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THE INFORMATION GOVERNANCE WEB —

EVERY STRAND MATTERS

By Linda G. Sharp

30-SECOND SUMMARY

The siloed approach to managing information is old hat. Like the spider's web, each unit of the organization is intertwined with the others. Therefore, companies should consider managing their data as a cohesive environment, recognizing that the business teams, records, legal and compliance units are all seeking access to the same information. This approach optimizes storage costs, reduces risk to the organization, and creates a seamless infrastructure. In order to tackle the issue of comprehensive information governance, it is useful to map out and account for all existing systems in which both structured and unstructured data may already be managed. All unstructured data, even "junk," needs to be addressed by the information governance system.

Five information governance issues in-house counsel should consider

The legal industry is changing, and so are the expectations that organizations place on their in-house counsel. Legal teams are becoming increasingly and actively involved in corporate record retention initiatives; some legal teams are even controlling such initiatives. Additionally, more and more records managers and directors are reporting directly to GCs as part of a data-management initiative that is now broadly termed "information governance."

With the evolving role of in house counsel in information governance comes new responsibilities, challenges and opportunities. As Peter Parker (of Spiderman fame) was sagely counseled by his Uncle Ben: "With great power comes great responsibility." Information governance, after all, is much like the web of a spider. Each strand of data is intertwined, supporting the organization's business processes, records initiatives, compliance requirements and ediscovery processes. As you look at a spider's intricate web, you discover that each strand has a specific purpose — so, too, does corporate data.

By understanding and addressing the information access needs of its various stakeholders, an organization can best position itself to reap the full benefits of its information governance strategy. This article explores five key considerations that will aid in house counsel in establishing an effective, long-term information governance plan.

Involve all relevant stakeholders, not just individual departments or business units

Departments and business units can no longer operate in their own bubbles, creating disparate silos of information. Traditionally, when a need arose for a particular business unit, they would notify IT. IT would reach out to find a solution to fix that specific need. Little consideration was given as to how this might affect the rest of the organization, or whether there could be a potential alternative solution that other departments could leverage to create enterprise-wide efficiencies.

Many information governance goals are shared across business units, but a pervasive failure to communicate often means that different departments are all tackling the same problems from different angles. Organizations that are seeking to implement a Total Information Governance[®] solution are moving away from the siloed approach to managing information. They have come to recognize that the optimal solutions are those which allow various stakeholders to leverage the same information from different perspectives, thereby optimizing storage costs, reducing risk to the organization, and creating a seamless infrastructure that can be leveraged by all of the stakeholders: legal, records, compliance and business teams.

The overlap between records management and in house counsel serves as a prime example. Even though both departments need comprehensive information management

infrastructures, as well as a defensible data management lifecycle, they often do not collaborate proactively toward achieving those goals. Records management teams of years past were focused only on the “records” of the organization (e.g., contracts, leases and hiring documents). Today, however, records managers must control all of the data in their organization, a task that includes identifying strategic ways to eliminate information that either has no business purpose or has passed its useful lifespan.

Yet legal teams continually seek access to, and replication of, this information for various regulatory investigations, litigation matters and the like. As legal teams strive to identify corporate data that is necessary for their purposes, additional silos are being created. Copies of such documents are made as data is exported to outside counsel and service providers to house the data during the pendency of the particular legal matter. This process takes the data outside of the corporate environment, creating ever-increasing copies of the data and wreaking havoc with corporate records retention policies.

One business unit’s attempt to address a specific information governance goal, without consulting other business units, can undermine everyone’s intentions. While legal teams generally account for the largest share of the silo problem, for the reasons described above, they are not alone in this regard. Companies maintain data in file shares, SharePoint, records management data stores, email environments, backup systems — the list goes on and on. The same exact piece of data may exist in several different

locations within the enterprise, as business units struggle to take control of the data for their specific purposes. Unfortunately, these disparate efforts compound the enterprise-wide data problem, leading to:

- overlap in systems,
- duplicative data,
- redundant point solutions,
- incompatible siloed systems, and
- amounts of data that are either impractical or impossible to import or export.

Know where your unstructured data resides

To tackle the issue of comprehensive information governance, it is useful to map out and account for all existing systems in which unstructured data may already be managed. It is vital to consider common data types (e.g., email, business records and file share systems) and more “informal” data types (e.g., enterprise instant messaging and corporate social media posts). Do these various data types have a repository or system where they are managed?

The next step is to identify possible overlap between the various systems. Overlap in function can create duplicate data, making it more difficult to manage and find the data. To address overlapping systems, business units must decide which system will be the “master” system for the purpose of invoking data retention policies.

Identifying the business units that have “ownership” (i.e., primary control) over each information management tool is crucial to solving this puzzle. Know whom the key contacts are — the personnel whose primary responsibility is to oversee



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the various unstructured data systems. Compliance, legal, records management and IT all play a role in untangling the web.

Identifying who controls the various information management systems is as important as understanding how these systems are accessed when unstructured data needs to be located for litigation purposes. There are some key questions that legal teams should be able to answer. Does the legal team have direct administrative access to the systems, or does access have to be requested via other parties, such as IT or records managers? How easily are systems searched for relevant information? For example, can they all be searched globally from one point of access, or must each system be searched individually? How long do simple keyword searches take? If your company has embraced the siloed approach to data, these searches could,

unfortunately, take literally days or weeks, and with varying results, due to the use of different applications to conduct the search process. A search query used in one data store may render a completely different result in another data store.

Consequently, it is critical to understand the requirements for each of the applications that you might be using, as well as the effect on that group of data. This is most important when discussing keyword lists and processes. The query that you agreed on with opposing counsel, or that you are directed to undertake by court order, may not render consistent or valid results across all of your data stores.

Mapping out the business's unstructured data "landscape" can have benefits beyond litigation readiness; it is also helpful to understanding long-range risk management and business strategies. Knowing the structure of

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information management systems is especially useful — and often required — in heavily regulated industries, such as finance and biomedical manufacturing, where IT systems must be available for audit.

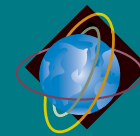
Data mapping can also aid in complying with idiosyncratic state laws that require protection of sensitive customer or consumer data. For example, Massachusetts 201 CMR 17¹ requires that any organization that

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be kidding*

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owns or licenses the personal information of a Massachusetts resident to follow certain standards of encryption and security, and to maintain the personal information in systems that are capable of compliance. Such organizations are also required to maintain a comprehensive, written information security program. Data mapping is a useful exercise for fulfilling the requirements of this regulation, and in a broader sense, the data mapping process can lead to identification of possible points of failure or potential areas of non-compliance before legal issues arise or become newsworthy.

Finally, data mapping can help companies utilize the protection conferred by the Federal Rules of Civil Procedure with respect to data that is unduly burdensome or costly to access.² Data mapping will allow counsel to articulate precisely why obtaining a particular piece of ESI would be unduly burdensome. Simply knowing that the data exists “somewhere” is often more harmful than being able to prove that the enterprise no longer has it or that it resides in an outdated system. With tangled data silos and duplicate copies, you may turn up unexpected results... assuming you turn up anything at all. By taking a methodical approach to general mapping of information management systems (including age, function, accessibility, and search capacity), it is much easier to state in advance the objective costs and burden associated with producing a given item.

Too much data is not inherently dangerous or costly; mismanagement is

Even if particular data is not considered to be an important business document or official record, it could potentially have legal or business relevance. And regardless of its potential relevance, all unstructured data needs to be addressed by the information governance system, even if it is just to declare the data as “junk” and assign it a date for deletion. All data types need to be assigned a retention period that reflects applicable rules, regulations or relevant law. For data types that do not have a retention period mandated by law, or by other business or industry standards, there needs to be a practical retention period that the business chooses and consistently enforces via its information governance system. Consistent management of data lifecycles is a major component of defensibility; defensible lifecycle management will help avoid potential sanctions, such as spoliation sanctions.³

Lifecycle management is especially crucial in light of the fact that the number of data types considered potentially relevant to litigation is continually growing; as such, information governance strategies have to account for all types of data. Corporate social media posts, enterprise instant messages, Bloomberg chats and other information that traditionally do not have a hard-copy equivalent are now often considered to be legally relevant in the course of discovery. Additionally, certain industries are subject to regulatory requirements mandating maintenance of this data for designated time periods.

From the perspective of legal strategy, knowing exactly what you have in terms of data — even if it is unfavorable to the company — is preferable to possessing unknown information that might be used against you during litigation. The

more you know about your data landscape, the more likely you are to discover a “smoking gun” that makes settlement the clear course of action. Today, it is virtually axiomatic that companies prefer to “win or lose early.” It is ideal to know how the evidence stacks up prior to spending unnecessary time and effort on protracted litigation. It is better to know bad news in advance, rather than being caught off guard by the opposition. Furthermore, the more you know about the data available to you, the better prepared you’ll be for meet-and-confer negotiations, or meeting with a federal agency regarding a regulatory investigation, or even negotiating a keyword list in civil discovery.

There is a common misconception that more data is equivalent to more expense, largely rooted in the fact that systems have been implemented ad-hoc over time to control more data and more types of data. Instead, it is the complexity in information governance systems, and not the amount of data stored by those systems, that tends to increase costs for legal teams and other business units. More systems for managing data means slower search times, inability to search from one central location and costs associated with logistics, such as importing and exporting data. Data silos implemented for specific types of data (e.g., standalone email archives and ECMs) segregate data and make it difficult to find information, wasting time and resources. Legacy systems (for old data) are frequently expensive to upgrade or maintain. Duplicate data and data managed in multiple locations drive up costs. Duplicates waste storage space, are often managed in disparate ways, and cause immense difficulty in accurately determining whether, and where, certain data exists. For example, one may confidently declare that a certain email is not present

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Practice Resource

ACC Alliance Partner Jordan Lawrence's Assessment for Records Risks service quickly and accurately identifies and values a company's information and creates the foundation of a successful information governance plan. Legal and Information Technology don't speak the same language and Jordan Lawrence bridges the gap. Getting everyone on the same page ensures the successful development, implementation and success of a defensible information governance plan. Find out more at www.jordanlawrence.com/acc.

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within the organization, when in fact a copy resides in a separate system.

Total Information Governance® forms foundation of ediscovery downstream steps

The Electronic Discovery Reference Model (EDRM), which most consider to be the leading conceptual model of the ediscovery process, is based on several steps that are iterative and frequently run parallel to one another.

Information management (or information governance) forms the foundation of the process. All subsequent iterative steps depend on data being present in the information management stage. If data is not present in the information management stage, then it will not be available at any point downstream. "Garbage in, garbage out," the saying goes. Potentially missing information poses a significant risk for the defensibility of the overall process.

The highly iterative nature of the EDRM steps often necessitates moving back and forth from one step in the process to the next, as data is evaluated and refined, or as more custodians and data stores are identified. The more "solutions" that are implemented in the discovery process (e.g., records management platforms, ECA tools, predictive coding utilities, review platforms, preservation tools, etc.) the greater the risk of compromised data integrity and increased costs.

It is common to see corporate legal departments using five to seven targeted point solutions to weave their data through the ediscovery process, and to ultimately pass the data to outside sources — whether to outside counsel or a third-party service provider. Each export and import of data poses the risk of data corruption and loss. As litigation trends necessitate handling increased volumes of data, the process of export and import of data sets between solutions becomes slower, costlier and riskier. For large

organizations dealing with massive volumes of ESI, the lag time and risk of loss associated with shuttling data between point solutions has often rendered this paradigm infeasible.

Adopting a Total Information Governance strategy reduces risk to the organization while, at the same time, streamlining the ediscovery process and reducing costs.

Point solutions might miss the point (and the big picture)

The use of point solutions is extremely common in addressing specific ediscovery needs (especially on the right side of the EDRM); however, point solutions generally do little to address the core requirements of information management. The process usually involves legal teams collaborating with records managers and IT personnel to garner a targeted pool of data that they believe may address the issue at hand. Unfortunately, this process is far from perfect — a sort of guessing game, but with potentially disastrous consequences for losing. IT and records managers, in their efforts to aid the legal teams, frequently rely on individual silos of data that are designed to handle just one data type (e.g., email, business records or instant messages). Most often, these silos cannot be searched through globally as a group, making enterprise-wide search impossible.

Point solutions are only as useful as the data sets that are fed into them. If the information management stage is incomplete or skewed, then the data that is fed into point solutions will be equally incomplete or skewed. As noted earlier, "Garbage in, garbage out." Indeed, the greater the number of point solutions used, and the more complex the ediscovery environment, the greater the risk for mismanagement of data. Overlapping data can lead to lingering duplicates. Data can become corrupted due to disparate import/export capabilities. The effects

of incomplete data sets become compounded. The costs to import and export between data systems increase, as does the time required to process data — due to the need to export, import and reconcile the data.

Rather than relying on point solutions, legal teams should look to global and holistic solutions that, at a minimum, allow for global search and discovery of data across the entire enterprise. Ideally, enterprises will implement comprehensive solutions that store all unstructured data in one, centralized location, and not only perform global search, but also ediscovery, records management and compliance functions. Such solutions eliminate data silos, mitigating the unnecessary risk, cost and inconvenience that they cause.

Meet enterprise needs

Companies can only achieve a Total Information Governance strategy when they look to manage their data as a cohesive environment, recognizing that the business teams, records, legal and compliance units are all seeking access to the same data. The stakeholders in an enterprise, as well as the company as a whole, will benefit by identifying a solution that meets the needs of the entire enterprise. Like the spider's web, each unit of the organization is intertwined with the others. The touching of a strand by one unit may affect the others. In order for the company to operate optimally, there must be integration between the units. Reductions in data volumes (by removing duplicates) and security risks, the improved ease with which

employees can repurpose their prior efforts, and reductions in the overall cost of managing data infrastructure are just a few of the significant benefits an organization can derive from Total Information Governance. **ACC**

NOTES

- 1 www.mass.gov/ocabr/docs/idtheft/201cmr1700reg.pdf.
- 2 See Federal Rule of Civil Procedure 26(b)(2)(B).
- 3 See Federal Rule of Civil Procedure 37(e).



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