

## *The Sedona Conference*

### *Commentary on Defensible Disposition (April 2019)*

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The Sedona Conference *Principles and Commentary on Defensible Disposition* grew from Principle 6 of The Sedona Conference *Commentary on Information Governance* which advises that the effective, timely, and consistent disposal of physical and electronic information that no longer needs to be retained should be a core component of any Information Governance program. However, many organizations struggle with making and executing effective disposition decisions. That struggle is often caused by many factors, including the incorrect belief that organizations will be forced to “defend” their disposition actions if they later become involved in litigation. Indeed, the phrase “defensible disposition” suggests that organizations have a duty to defend their information disposition actions. While it is true that organizations must make “reasonable and good faith efforts to retain information that is relevant to claims or defenses,” that duty to preserve information is not triggered until there is a “reasonably anticipated or pending litigation” or other legal demands for records. Another factor in the struggle toward effective disposition of information is the difficulty in appreciating how such disposition reduces costs and risks. Lastly, many organizations struggle with *how* to design and implement effective disposition as part of their overall Information Governance program. These Principles and their associated Commentary aim to provide guidance to organizations and counsel on the adequate and proper disposition of information that is no longer subject to a legal hold and has exceeded the applicable legal, regulatory, and business retention requirements.

- Principle 1: Absent a legal retention or preservation obligation, organizations may dispose of their information.
- Principle 2: When designing and implementing an information disposition program, organizations should identify and manage the risks of over-retention.
- Principle 3: Disposition should be based on Information Governance policies that reflect and harmonize with an organization’s information, technological capabilities, and objectives.

The full text of *The Sedona Conference Commentary on Defensible Disposition* is available free for individual download from The Sedona Conference website at:

[https://thesedonaconference.org/publication/Commentary\\_on\\_Defensible\\_Disposition](https://thesedonaconference.org/publication/Commentary_on_Defensible_Disposition).

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