

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

SILICON AGGREGATES AND MINERALS

Main Topic: Discovery

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

CURRENT BUSINESS SCENARIO:

You are the newly hired corporate RIM Manager for Silicon Aggregates and Minerals (SAM) Inc., a nation-wide mining and mineral processing company. Over the past few years, SAM has been the defendant in several lawsuits involving health and safety issues with its employees at multiple work sites across the country. Three different court systems in three different states found that there was gross negligence on behalf of the company for failure to preserve and produce responsive documents, resulting in monetary sanctions. In those cases, SAM was found to have not collected all of the requested information. In addition, the company was found to have inadequate records and data retention practices and poorly implemented RIM policy. The Vice President of Administration has tasked you to examine the corporate RIM practices and provide a report in three months that proposes changes that the company needs to make in order to be better prepared for litigation in the future.

ISSUES IDENTIFIED:

SAM consists of the headquarters office with 200 employees and many smaller regional offices and processing plants. In addition, there are field offices located at the individual mines. Field office locations may change over the years, depending on the actual site being mined.

Because of the multiple worksites within SAM, you have found that processes for creating and storing records are different based on location for both paper and electronic records. There are no overarching records or litigation preparedness policies for the entire company. Headquarters employs a staff of 5 records clerks in the company's centralized file room. They are supervised by the assistant to the Vice President of Administration.

The clerks follow very basic document handling procedures and their main duties are to receive documents from the various departments, create file folders, and shelve and retrieve files. Only one clerk has had any formal records training, but he is not asked to provide any guidance to the other clerks or to other employees. The indexing system for the files is manual and is based on file designations determined by the clerks.

Electronic records generated by headquarters departments are stored on their own file shares according to file designations that the department determines. Corporate records retention schedules exist, but were created 15 years ago and do not include or acknowledge electronic records and processes. Most of the departments do not have the time or staff to handle records disposition and have not assigned disposition duties to the clerks in the file room.

Regional offices and processing plants have fewer employees with smaller administrative staffs. Most of these offices and plants handle paper and electronic records based on their own methods and needs and do not receive any direction or training from the SAM headquarters. None of managerial or administrative staff at the regional offices or plants are aware of any company retention schedules and tend to discard operations records when room is needed for newer records.

Because of the lack of overarching company records or litigation policies, there are no assigned roles, responsibilities, or procedures during litigation. Over the years, legal counsel would issue memoranda to the departments where responsive records were believed to be held. In more recent years, company-wide emails have been sent out to the headquarters, regional, and field offices of the company announcing legal holds. In general, the smaller or more distant the office is from headquarters, the less likely it will comply. When conducting interviews with offices in the region and field, you frequently were told that those offices didn't believe that the legal hold notices applied to them and that they expected headquarters to address all of the legal issues and production of responsive documents.

During discovery for the employee health and safety lawsuits, the opposing legal counsel asked for records such as worker compensation claims, medical files, training

documentation, and equipment inspection forms. Copies of those documents are frequently stored only in the field offices. Field offices may consist of a worksite trailer without dedicated or consistent office staff. The trailers may be moved to new worksites, but no one within the company is able identify any processes to account for and ensure the transport of records during the moves. Additionally, they cannot identify someone at the worksites who will monitor the litigation, be responsible for searching for the records, and administer the legal hold. As a result responsive records were not identified and provided to the opposition during the lawsuits from the field offices involved.

During discovery for the same lawsuits, SAM headquarters staff interpreted the counsel directions to focus primarily on searching for, and providing paper documents stored within the office space. Because of that faulty interpretation, the company did not produce responsive paper records that were stored in a company warehouse. Legal counsel did not follow up on what was produced and did not question the completeness and accuracy of the findings. Simultaneously, some records boxes that potentially contained responsive paper documents were disposed of at a regional office because no one had the responsibility or training to understand the purpose of a legal holds. Further complicating each of the cases, the company performed careless and incomplete assessments of their electronic records because they did not understand what records to search for, in what formats, and in which server, drive, or backup locations. They did not seek additional guidance from their legal counsel, professional consultants, or from vendors who could have helped. The courts found that the documents SAM produced in each of the lawsuits were of questionable and marginable relevance.

ACTION:

This business case has been designed to assess your proficiency in outlining problems and potential solutions for legal discovery issues within a company. Write a clear, well-organized narrative business case that can be presented to the Vice President of Administration. Your business case should address evident problems in complying with the requirements of litigation and propose solutions.

Your business case will consist of two parts: an Executive Summary and an Analysis. The Analysis section consists of several questions that will require a discussion of the problems and your proposed solutions.

I. Executive Summary

10 points maximum

Explain (no more than 2-3 paragraphs) the basic overall problem(s) that you have identified, the key issues or factors that must be resolved, and a high level description of your recommended outcome that would be used to brief an organization's executive. The Executive Summary should not be a detailed description of the problems and recommendations, but rather a shorter description of your analysis in Part II.

II. Analysis:

40 points maximum

This section should deal with the specific problems and issues discovered during the study of litigation preparedness of Silicon Aggregates and Minerals (SAM). Your analysis may contain lists or bullet points, so long as the section includes a paragraph explaining why the actions are appropriate. Your business case may not consist only of lists or bullet points without explanation. Your business case should address the following topics:

A. Identification of the Problems

12 points total

Identify problems that you see in this organization. Discuss why a RIM manager would perceive those issues as concerns or risks.

B. RIM Program Recommendations

20 points total

In order to correct the problems you have identified in Question A, propose how the issues can be addressed from the point of view of a RIM Manager. Discuss why the steps are necessary.

C. Return on Investment

8 points total

Discuss at the theoretical level how ROI would result from improving SAM's RIM and legal risk issues. You should explain the objective of an ROI, how an ROI can help build a justification for an initiative, and list the elements of an ROI specific to this business case. You are required to explain any assumptions you make.