This is part of a syndicated column I have created for ARMA chapters, including the Phoenix ARMA Newsletter My column is devoted to answering information governance, records management and related legal questions from Chapter Members. As you read my responses, please note that although I am an attorney specializing in these areas of law, these are only my opinions based on very limited knowledge of the Member's particular circumstances. My opinions should not be construed as legal advice. Kindly consult with an attorney for more formal advice. That said; please keep your interesting questions coming.

1) ARMA has developed GARP (Generally Accepted Recordkeeping Principles). Is GARP catching on?

   Yes. It is amazing to see how many organizations are issuing Requests for Proposals that are either directly or indirectly tied to the GARP Principles. Some organizations have started with the ARMA health check-up tool, available at www.arma.org/garp/health.cfm. From there, they often make the determination for next steps including whether to proceed with a more formal needs assessment, one of which ARMA will be releasing in January of 2012. Other organizations decide to retain the services of an outside firm to help manage the assessment process. Once the needs assessments are done, this is a great tool for planning, including priorities, timing and budgeting.

2) How can adopting GARP principles help an organization in Legal matters?

   As I noted in a chapter I wrote recently for a book to be published by the American Bar Association this coming summer, the GARP principles essentially codify legal requirements. This means that adherence to the GARP principles should indicate how the organization is on top of its statutory and regulatory recordkeeping requirements, in addition to compliance with other information governance mandates. The Principle of Retention, for instance, calls for adherence to legal retention requirements and business retention needs. Overarching all this is the Principle of Compliance, which means that organizations must be sure that they are complying with recordkeeping and overall information governance requirements. In terms of "Legal matters," compliance with GARP should mean that the organization has a RIM program that is legally defensible, including the all-important Legal Holds policy and procedures to avoid sanctions for spoliation (i.e., the wrongful destruction of documents or evidence).

3) Are legal departments typically aware of GARP? If not, what are some suggestions for engaging the department in GARP implementation?

   Since GARP is a relatively new concept, it would be surprising if most legal departments were aware of it by now. However, as noted in response to Question 1, GARP is catching on at great speed. That said, to engage legal departments the first step could be to obtain authority to conduct at least the ARMA health checkup tool noted above. I have found that organizations are quite receptive to the results, once they realize in concrete terms the status of the organization. Many of my clients in RIM departments are using GARP to convince their superiors of the need for additional resources. Starting this year I am starting to see RIM departments get budgeting for 2012 tied to GARP assessments.

One of my clients just received authority to add two members to his RIM staff. Of course, my experience is purely anecdotal and may not be indicative of all organizations.

4) If an organization is only at the early stages of implementing GARP, can that hurt them in litigation?

   I would say no. We always tell our clients to strive for "progress over perfection," a quote I learned from Terry Coan several years ago. I frankly cannot see how a court could fault an organization for striving to improve its compliance, transparency and availability recordkeeping principles, to name a few. The status of the organization's program will be discoverable irrespective of the state of your GARP assessment, assuming you have even started one. Yes, the analysis itself may be discoverable if it is not protected by the attorney client privilege, but it may not be relevant. Then, even if it is deemed relevant and discoverable, one could argue that the organization's recognition of its shortfalls is a step in the right direction. My biggest concern is not whether the organization is planning to implement changes, but whether the organization fails to implement legal holds that could result in spoliation claims. Almost all of the published ediscovery cases deal with spoliation in the face of pending or anticipated litigation or investigations, and not with scrutiny of the status of the organization's information governance plans.

John Isaza is a California-based attorney and founding partner of the Howett Isaza Law Group, a law firm that specializes in electronic information governance, records management and overall corporate compliance. He may be reached at Jisaza@HiLawGroup.com or follow him on Twitter and LinkedIn.