

Paper and Digital: How Records Management Decisions Affect Litigation Readiness.

By Peter Balis

Law firms have been challenged with paper records issues for as long as firms have been litigating cases for their clients. This conundrum has continued to become exponentially more complex as we entered the digital age, and the volume of information has continued to increase. Electronically Stored Information (ESI) has been the catalyst for a new age of challenges that Records and Information Management (RIM) professionals are tasked with, which includes Information Governance (IG). Information governance is defined as the means to help organizations manage corporate risk and improve operational efficiency as they work to achieve compliance with regulations and laws governing enterprise information. Essentially, IG programs are a superset of records management programs and feature similar methodologies and processes. RIM professionals, both inside and outside of law firms, rely on Electronic Document and Records Management Systems (EDRMS) to help them bridge the gaps that exist, but this alone will not provide the ultimate solution. Litigation readiness requires that RIM professionals, IT staff, attorneys, support staff, of both law firms and their corporate clients work collaboratively.

The legal landscape has been changed permanently and continues to evolve rapidly due to challenging information management environments, and obsolescence in office technology systems. Even in the rare case where a firm is way ahead of the information curve, their clients in many instances are not. Historically, litigation readiness fell primarily into the lap of the law firm, and clients expected their outside counsel to be capable of cleaning up their mess. This of course came with a very high cost that is no longer sustainable following the “Great Recession of 2008”. Corporate GCs are striving to become viewed more as business leaders in the board room vs. inhibitors of profitability. Along with being engaged and working collaboratively with their outside counsel, they are also looking to Legal Process Outsourcing (LPO) providers for expertise and reduced litigation costs.

Records management and information governance are the multi-disciplinary enterprise accountability framework that ensures appropriate behavior in the valuation of information. The definition of roles, policies, processes, and metrics required to manage the information lifecycle, including defensible disposition is paramount. An organization with a solid foundation of proven successful records and information management practices will foster collaboration among key stakeholders in an environment of comprehensive information governance. An effective system has the following components:

- Establish ownership and accountability of the RIM and IG programs.
- Retain the right information for the correct length of time, and securely dispose of it when it is no longer required.
- Meet legal discovery requirements faster and more cost effectively.
- Control and manage records storage and destruction fees.
- Archive vital information for business continuity, disaster recovery, and long term retention.
- Use technology to manage records and information to improve the program.
- Integrate policies and procedures throughout your organization.
- Arrange for continuous training and communication throughout the organization.
- Review and audit to improve program continuously.

The above components are essential to a compliant RIM program. Individually, they each are a good practice. Taken together they become a solid foundation of best practices for success.

One of the biggest drivers within law firms is the desire to minimize, mitigate, or completely remove risk during litigation; complete removal may not be realistic, but it is the goal nonetheless. During litigation discovery and the information collection process, great care needs to be asserted in order to avoid negative litigation consequences. Many firms have made mistakes that resulted in them being litigated by their clients. The financial impact and loss of credibility in the business community can be devastating to a firm's image. A good risk reduction platform includes the following:

- Laws and regulations governing the business/industry are being followed
- Security and confidentiality procedures are in place
- No loss or spoliation occurs
- Only authorized destruction occurs

In conclusion, the business benefits of effective data management are quickly driving the development of best practices. Organizations vary by industry, size, and capability, so the implementation of IG is a process of continuous improvement. There is much at stake related to financial and public relations risk for both the representing law firms and their clients. There is an abundance of information available through organizations like ARMA International, AIIM International, the Association of Litigation Support Professionals, and many other sources. LPO providers are at the pinnacle of subject matter expertise and provide consultation, implementation, and execution of all components of RIM programs. Key phases include:

- Organizational assessment (identification and mapping of data)
- Implementation of document management systems
- Establishing standards for archiving and disposition/destruction
- Adoption of imaging processes to reduce the cost of paper storage and manageability
- Advanced Record Management/classification tools to categorize content, allowing greater searchability, access control, and defensible disposal

DTI is a leader in the space and can provide an end to end solution to law firms who desire to best serve their clients and reduce the risk they expose themselves to during all phases of the litigation process.