



The Risks are Real The Solutions are Too

How to Stay Out of the Courtroom

*Or, if you have to go.....
How to “shine” once you’re there!*

Bill Millican

Consulting Strategist

Records & Information Management

Today's Focus

- Records Management: a foundational peek
- The Key Elements:
- Security and Privacy
 - **“The Cloud”** is.....
- RIM Implementation and Management
- Electronic records: all of them
- Litigation Readiness: the risk or the reward
 - Which will it be?
 - Which is it?
- Competent: how much do you really “know”

The Issue: Facts

- Paper based systems
 - Paper production continues to rise and stock made into file folders continues to rise
 - American Paper Institute
 - Sales increase of \$ 100M = 8.8M more sheets of paper
 - Price Waterhouse Coopers
- Electronic Mail (E-mail)
 - Volume continues to rise
- Electronically Stored Information (ESI)
 - Sanctions are on the rise
- The Cloud is real and more real
 - Will it become the **only** option
- Professional Records Management
 - Vice President, Records Management

The Issue: Facts

- **E-discovery sanctions** are at an all-time high. We identified 230 sanction awards in 401 cases involving motions for sanctions relating to the discovery of electronically stored information (ESI) in federal courts prior to January 1, 2010
 - The Duke Law Journal: November 2010
- **Hard Copy Storage Costs:**
 - \$ 3.00 per year in a records management facility
 - \$ 30.00 per year in your office space
 - National Archives & Records Administration
- **E-mail Proliferation**
 - Results in a 40% increase in paper use when improperly managed
 - Price Waterhouse Coopers

The Issue: Facts

- **Retention & Disposition Works:**

- 55 % of inactive or obsolete materials can be either properly destroyed or moved to a professional records center

➤ Robert Allarding

- **Hard Copy Storage Costs:**

- \$ 3.00 per year in a records management facility
- \$ 30.00 per year in your office space

➤ National Archives & Records Administration

- **E-mail Proliferation**

- Results in a 40% increase in paper use when improperly managed

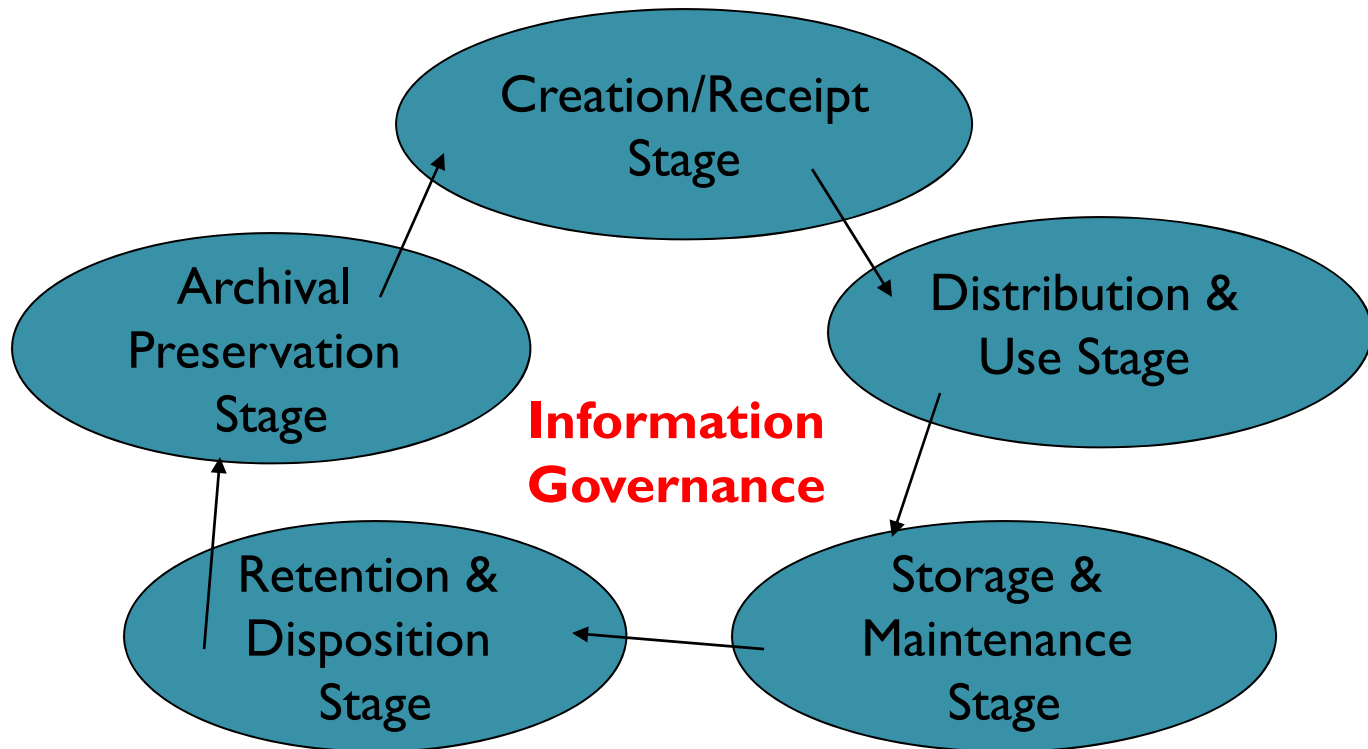
➤ Price Waterhouse Coopers

The Issue: Facts

- You'll Never Touch Most of Them:
 - 90% of records filed after completion are never accessed
 - General Services – State of Tennessee
- Data Loss:
 - 67% of data loss is directly related to user blunder
 - 30 TIMES more menacing than viruses
 - Tandberry Data
- Physical, Hard Copy Usage Costs:
 - Clerical processing costs **30 to 50** times the printing costs
 - Business Forms Management Association
- Wasted Time:
 - Office workers can spend up to 2 hours a day (**62.5 days a year**)
 - Computer users spend 7.5% of their time **on the PC searching**
 - State of Tennessee and Information Week
 - Price Waterhouse Coopers

Life Cycle Concept!

Never Changing



The Differences

- **Traditional Records Management**
 - Isolated business function
 - Paper based
 - Technologically limited and/or inadequate
- **Today's Records Management**
 - More recognized and involved
 - Paper and Electronic
 - Dependent upon technology

The Differences Continued

- **Tomorrow's Records Management**
 - Prominent Business Function
 - Information Management
 - Asset Management
 - Intellectual Capital Management
 - Organization Intelligence Management
 - Electronic Information - Paper Dwindling
 - Technologically Acumen Advanced

The Records Inventory

- Records Inventory: It's Really Necessary
 - It is Critical
 - It is a fundamental element
 - Some say: it is THE most critical element
 - Some say: the RM Program cannot properly function without the Inventory
 - Some say: without the Inventory the Program will fail.

The Records Inventory

- Records Inventory: How is it Used
 - To build the RM Program: The Foundation
 - Process Intelligence
 - Information Processing Efficiency
 - Business Unit Crosswalk Efficiency
 - Forms and Document Management
 - Retention & Disposition Development



Records Retention Program

- Defines the period of time that records are **maintained** and specifies procedures for the **transfer** and **destruction** of records
- Retention periods are based on the **operational, legal, and historical** value of each record type
- Specifies the methods of **disposal** and **disposition**

Records Retention Schedule

- For full legal protection, **all records** must be included in a retention schedule
- Each organization must develop their own retention schedule
- Classify records by using “**records series**”
- Dispose of records in the “**normal course of business**”

Considering Security & Privacy

- Security of Business Records
 - File plans
 - Standard for storage – safe, secure
 - Retrievable
 - Access to Business Records
 - Trade Secrets
 - Make the policy Transparent



Secure



Access Restrictions



Retrievable?

Considering Security & Privacy


- Security & Privacy Issues:
- How is Security different from Privacy?
 - Privacy
 - Trust
 - Confidence
 - PII
 - Information Use
 - Consumer, or Customer Choices

Considering Security & Privacy

- Security & Privacy Issues: The Differences
 - Security = Controls
 - Privacy = Trust
 - Security = Constraints
 - Privacy = Confidence
 - Security = Permission
 - Privacy = PII

Considering Security & Privacy

- Security & Privacy Issues: The Differences
 - Security = Denial
 - Privacy = Information Use
 - Security = Protection
 - Privacy = Consumer Choices
- While there are clear differences, Security and Privacy there are strong corollaries



The RIM Program

An Open Discussion

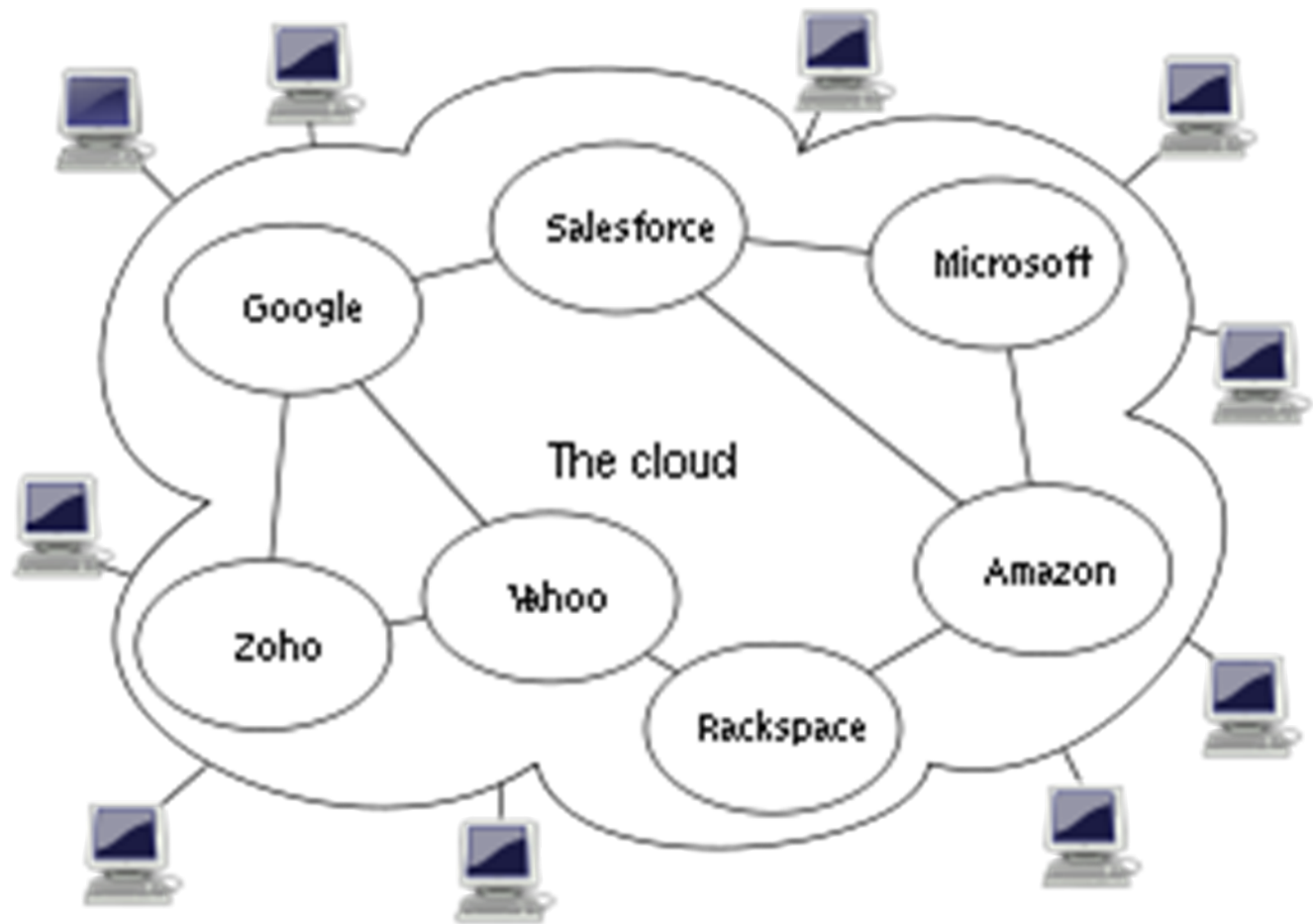
On

Building a Program

Electronic Records: The Cloud

- **Cloud computing** is Internet-based computing, whereby shared resources, software, and information are provided to computers and other devices on demand, like the electricity grid. (Wikipedia)
- **Cloud Solutions**
 - **Communications** – Email, instant messaging
 - **Enterprise Content Management (ECM)** – Capture, document management, workflow, records management
 - **Business Continuity** – Disaster recovery systems

An Idea of The Cloud



Will the Cloud Remain?

- **Steve Ballmer, Microsoft CEO**, stated that “Microsoft is all in when it comes to cloud computing”
- **Brad Horowitz, Google VP**, stated that “**regulatory issues are better solved by the cloud paradigm.**” He argues that it is easier to do e-discovery if the data is all on central servers instead of spread out on PC’s.
- **Greg Taylor, Sony**, stated that “**all content that poses no threat to customer privacy or data security should be shipped off to the cloud.**”

Records Manager's Role in the Cloud

- **Collaborate** with IT, Legal, Compliance and Security
- **Define processes for:**
 - Information ownership
 - Retention
 - Security
 - Privacy
- **Participate** in writing 3rd party service level agreements
- **Develop** performance metrics and auditing controls
- **Take the lead** as courts will continue to require organizations to manage their information

Electronic Records

- **RIM Status – Cohasset/ARMA Survey (2009)**
 - **34%** of organizations polled stated that they do not have a formal process for responding to **discovery** requests
 - **35%** of respondents stated that electronic records are not included in their **records retention schedules**
 - **41%** stated that IT/IS has primary responsibility for **managing** their electronic records
 - **43%** reported that they are not confident that their electronic records are **accurate, reliable and trustworthy**
 - **47%** said they do not have a formal retention policy for **email**

Successful Electronic Records Programs

- Senior executive support
- Strategic plan
- Commitment to digital recordkeeping
- Tactical partnership with IT
- Adequate funding and staffing
- Deployment of advanced technology solutions
- Program development in compliance with RIM standards and best practices, including GARP

Records Manager's Role in Electronic Recordkeeping

- **Have overall responsibility for managing all information assets of the organization**
 - Policy planning and compliance monitoring
 - Electronic records inventory and records retention schedule development
 - Technology solution analyst
 - Digital preservation specialist
 - Provide RIM training
 - **(Some of these elements above can be delegated/outsourced, but the records manager must be responsible for the program)**
- **Collaborate with IT, Legal, Compliance and Security**

Compliance

- Conforming to a rule, such as a specification, policy, standard or law
- The complex set of processes, rules, tools and systems used by corporate legal departments to adopt, implement and monitor an integrated approach to business problems
- There are over 18,000 federal and state statutory and regulatory requirements that affect records retention.
- **Sarbanes Oxley:** this 2002 Act imposed regulations on public traded corporations to ensure they institute, document, and certify adequate financial controls
 - Personal liability and criminal penalties for corporate officers not complying with SOX
- **FRCP amendments** went into effect December 1, 2006
 - Introduced the term “**Electronically Stored Information**” (ESI) into discovery jargon



Compliance - Risks and Rewards

- **Best practice** – Retain only those records needed to operate the business and comply with all laws. All other records should be destroyed per retention guidelines.
- **Risks**
 - Courts do not look favorably on failing to follow RIM policies
 - Fines, sanctions, prison
 - Complying with discovery orders can be burdensome and expensive
- **Rewards**
 - Maintain compliance with laws and regulations
 - Control the growth of records
 - Reduce storage costs

Records Manager's Role in Compliance

- **Research and apply those laws and regulations that apply to your industry**
 - IRCH (Don Skupsky) - Legal Requirements for Business Records
 - Zasio Enterprises – Versatile Retention
 - LexisNexis – Compliance Manager
 - WestLaw - Next
 - TheLaw.net – Equalizer
- **By knowing the legal requirements, a legally defensible records retention program can be developed**

Job Security Tips!

- Understand your organizations **strategic direction**, and how you can make an impact on the bottom line
- Ensure your **role is meaningful** to the success of the company
- Educate yourself on **new technologies**
- Stay aware of **changes** happening in the RIM industry
- Expand your **RIM skill set**

Competence: Today and Tomorrow

- The ability to perform a specific task, action or function successfully
- The knowledge, skills, characteristics, or traits that contribute to outstanding performance in a particular profession
 - demonstrated in such a way that they can be observed, measured, and rated
- A competency model can be used to identify gaps between present knowledge and skill sets and those required for excellent performance within the current job or for advancement to the next job level.

The ARMA Competencies

- **The Levels**
 - **Level 1** - Entry-level position
 - **Level 2** - Prior RIM knowledge, skills, and experience
 - **Level 3** - Seasoned practitioner
 - **Level 4** - Executive level
- **The Domains**
 - Business Functions
 - RIM Practices
 - Risk Management
 - Communications and Marketing
 - Information Technology
 - Leadership

ARMA - RIM Self-Assessment

- Document your strengths to management when discussing your performance, career goals, and development needs
- Improve your skills and increase your market value
- Create a professional development plan to guide your career

Free to all ARMA members!

The Risks

- firms that have not developed a good records management policy may fail their clients and be faced with a costly liability lawsuit.....
 - Chubb & Son
-companies and organizations are finding they need policies and systems to manage all electronic information from origination to destruction. Litigation aside, experts say it is just good business.
 - EMC Corporation
- ❖ Sprint Settlement: \$ 57 million settlement over scrubbed employee data
 - Public Record

The Risks

- “It’s not difficult establishing the benefit of proper records management, when a company such as Microsoft spends an average of \$20M for e-discovery per litigation.....”
 - Microsoft Corporate Executive: **Computerworld**
- “Ease of use and minimal disruption to the business is paramount = time, effort and money”
- “You’ve got to treat the disease, not the symptom, e-discovery risk and sanctions are a symptom of unmanaged electronic information, particularly e-mail and office content.
 - **James Daley, Attorney**
 - Daley & Fey
 - Founding member of Redgrave, Daley, Ragan & Wagner

Summary and Close

- Records Management: a foundational peek
- The Key Elements:
- Security and Privacy
 - **“The Cloud”** is.....
- RIM Implementation and Management
- Electronic records: all of them
- Litigation Readiness: the risk or the reward
 - Which will it be?
 - Which is it?
- Competent: how much do you really “know”

Thank U!

Questions and Discussions Continue

Take away – Organizations are looking for someone to step up and tackle these challenges. If not you, who?

Bill Millican

Consulting Strategist

Records & Information Management

816.213.5007

wfm@mediaservicesnow.com

wfmillican@gmail.com