

5 STEPS TO LITIGATION READINESS

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1 Create a Data Map

2 Establish Information Governance

3 Develop a Litigation Response Protocol

4 Prepare a Litigation Response Team

5 Enable Response Tools

As the amount of data in the world grows exponentially, the need for organizations to be “litigation ready” is growing as well. IDC predicts 50% annual compound growth in enterprise data storage through 2016¹. Add to this the fact that organizations are finding themselves as a party to litigation or investigations more often than ever before; a 2013 Alix Brothers survey found that 35% of corporate respondents were involved in more legal disputes this year than in the previous 12 months, compared to 7% who said that the number of disputes dropped.²

Forward-thinking organizations are now moving from a reactive litigation mode to proactively developing readiness for new litigation. This entails organizing and managing information, assembling the necessary team to meet a litigation challenge, and supporting that team with effective tools and solutions. This white paper focuses on the five most important steps to help your organization prepare for potential litigation.

¹ IDC Enterprise Storage Study <http://www.infostor.com/san/data-storage-in-2014-cloud-virtualsans-big-data.html>

² Cathleen Flahardy, Companies face more litigation than they did two years ago, Inside Counsel (July 18, 2013). In 2013, 48% of organizations faced labor litigation, 36% had at least one case on contract litigation, and 20% had a regulatory investigation in 2013, according to the Norton Rose Fulbright Annual Litigation Trends Survey. [<http://www.insidecounsel.com/2013/07/18/companies-face-morelitigation-than-they-did-two-y>]



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STEP #1 – CREATE A DATA MAP

Corporate databases and other information sources are often the focus of discovery proceedings. Attorneys must identify and understand these sources very early in the case, to ensure effective legal hold, comply with initial disclosure requirements, cooperate and negotiate in meet-and-confers, carry out targeted collections, and quickly evaluate case merits based on the evidence. The best way to do this is to develop a documented inventory of information within the company's custody and control, known as a "data map." Data maps identify each data source, its status, and other characteristics required to identify, assess, and collect from each source. Data maps permit attorneys to gain transparency and access into the variety of complex applications and databases used by corporate business departments. Data maps also quickly provide valuable information to counsel about what type of data should already have been deleted in the company and what should be available.

The starting point for creating a data map is to identify all data sources. This includes data that resides in the corporate data center and corporate cloud systems, as well as data that is created and stored outside the data center that may still be within the company's custody or control. For each source, data maps should reflect usage attributes such as access, update cycle, backup details, permission structure, and any other element that may be requested for litigation support. The specifics will vary based on the type of data and the applications it supports.

In addition, data maps may reflect what specific inputs and outputs are used with key data sets, from where the inputs derive, and what other data sets the outputs feed. Every organization has an "information flow." Understanding and documenting this flow is critical to developing a cohesive view of the information and assessing it for litigation preparedness. It is also important to identify the individual or group that is most knowledgeable for each data set to access their knowledge of the specific information. Part of an example data map below showcases some key information that a data map should contain. Your data map will be based on the information within your organization and how it is structured.



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A key aspect of the data mapping process is to ensure that all deletion and retention practices are documented, accurate and consistent with company information governance policies. At the outset of a new litigation, corporate or outside counsel will identify and initiate legal holds, notifying the organization—often through the IT department—that specific information or data sets must be preserved and data deletion prevented. It is important to remember that not only must current information be preserved, but archived data that may reside in backup tapes or other forms must be preserved as well. Data maps are essential to ensure that holds are appropriately administered for each data source and data is appropriately collected.

CATEGORY	SUB-CATEGORY	STATUS	APPLICATION NAME	VERSION	DIVISION	LINE OF BUSINESS	LOCATION	DATE DEPLOYED
Bus. Application	Inventory	Active	Ansys	3.1	Enterprise	Forrest Prods	Spokane	2011
Enterprise Application	Accounting	Active	Oracle Accounting	6.2.5.8	Enterprise	All	All	2012
Bus. Application	Warehouse	Active	SamMan	8.2	Warehouse	Forrest Prods	Spokane	2007
Bus. Application	Warehouse Labor	Active	SamMan	8.2	Warehouse	Forrest Prods	Spokane	2007
Bus. Application	Shipping	Active	InHouse App 21	11.4.5.2.7	Shipping/ Customer	Forrest Prods	Spokane	2009
Enterprise Application	Billing	Active	Oracle Billing	6.2.5.8	Enterprise	All	All	2012
Enterprise Application	A/R	Active	Oracle A/R	6.2.5.8	Enterprise	All	All	2012
Collaboration	Email	Active	Exchange	2013	Enterprise	All	All	2013
Collaboration	Messaging	Active	SameTime	4.1	Enterprise	All	All	2011
Collaboration	IP Telephony	Inactive	Cisco Telephony		Enterprise	All	All	2005
Collaboration	Email Server	Active	MS Server	2013	Enterprise	All	All	2013
Bus. Application	Picking Tickets	Inactive	SamMan	8.2	Warehouse	Forrest Prods	Spokane	2008
Bus. Application	Order Entry	Active	OrderPlus	4.3.9	Shipping/ Customer	Forrest Prods	Portland	2010
Enterprise Application	Payroll	Active	Oracle Payroll	6.2.5.8	Enterprise	All	All	2013
Enterprise Application	Vacation Accrual	Active	Seibel	3.4.5	Enterprise	All	All	2010

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STEP #2 – INFORMATION GOVERNANCE AND DATA FLOWS

Information governance policies should reflect how data is handled by the organization and its employees. The traditional approach of permitting employees to keep all data in any format convenient for them is an outdated practice that may become very expensive in litigation by generating an overwhelming amount of disorganized data. Active information governance helps prepare organizations for e-discovery activities. It can also make the organization more efficient by ensuring that high value data is easily accessible, and by decreasing capacity requirements for IT.

- To achieve responsible information governance, the organization must implement a three step process.
- Develop and implement policies that require data to be stored and managed in a way that supports the organization's legal and business requirements;
- Train employees to follow these policies in the course of their daily activities;
- Audit activities to ensure that the information governance policies are being followed.

The information governance policies must document specific protocols for handling corporate data, and specify which staff or job functions have the responsibility for ensuring that these processes are implemented and executed. The policies must be specific and clear, and should cover the following issues:

- Data storage
- Data deletion
- Preservation for legal and regulatory holds
- Internal and external data communication
- Backup procedures
- Designated data owners
- Use of personal devices
- Use of third party data services, include cloud providers, webmail and social media

These policies must include specific directives, such as “back-up tapes will be reused after 30 days” or “all mobile devices must store and communicate data in an encrypted format.”

While Information governance policies generally address electronic data, they should also apply to paper-based data; organizations ignore paper-based data at their peril.

Once Information governance policies are adopted, implementing them may involve sorting through large amounts of legacy data to delete stale data and organize data that has business or legal value. Data remediation projects are often key to reducing litigation costs by reducing the volumes of data that must be reviewed. Because they can only reduce volumes if documents are not already under a litigation hold, it is best to deal with the data sooner rather than later in case litigation does arise. However, deletion must be done according to a deliberately planned and carefully documented process, rather than a spontaneous “clean up day.” While “clean up days” may be good faith efforts to remediate data, an organization may later find it difficult to prove good faith, if it just happens to be served with a lawsuit or subpoena the next day.

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STEP #3 – DEVELOP A LITIGATION RESPONSE PROTOCOL

When litigation does occur, it is essential to have a documented process for responding in an effective and efficient fashion. Having a plan in place will lower costs and reduce the time needed to respond to the action.

First, determine how the response will be made, and by whom. While this may seem obvious, the goal of a response process is to avoid a “fire drill” when many parties and departments are involved, creating the potential for confusion. The plan should include a set of different responses that can be implemented, depending on the type and scale of the litigation that occurs. The responses may be driven by the type of incident—such as whether it was internally or externally initiated, or the nature of the litigation. Finally, the response protocol should also name which partners or technical resources might be needed, and have contracts or agreements in place that can be activated in the event of an incident. Having resources in place prior to the event will help the organization respond quickly.

STEP #4 – ESTABLISH A LITIGATION RESPONSE TEAM

An important corollary of developing a litigation response protocol is to identify and develop the response team that will be called to action. This team will likely cross different groups within the organization as well as external parties. The development of the team must include training in the litigation response process as well as in the key tools identified by the organization. In litigation, individuals identified as most knowledgeable for relevant data sources may also be added to this team.

To assemble the needed expertise, the organization should include individuals with required skills in e-discovery, and also individuals with knowledge of key business and legal issues. The composition of the team should be flexible, as different types of incidents may require different skill sets.

Designated team members should be trained on the litigation protocol and how to engage as a team, so that they are both acquainted and prepared for the response process. This includes training on the tools and software products that will be used to manage the litigation process.

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STEP #5 – ENABLE RESPONSE TOOLS

Finally, organizations must ensure that the tools and platforms to support the response team are in place and ready to operate.

When choosing a platform for litigation readiness and response, organizations should ensure that it has the features necessary for all team members as required by their roles.

Ideally, the solution should have a single data repository that will be shared across team members and that can be leveraged across cases. Multiple repositories can add to the confusion and lead to missed documents, inconsistent handling of documents, or wasted work product.

Given the need for effective and frequent communication during litigation response, the platform must improve and enhance the collaboration of the team. It must provide an intelligent and structured approach to ensuring that team members are working together. Tools should also help memorialize collaboration activities to ensure all of the team's workings are transparent and auditable.

SUMMARY

The old adage that “an ounce of prevention is worth a pound of cure” has never been more true than it is in litigation readiness. Companies that are prepared for discovery not only reduce risk and save costs, but give themselves a key advantage in litigation: the ability to focus on case merits.

ABOUT INNOVATIVE DRIVEN

Innovative Driven developer of the ONE integrated e-Discovery platform, is a leading provider of customizable e-Discovery solutions and services across the Electronic Discovery Reference Model, as well as comprehensive computer forensics and expert consulting services. For more information contact:

Wynter Grant, Chief Revenue Officer
wynter.grant@innovative driven.com | 877.637.4836

ABOUT THE AUTHOR

Tara Emory is the Director of Consulting of Innovative Driven Tara consults with companies and law firms to create information management and efficient e-discovery processes that reflect a best fit for each client and case. Through her experiences as an attorney and technology consultant, Tara has managed large scale projects involving data remediation, litigation, investigations, mergers, and due diligence. Tara speaks and writes frequently on information management and e-discovery, and is a member of The Sedona Conference Working Group 1.

Tara S. Emory
Innovative Driven
Office: (703) 533-9200