

# Leveraging the Principles in Mergers, Acquisitions, and Divestitures



Despite the upheaval that comes with merger, acquisition, and divestiture activities, they provide great opportunities for organizations to assess and improve their information governance practices.

## Julie Gable, CRM, FAI

Industries as diverse as hospitals, pharmaceuticals, airlines, law firms, utilities, and non-profits have all experienced high levels of merger and acquisition activity in recent years. According to the Institute of Mergers, Acquisitions and Alliances, a non-profit think tank that researches the subject, there were more than 130,000 such transactions from 2000 to 2010.

At best, mergers and acquisitions are the melding of two cultures to produce a single, stronger entity. At worst, they are politically fueled wars about which processes and systems will dominate once the dust settles. Records and information management (RIM) programs are often caught in the fray because information assets play a pivotal role in mergers and acquisitions. Most

often, the acquirer or the larger firm in the merger assumes its information governance program is superior, when that may or may not be true.

In merger and acquisition scenarios, the Generally Accepted Recordkeeping Principles® (the Principles) and the Information Governance Maturity Model (IGMM) provide standards-based, objective ways to coolly assess where the strengths

and weaknesses of each party's RIM program lie, removing the competitive "Our program is better than your program" atmosphere and focusing instead on the opportunity to combine the programs with an eye to overall improvement.

Conversely, changes in regulatory climate and new technologies in industries such as energy and communications have made it profitable to spin off or divest certain subsidiaries into stand-alone companies. Newly divested companies may find themselves with gaping holes in information policy and practices that were once supplied by the parent company. How to plug the gaps becomes an important priority for the new company.

For divested companies, the Principles and the IGMM can be used to identify what needs to be done to shore up and supplement RIM programs that lack the features and focus of their more established parent company's programs.

The case studies of fictional companies below illustrate how the Principles can be used in acquisition and divestiture settings.

### **Case Study 1: Arix Acquires Nemestan**

Arix, established in 2001, is a pharmaceutical company that has grown chiefly through acquisition. Each acquired company produced a specific product at one or more locations globally.

#### ***Previous Acquisition Practices***

Upon acquisition, records were left in place at the acquired company. Paper records may have been stored at one or more offsite storage facilities, and electronic records occupied the expected mix of document management systems, specialized quality systems, file shares, and storage devices.

Many of the previously acquired companies had some components of RIM, but there was never any formal study of which company had which

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elements. Each company did its own thing with regard to regulatory compliance, retention schedules, policies, procedures, and tools such as records management software. So far, regulatory audits have gone smoothly, and Arix has never had a serious lawsuit.

#### ***Corporate RIM Established***

About a year ago, Arix established a formal RIM department at the corporate level. The new RIM function is working on global policies and retention schedules that can be disseminated to all locations. It is hoped that these will serve as a uniform framework that can be adapted for managing records locally. The RIM department is also developing policies to protect records that are considered private, confidential, or privileged, as well as standardized metadata for all records.

Arix is also evaluating records management software as part of an effort to unify records management practices throughout all companies. The software will require standardized classification and metadata for managing paper and electronic records. Most of the line managers at Arix's various locations welcome the chance to shed inconsistent indexing procedures in the hope that better metadata will mean better search results.

The records software will allow legal, tax, and other holds to be placed on paper and electronic records, but this hold functionality may not matter because there have never been formal retention schedules, and Arix has never disposed of anything, living by the credo "storage is cheap."

The Arix records program is staffed by one manager, one analyst, and various contractors hired to

produce specific pieces of the records program such as procedures and training materials. Arix's RIM department reports through the IT department.

#### ***A New Acquisition***

Last year, Arix announced that it would acquire Nemestan, a maker of vaccines. Though relatively small compared to Arix, Nemestan has had a formal RIM program almost from its inception, with a centralized management structure for mostly paper and some electronic records – usually images of paper documents.

Nemestan takes an archival approach to its business records, preferring to err on the side of preserving more than is needed, rather than aggressively disposing of records the moment full retention is reached. There are approved policies, procedures, and retention schedules that apply to U.S. locations, and Nemestan is developing audit criteria for judging records management compliance and effectiveness. The company also wants to extend the program to its non-U.S. locations.

The company has invested in software for maintaining records inventory, and there are many metadata fields to aid in searching. Indexing is done at the box level, the folder level, and in the case of electronic records, at the document level.

Nemestan's program is staffed by four full-time people, including a manager, an assistant manager, and two records analysts. The records group reports to the law group. Because it has no way to reliably attach legal holds, Nemestan has never destroyed anything.

After the initial period of non-communication, the manager of Arix is ready to meet with his counterparts at

Principle	Level 3 (Essential) Elements	Arix Score	Nemestan Score
Accountability	The company includes electronic records in RIM program.	3	2
Transparency	It has written policy regarding transparency.	3	1
	Employees are educated.	2	1
	Business & RIM processes are documented.	2	3
	It can handle most requests for information, e.g., discovery, regulatory response, FOI.	2	3
Integrity	A formal process to ensure authenticity and chain of custody can be applied to systems and processes.	1	1
Protection	It has a formal written policy on protection.	3	1
	RIM audits are conducted only in regulated business areas.	3	1
Compliance	A hold process is integrated into information management and discovery processes for critical systems, and it is effective.	1	1
Availability	A standard for where and how records are stored, protected, and made is available.	2	3
	It has clear policies for information handling.	2	3
	Retrieval methods are consistent.	2	3
	It is easy to determine where to find the authentic and final version of information.	2	3
	Legal discovery and information request processes are well-defined and systematic.	1	1
	Systems and infrastructure contribute to records availability.	2	2
Retention	A retention schedule tied to regulations is consistently applied.	2	3
Disposition	Official procedures for records transfer and disposition exist.	1	1
	Official policy and procedures for suspending disposition have been developed.	1	1
<b>Totals</b>		<b>35</b>	<b>34</b>

**Figure 1:** Comparing Tangibles – Arix & Nemestan

Nemestan to find out what they have in the way of information governance and how it fits with Arix’s plans. Arix does not want this acquisition to be like the others with yet another silo of records managed without corporate supervision.

### A New Way Forward

To systematically determine the companies’ similarities and differences, the Arix records manager has prepared a chart based on the Principles and the IGMM Level 3 (Essential) descriptions of information governance program elements that are indicators of basic good practices. For his comparison, the Arix records

manager concentrates only on information governance program aspects that are tangible and transferable, focusing on what is measurable and what would be useful going forward as the two programs merge.

As a first step, he honestly rates the aspects of Arix’s program, with a score of 1 if the element does not exist, 2 if the element is being worked on, or 3 if the element is a delivered part of the information governance program. Following conversations with his counterpart at Nemestan, he also rates each aspect of the Nemestan program using the same scale, producing Figure 1: “Comparing Tangibles – Arix & Nemestan” above.

### *Not the Most Points, the Most Value*

Adding up the points, Arix “wins,” but that isn’t the objective of the exercise. A careful look at the chart shows that Nemestan has potential value to offer in regard to the Principles of Availability, Transparency, and Retention, where it has already achieved at least the Essential Level 3 in the areas of storage standards, policies for information handling, consistent retrieval, and retention schedules.

These are worth further investigation to see where synergies may exist and how Arix could possibly raise its own levels in these areas by capitalizing on work done by Nemestan. It



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Principle	Essential Aspects Required for Stream
Accountability	<ul style="list-style-type: none"> <li>• Hire a records manager at the right level to have strategic impact on the company.</li> <li>• Make senior management aware of the records program and ask for their support. Find a senior manager to be the records champion.</li> <li>• Establish an information governance steering committee.</li> <li>• Define goals related to accountability and a timeline for their accomplishment.</li> </ul>
Compliance	<ul style="list-style-type: none"> <li>• Formulate the company's overall code of business conduct.</li> <li>• Document a rudimentary hold policy and process and ensure they can be complied with now and in the future.</li> </ul>
Transparency	<ul style="list-style-type: none"> <li>• Update business and records policies inherited from Mega. Are these usable and practical at Stream? Define goals related to information governance transparency.</li> </ul>
Availability	<ul style="list-style-type: none"> <li>• Establish best practices for responding to requests for information by customers, regulators, auditors, and others.</li> <li>• Consider prioritizing projects that have the objectives of consistent indexing, records classification, and retention codes.</li> </ul>
Retention	<ul style="list-style-type: none"> <li>• Revise the inherited retention schedules so they are applicable to Stream's legal, fiscal, operational, and historic requirements.</li> <li>• Make records training mandatory for all employees.</li> </ul>
Disposition	<ul style="list-style-type: none"> <li>• Establish uniform procedures for disposition—for example, describe what approvals are needed to dispose of records.</li> <li>• Establish procedures for suspending disposition.</li> </ul>
Integrity	<ul style="list-style-type: none"> <li>• Lay the groundwork for a project to ensure that some standardized metadata elements are captured for all of the company's electronic records.</li> </ul>
Protection	<ul style="list-style-type: none"> <li>• Examine how physical records will be kept while they are active, as well as when they are inactive. For example, are there locked rooms onsite? Who may retrieve boxes from offsite storage?</li> <li>• Work with information technology to ensure that systems containing sensitive or private information have adequate safeguards in place.</li> </ul>

**Figure 2:** Divested Stream Energy's Priorities

is important to remember, though, that work developed for a U.S.-based company may not have specific applicability outside U.S. borders.

On the other hand, areas of the chart showing a Level 1 for both companies indicate aspects that need work. In this case, the formal processes to ensure authenticity under the Principle of Integrity, the hold process under Compliance, the legal discovery process under Availability,

and procedures governing Disposition are weak for both companies. These can form the basis for a RIM strategic plan for the merged companies going forward.

### **Case Study 2: Mega Power Divests Stream Energy**

Mega Power is an energy conglomerate that wanted to raise cash to finance its newly developed shale exploration division. With competition

increasing in the electric power marketplace, Mega has changed its strategic direction to focus on future technologies and revenue sources. Mega decided to divest Stream Energy, its electric power division. Stream will be a free-standing entity, with stock sold through an initial public offering.

#### ***Mega's RIM Program***

As part of Mega, Stream had the benefit of using records management

services supplied by Mega's corporate services group. RIM at Mega is a mature program that covers both paper and electronic records. Mega has its own paper archives, its own software for managing them, and a competent staff who easily handles their storage and retrieval.

In addition, Mega has in-house, centralized services for document imaging. Mega also has invested in document management technology for its unstructured records, and progress is being made in applying retention to electronic records in these systems.

The RIM program staff consists of a corporate records manager, six analysts, and several liaisons who are responsible for records management within each division. Several of the records liaisons for Stream have opted not to go to the divested company, so some records management knowledge has been lost.

### **Stream's RIM Program**

Stream has appointed an attorney to be responsible for records management for the divested company. He has received a report of the records inventory, and asset transfers from various systems will be made where possible. Some data, such as that for accounting, human resources, and finance, will be outsourced to third-party organizations. Stream has Mega's retention schedule and copies of Mega's policy and procedures. Much more is needed to ensure that the new company can manage its information needs.

Of the many challenges facing Stream, one of the greatest is how to structure a records and information governance program that can serve the present and future needs of the new entity.

### **Using the Principles in Divestiture**

Stream's acting records manager knows he needs to establish a program as robust as the one everyone knew at Mega. However, this can't

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happen overnight. Each element of a sound RIM program takes time to develop. Determining where to start, what to work on, and in what order are important.

The immediate need is to make sure that Stream has received all of its records and information from Mega per the terms of the divestiture. The next is to make sure that there are adequate systems and storage for information needed to conduct daily business.

As an attorney, Stream's acting records manager is highly aware that managing information is crucial. While he has plenty of comprehensive documentation about how to do RIM processes from Mega, what he doesn't have is a way to structure the RIM culture. Without this structure, policies, procedures, schedules, and training are just words on paper. Furthermore, what worked as policy infrastructure for a large records program may not be appropriate for an entity that does not yet have the resources to support it.

The attorney decides to look through the IGMM as a way to understand what needs to be done, to set goals for Stream's RIM program, and to measure progress. Looking at the column for Level 3 – Essential, he formulates Figure 2: "Divested Stream Energy's Priorities" (on page 36) as the initial path toward setting up a RIM program to meet Stream's needs.

Note that he has put the Principles in a different order to indicate priorities. While everything on the chart is essential, the Principle of Accountability will take first priority. If the new company's culture can grow to be information governance aware, it must start at the very beginning with executive sponsorship and recognition

of the RIM function. Looking at the remainder of the chart, the attorney realizes what a tall order it is, but he also knows he has a sound plan to follow going forward.

### **Change Provides Challenges, Opportunities**

Those who have been through mergers, acquisitions, and divestitures often cite change management and culture change as some of the greatest challenges in moving forward. This is because people become used to doing things in certain ways, and they don't want to change.

Time is also a factor; many RIM initiatives require the participation and commitment of those who know the business processes. These are often the same people charged with keeping the business moving forward. They can be overwhelmed, particularly in cases where new technology comes with the new situation.

Despite the upheaval, organizations that participate in merger, acquisition, and divestiture activities have great opportunities to take a critical look at RIM policies and practices with an eye to improvement. Used well in merger and acquisition, the Principles and the IGMM can provide a framework for objectively assessing RIM programs to take advantage of the strengths of all parties and to identify where more work will be needed. For divestitures, the Principles and the IGMM are like girders in construction projects, providing a foundation on which the next levels can be built from the ground up. **END**

*Julie Gable, CRM, FAI, can be contacted at [juliegable@verizon.net](mailto:juliegable@verizon.net). See her bio on page 47.*