

Integrating Records Management and eDiscovery Processes for Greater Efficiencies

APRIL 2008

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CA INFORMATION GOVERNANCE SOLUTIONS

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Executive Summary

Challenge

Although records management and eDiscovery are complementary in many areas and respects, the functions typically report in to different units within the organization. But, a review of common tasks and obligations faced in both shows that an integrated approach to these very necessary processes can help enterprises enhance their information governance postures while decreasing their operational costs and eliminating redundancies.

Opportunity

The integration of the eDiscovery and records management functions is gaining acceptance as organizations look to derive true business benefits from addressing the management challenges presented by amendments to the Federal Rules of Civil Procedure concerning the discovery of “electronically stored information.” This trend is as much a result of the similarity and overlap between the challenges and responsibilities of the departments as it is because there are many efficiencies to be realized by the convergence.

Benefits

Applying sound records management principles, including those for retention management, throughout an organization can provide many benefits, including:

- Rapid and reliable eDiscovery searches for potentially relevant information from an overall reduction in the amount of data under management
- Decreased costs from less information to review and produce in a discovery event
- Optimized storage costs and backup windows via a reduction in the volume of information to maintain

Functional Convergence: eDiscovery and Records Management

Linkages Are Obvious and Natural

The linkage between eDiscovery and records management is gaining acceptance as organizations look to increase efficiency and comply with the amendments to the Federal Rules of Civil Procedure concerning the discovery of “electronically stored information” enacted on December 1, 2006. And although they are separate business functions, there is enough similarity and overlap between their inner workings to make a strong case for integrating them.

By examining common tasks and obligations faced in eDiscovery and records management, it becomes clear that both processes can help organizations meet their information governance objectives and would benefit from an integrated approach.

Related and Similar Tasks

Two of the major tasks in the records management workflow are the declaration/classification of records and the assignment of the corresponding retention period. However, a typical knowledge worker — the creator of the majority of important business documents — doesn't think in terms of what is or is not a “record.” And as such, the knowledge worker does not think in terms of compliance and security as they relate to storage and maintenance of original content.

To establish the most efficient management of this information, appropriate documents should be declared as records and classified according to an organization's established retention schedule and file plan. And to be complete, the associated records management program must make this easy for knowledge workers — and by automating this process where possible.

Similarly, in the eDiscovery workflow, attorneys may be asked to place documents on “legal hold,” where they suspend their purge and restrict access, or to classify documents as responsive, privileged or pertinent to some specific issue. In this context, automation also is key for eDiscovery in order to facilitate success, minimize costs and help avoid penalties.

The underlying nature of each task is remarkably similar; and amounts to making decisions regarding the value and necessary retention time for specific documents. Moreover, each task requires a classification element and a retention element. So while there are many pieces of the eDiscovery flow that have no records management counterpart, and vice versa, the essence and goals of each process naturally map to automation.

Related and Similar Obligations

There are also striking similarities in the obligations faced in eDiscovery and records management settings. Ultimately, a party's eDiscovery responsibility is to produce the material that is responsive to an opponent's request — as long as that information is not privileged or otherwise protected. But until those outcome-determinative decisions can be made, a party's obligation is to protect “potentially relevant” information from destruction. And, doing so requires “locking down” all versions of the documents and records in question with unaltered metadata.

In other words, parties are charged with a “keep and don’t change” obligations as they relate to pertinent information. Keep and don’t change obligations are well known to records managers. And together with access controls, they form the foundation of records management obligations.

Dissimilar Reporting Structures

Although records management and eDiscovery are complementary in many areas and respects, the functions typically report in to different units within the organization. The records department often reports directly to IT, Operations or even Finance. When a discovery order is mandated, however, records managers and Legal work closely together — so much so that an argument could be for records management to report to the Legal department — at least within heavily litigated organizations. Overall and beyond that specific scenario, such an approach makes sense given the nature of some of the mandates that records management carries as part of its charter — like keeping information for statutory or regulatory compliance.

Another key factor is the benefit of applying sound records management principles, including retention management, throughout an organization. Once these principles are extended beyond records and into all enterprise content, an organization will be able to harmonize the business value of information with the amount of time it is retained. And another positive byproduct will be the purging of nonessential information, which will help to reduce costs.

SECTION 2: OPPORTUNITY

Efficiency Through Integration

By leveraging retention policies from records management for eDiscovery, these and other business processes are improved. Having less data to manage makes the eDiscovery search for potentially relevant information easier, more efficient and less risky. Similarly, having less to review and produce in a discovery event will help reduce costs. Finally, storing less information can also help IT maximize storage space and reduce backup times.

Data Mapping

The first step in any retention management exercise is to determine what information exists and where. And, capturing the results in a written or graphical format, often referred to as data mapping, is one of the hot topics in eDiscovery.

The importance of a data map has increased because of the recent amendments to the Federal Rules of Civil Procedure and the management challenges that they present. Two of the key issues are the early attention challenges arising from the changes to Rules 16 and 26(f) and the records management discovery challenges arising from changes to Rule 26(b)(2)(B).

The amendment to Rule 26 that created Rule 26(b)(2)(B) resulted in “two-tier” discovery that can serve as a best practice among frequent eDiscovery practitioners. That amendment presents a management opportunity in that a producing party can, under some circumstances, avoid producing information that sits on sources it has identified as not reasonably accessible because of undue burden or excessive cost. This identification step seems to beg for a data map, because the organization that has endeavored to create a data map should be in a

better position to prevail in any disputes over its identification of “not reasonably accessible” information.

And not only will the end result — the data map — be a useful tool in and of itself, but the necessary department-by-department survey will also provide an excellent opportunity to identify the retention procedures in use in an organization and to compare them to any written policies that may exist.

SECTION 3: **BENEFITS**

Making Records and eDiscovery Work for the Business

An organization that links records management and eDiscovery will become more efficient and capable to enforce policies across the enterprise — and will save time and money in the process — with the storage of less information, which in turn, reduces the amount of information necessary to be reviewed in searches.

These benefits will come as less of a surprise to records managers and lawyers than to the rest of an organization because they have seen the growing overlap for many years. However, the efficiencies and economies to be achieved through integration of the two disciplines can help enterprises turn these functions from cost centers to profit centers that are aligned with the goals of the business.

SECTION 4

Conclusions

The integration of the eDiscovery and records management functions is gaining acceptance as organizations look to derive true business benefits from addressing the management challenges presented by the amendments to the Federal Rules of Civil Procedure concerning the discovery of “electronically stored information.” This convergence is helping heavily litigated enterprises ensure comprehensive application of sound records management principles, and is thereby paying dividends for eDiscovery processes by eliminating redundancies in the type and amount of data under management.

About the Author

Peter Pepiton has spent the past 15 years helping lawyers utilize technology to achieve greater efficiency and better results in litigation. He is currently supporting CA's eDiscovery focus in Information Governance and spends much of his time writing and speaking on the methods and benefits of achieving greater eDiscovery readiness.

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