E-Records Concepts

CHAPTER 1

E-Records Definitions, Business Drivers, and Benefits

First, some basic definitions of core terms used in this text: The International Organization for Standardization (ISO) defines (business) **records** as “information created, received, and maintained as evidence and information by an organization or person, in pursuance of legal obligations or in the transaction of business.”¹ It further defines **records management** as “[the] field of management responsible for the efficient and systematic control of the creation, receipt, maintenance, use, and disposition of records, including the processes for capturing and maintaining evidence of and information about business activities and transactions in the form of records.”²

The U.S.-based Association of Records Managers and Administrators (ARMA), defines a record as “evidence of what an organization does. They capture its business activities and transactions, such as contract negotiations, business correspondence, personnel files, and financial statements. . . .”³

Electronic records management (ERM) has moved to the forefront of business issues with the increasing automation of business processes, and the vast growth in the volume of electronic documents and records that organizations create. These factors, coupled with expanded and tightened reporting laws and compliance regulations, have made ERM increasingly essential for most enterprises—especially highly regulated and public ones—over the past decade.

ERM follows generally the same principles as traditional paper-based records management, that is, there are **classification** and **taxonomy** needs to group and organize the records; and there are **retention** and **disposition** schedules to govern the length of time a record is kept, and its ultimate disposition, whether it is destruction, transfer, or long-term archiving. Yet e-records must be handled differently and they contain more detailed data about their contents and characteristics, known as **meta-data**. (This book discusses these detailed topics in more depth in later chapters.)

E-records are also subject to changes in **information technology (IT)** that may make them difficult to retrieve and view and therefore render them obsolete. These issues can be addressed through a sound ERM program that includes **long-term digital preservation (LTDP)** methods and technologies.

ERM is primarily the organization, management, control, monitoring, and auditing of formal business records that exist in electronic form. But automated ERM systems also track paper-based and other physical records. So ERM goes beyond simply managing electronic records; it is *the management of electronic records and the electronic*

E-records management has become much more critical to enterprises with increased compliance legislation and massively increasing volumes of electronic information.

management of nonelectronic records (e.g., paper, CD/DVDs, magnetic tape, audio-visual, and other physical records).

Most electronic records, or “e-records,” originally had an equivalent in paper form, such as memos (now e-mail), accounting documents (e.g., purchase orders, invoices), personnel documents (e.g., job applications, resumes, tax documents), contractual documents, line-of-business documents (e.g., loan applications, insurance claim forms, health records), and required regulatory documents (e.g., material safety data sheets, MSDS). In the past, many of these documents were first archived to microfilm or microform/microfiche, before e-document software began to mature in the 1990s.

Not all documents rise to the level of being declared a formal business record that needs to be retained; that definition depends on the specific regulatory and legal requirements imposed on the organization, and the internal definitions and requirements the organization imposes on itself, through internal **information governance** (IG) measures and business policies. IG *is the policies, processes, and technologies used to manage and control information throughout the enterprise to meet internal business requirements and external legal and compliance demands.*

ERM is a component of enterprise content management (ECM), just as document management, web content management, digital asset management, enterprise report management, and several other technology sets. ECM encompasses *all* an organization’s unstructured digital content, (which means it excludes structured data i.e., databases). ECM includes the vast majority—over 90 percent—of an organization’s overall information, which must be governed and managed.

ERM extends ECM to provide control and to manage records through their life-cycle—from creation to archiving or destruction. ERM is used to complete the life-cycle management of information, documents, and records.

ERM adds the functionality to complete the management of information and records by applying business rules to manage the maintenance, security, integrity and disposition of records. Both ERM and ECM systems will aid in locating and managing the records and information needed to conduct business efficiently, to comply with legal and regulatory requirements, and effectively destroy (paper) and delete (digital) records that have met their retention policy timeframe requirement, freeing up valuable space, physical and digital, and eliminating records that could be a liability if kept.

E-records management follows the same basic principles as paper-based records management.

E-records management includes the management of electronic and nonelectronic records, like paper and other physical records.

Records Management Business Rationale

Historically, highly regulated industries, such as banking, energy, and pharmaceuticals, have had the greatest need to implement records management programs, due to their compliance and reporting requirements.⁴ However, over the past decade or so, increased regulation and changes to legal statutes and rules have made records management a business necessity for nearly every enterprise (beyond very small businesses).

Notable industry drivers include:

- **Increased government oversight and industry regulation.** It is a fact that government regulations that require greater reporting and accountability were early business drivers that fueled the implementation of formal records management programs. This is true at the federal and state or provincial level. There are a number of laws and regulations related to records management that have been added in the past 10 to 15 years. In the United States, the Sarbanes-Oxley Act of 2002 (SOX) created and enhanced standards of financial reporting and transparency for the boards and executive management of public corporations and accounting firms. It also addressed auditor independence and corporate governance concerns. SOX imposes fines or imprisonment penalties for noncompliance, and requires that senior officers sign off on the veracity of financial statements. It states clearly that pertinent business records cannot be destroyed during litigation or compliance investigations. Since SOX, other countries, such as Japan, Australia, Germany, France, and India, have adopted stricter “SOX-like” governance and financial reporting standards.
- **Changes in legal procedures and requirements during civil litigation.** In 2006, the need to amend the U.S. Federal Rules of Civil Procedure (FRCP) to contain specific rules for handling electronically generated evidence was addressed. The changes included processes and requirements for legal discovery of electronically stored information (ESI) during civil litigation. *Today, e-mail is the leading form of evidence requested in civil trials.* The changes to the U.S. FRCP had a pervasive impact on American enterprises and required them to gain control over their ESI and implement formal records management and electronic discovery (“e-discovery”) programs to meet new requirements. Although they have been ahead of the U.S. in their development and maturity of records management practices, Canadian, British, and Australian law is closely tracking that of the United States in legal discovery. The U.S. is simply a more litigious society so this is not unexpected.
- **Information governance awareness.** *IG, in short, is the set of rules, policies, and business processes used to manage and control the totality of an organization’s information.* Monitoring technologies are required to enforce and audit IG compliance. Beginning with major legislation like SOX in 2002, and continuing

A number of factors provide the business rationale for ERM, including facilitating compliance, supporting information governance (IG), and providing **backup** capabilities in the event of a disaster.

with the massive U.S. FRCP changes in 2006, enterprises have become more “IG aware” and have ramped up efforts to control, manage, and secure their information. *A significant component of any IG program is implementing a records management program that specifies the retention periods and disposition (e.g., destruction, transfer, archive) of formal business records.* This, for instance, allows enterprises to destroy records once their required retention period (based on external regulations, legal requirements, and internal IG policies) has been met, and allows the enterprise to legally destroy records with no negative impact or lingering liability.

- **Business continuity concerns.** In the face of real disasters, such as the 9/11 terrorist attacks, Hurricane Katrina, and in 2012, Superstorm Sandy, executives now realize that disaster recovery and business resumption is something they must plan and prepare for. Disasters really happen and businesses do fail if they are not well-prepared. The focus is on **vital records** (more details on this topic in subsequent chapters), which are necessary to resume operations in the event of a disaster, and managing vital records is a part of an overall records management program.

Why Is Records Management So Challenging?

With these business environment, regulatory, legal, and IG influences and changes comes increased attention to records management as a driver for **corporate compliance**. For most organizations, a lack of defined policies and the enormous and growing volumes of e-documents (e.g., e-mail messages) make implementing a formal records management program challenging and costly. Some reasons for this include:

- **Changing and increasing regulations.** Just when records and compliance managers have sorted through the compliance requirements of federal regulations, new ones at the state or provincial level are created or tightened down.
- **Maturing information governance requirements within the organization.** As senior managers become increasingly aware of information governance—the rules, policies, and processes that control and manage information—they promulgate more reporting and auditing requirements for the management of formal business records.
- **Managing multiple retention and disposition schedules.** Depending on the type of record, retention requirements vary, and they may vary for the same type of record based on state and federal regulations. Further, internal information governance policies may extend retention periods and may fluctuate with management changes.⁵