

**Business Case #85
(50 Points)**

SILICON AGGREGATES AND MINERALS

Main Topic: Discovery

Subtopics: Cost Justification, Creating Policy, Communication, Procedures, Protection, Training

ANSWER:

GENERAL GUIDANCE:

Please read the business case that was given to the candidate.

The goal of this business case is to evaluate the candidate's proficiency in developing a business case related to corporate litigation issues. The candidate is asked to write a clear, well-organized business case using a narrative format appropriate for the designated audience. The business case may contain lists, as often used in presentations to management. However, if lists are used, the candidate must devote a paragraph to explain why the actions are appropriate. The answer may not consist only of lists. The business case should explain the underlying problems found and recommend solutions to these problems. The candidate has been told penalty points may be levied by graders for incorrect format, poor grammar, poor spelling, and/or poor organization of the answer.

The candidate **MUST** introduce the report with an Executive Summary. The Executive Summary should contain 2-3 paragraphs explaining the basic overall problem(s) identified, the key issues or factors to be resolved in order to achieve the final result, and a high level description of the recommended outcome. Following the Executive Summary, the business case analysis should describe the specific issues found and the suggested recommendations.

The candidate is given the specific points to address. The candidate is expected to state any facts that are assumed in developing the business case. The assumptions must logically support the answer. Flexibility may be given when discussing specific topics so long as the suggested course of action is within the scope of general management and RIM techniques and methods. Topics not specifically mentioned also may be included in the business case and are acceptable so long as they are considered relevant by the grader.

Specific Points:

The candidate is instructed to introduce the business case with an Executive Summary, followed by the Analysis section consisting of several specific questions. Each of the following parts should be graded and weighted as follows:

**I. Executive Summary:
10 points maximum**

This section serves as the introduction to the business case. The candidate has been instructed to identify key issues or factors to be resolved in order to achieve the final

result, along with a high level description of the recommended outcome in no more than 2-3 paragraphs. Specific recommendations to resolve the problem should not be listed in this summary. No extra credit is awarded for this section. A sample Executive Summary for this Business Case would be:

“Silicon Aggregates and Mineral (SAM) Inc. has found itself in trouble with the courts. The company has minimal oversight and control of its records. The staff is not trained consistently within the company and throughout all work sites on how to manage records and respond to discovery requests.

The company needs to develop a company-wide records program that includes policies, procedures, and training to assist in the proper management of records throughout their lifecycle. The company should also ensure there is adequate expertise to interpret and assist in the production and preservation of records for litigation. In addition, the company needs to establish roles, responsibilities, and accountability across all parts of the company for its records. The outcome of this effort should be a well-maintained and audited records program for the company to increase operational efficiency and to comply with legal discovery requests.”

**II. Analysis:
40 points maximum**

This section should deal with the specific problems and issues discovered during your review of the Findings. Your proposal should include identification of the problems and recommendations.

**A. Identification of Problems
12 points total**

Identify the various problems seen in the business case and why they are considered RIM Issues. The candidate may include some of the following examples or think of others on their own. The grader has the flexibility to decide relevance on issues listed that do not appear as an example. Possible examples include:

- Failure to take corrective actions after the first lawsuit that imposed sanctions. The company could have used lessons learned from the first occurrence to improve its records and litigation preparedness programs to prevent the sanctions from the later court cases.
- Failure to have a company-wide records policy in place. A company-wide records policy that is followed helps to minimize the risks of not being able to find produce the responsive documents. All employees within the company should have clear requirements and guidelines set by policy for reference.
- Failure to have file plans within the company. File designations and organization are left to individual employees or departments. This increases the risk of multiple ways to file the same type of document, which in turn complicates the ability to retrieve files for work or litigation purposes.

- Failure to follow and update existing record schedules. Employees throughout the company should have been aware that there were retention requirements for their documents and ensured the documents were handled appropriately. Because of this communication and training breakdown, the company was at legal risk for both not having the responsive documents because they were destroyed too soon *and* for having documents that would have needed to have been produced because they were maintained beyond the appropriate retention period. Additionally, retention requirements should be updated periodically to account for all records and systems.
- Failure to train employees in records management. The lack of training in records management for employees at the headquarters, regional offices and plants, and field offices put the company at risk because the employees didn't know what their responsibilities were for day-to-day management of records and did not know best practices to apply.
- Failure to have copies of health and safety records stored at the headquarters office or to have a process to scan and store copies of the documents so that they were available for whatever purpose they were needed in whichever location for the duration of their retention periods.
- Failure to train employees in the collection and management of documents in anticipation of litigation. In the discovery phase of each of the lawsuits, employees did not accept responsibility or perform thorough and systematic searches for documents, leading to the unfavorable findings by the courts.
- Failure to ensure legal holds were properly communicated and in place. Even when employees were notified of legal holds, they did not understand what they were supposed to do with the information, putting the company at risk of not producing responsive documents and not properly administering the legal hold
- Failure to notify legal counsel or the court when problems were encountered during the discovery process. The company might have been given additional time to respond or may have been able to take some corrective during legal discovery to minimize the outcome that initiated the court sanctions.
- Failure of the company's legal counsel to verify the search for responsive documents was complete, accurate, and thorough. If the legal counsel had provided more oversight and verification, they could have determined there were problems in advance of producing the inadequate documentation to the court.

**B. RIM Program Recommendations
20 points total**

The following are possible recommendations for SAM. The grader is granted flexibility to evaluate the proposed items and their relative placement in the timeline, so long as the candidate's response demonstrates a logical understanding of the problem and provides explanations for each recommendation.

- Conduct a baseline study to establish current situation and to determine what specifically is needed by the company as part of a compliance review.
 - Inventory records, their locations, and formats

- Identify and assess records stored offsite, such as vendors, home computers, portable drives and devices, and warehouses
 - Identify hardware/software
 - Understand company's electronic information architecture
 - Perform an inventory on applications
 - Review data backup and storage procedures and locations
 - Identify and assess records stored offsite, such as vendors, home computers, portable drives and devices, and warehouses
- Develop and ensure a corporate RIM budget to continually focus attention and resources on SAM's RIM issues.
 - Create a team to address litigation issues (management, legal counsel, IT, RIM staff, and records custodians). Evaluate the quality and qualifications of personnel in the positions, including legal counsel.
 - Assign roles and responsibilities to specific groups and staff positions to mitigate risk of spoliation:
 - Legal Counsel - legal hold policy, oversight of the litigation processes within the company
 - RIM – records management policy, file plans, current inventory of records and their media, records retention schedule, consistent and routine implementation of retention and disposition practices (deletion/destruction as a normal course of business)
 - IT – audit trails, data maps (record type, location, custodian, how it is stored, accessibility characteristics, associated retention policy), evidence preservation and collection policy, policy and procedures for backups, testing whether back-up tapes are readable and recoverable, long-term preservation of data generated as a normal course of business for the length of its retention period.
 - All employees - provide training and reference documentation to all staff so that they understand their duties, responsibilities and accountability during legal holds.
 - Develop a consistent, reproducible, and defensible communication chain to announce, explain ongoing preservation obligation, monitor, and repeal legal holds.
 - Create policies and process for the records, throughout their lifecycle that can prove that accurate records are produced as a normal course of business from repeatable business processes and that those processes are adequately documented to demonstrate sound corporate operational integrity.
 - Ensure policies and procedures for records retention are available and understood by records custodians for normal business and for litigation holds, including custodians at regional offices, plants, and field offices.
 - Consider reorganizing where official records are stored, such as removing them from field offices in favor of regional or headquarters office where there is likely to be more records or administrative staff to manage them. Provide opportunities and processes for removing semi-active and inactive records to company-approved offsite storage if they must be maintained as paper.
 - Create policies and processes for litigation preparedness that are in place prior to litigation, including collection, preservation, analysis and review.

- Evaluate the role of technology to improve the success and efficiency of legal discovery such as:
 - imaging, indexing, and auto-classifying paper records.
 - purchasing an enterprise content management system to manage the electronic records.
 - purchasing records retention management software.
 - purchasing ESI mapping software.
 - purchasing data analytic software.

**C. Return on Investment
8 points total**

The goal of this section is to evaluate the candidate's understanding of the Return on Investment (ROI) process related to preparing for litigation at SAM. The candidate is to explain the objective of an ROI and list the ROI elements specific to this business case. The candidate does not have to include monetary values and may describe the ROI process at a theoretical level. The candidate is required to explain any assumptions they make. Below are some approaches to ROI that the candidate might take. The grader has the leeway to decide if the answer is logical and is supported by their assumptions and explanation.

The candidate might provide examples, such as those listed below, as possible objectives of an ROI:

- To compare and measure current process costs (including hard and soft dollar costs) against costs related to investments needed to improve a process and how long it will take SAM to recoup the investment.
- Collection and analysis of metrics regarding historical and current litigation within the company, including items such as budget for litigation, actual cost of litigation, efficiencies to be gained through targeted steps to improve the process.
- To assist an organization in determining and prioritizing where operational investments should be made.
- To provide a "bottom line" monetary value to management for investing in improving the business process for investing in adequately preparing for litigation records.

The candidate might include in their discussion concepts such as:

- The formula for ROI :

$$\text{ROI} = (\text{Gains} - \text{Investment Costs}) / \text{Investment Costs}$$
- Justification of the business case through investment of staff time and money through returns of profits, reduced expenses, streamlined processes, increased revenues and/or improved productivity
- Costs versus benefits of the investment
- Financial benefits over time – short term versus long term benefits

- Benchmarking and maturity assessment against Generally Recognized Recordkeeping Principles to measure progress

Below are examples of ROI components that the candidate may discuss:

- Cost for internal labor or consultant expertise to for develop and implement the RIM policies and procedures to bring recordkeeping practices into compliance uniformly across the company.
- Cost and risk avoidance in areas such as regulatory fines and legal judgements related to employee safety and health claims, lawsuit settlements due to not finding relevant information.
- Cost of automation, e.g. servers, computers, communication infrastructure, peripherals, depreciation and maintenance.
- Investment in hardware and software such as e-Discovery software Cloud versus company-owned for IT infrastructure, computing and storage.
- Operational enhancements such as improved internal operations, better access to information, and quicker decision-making.