Going for Information Governance Gold –

Closing the Gap on Discovery Materials

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An increasing number of firms are deploying formal Information Governance (IG) programs. These programs start with an approved records policy (with retention schedules), and then look to align user behavior with the firm's use of supporting systems. Mattern sees firms falling along a broad spectrum of adoption, from those firms trying to address legacy off-site physical records holdings, to firms attempting to tackle management of all information regardless of location or format (including electronic retention).

However, even for those firms addressing electronic information within email, network shares, and Document Management Systems (DMS), many still overlook client discovery materials in both firm and vendor-hosted systems. This may take the form of modern Relativity databases, or of legacy Summation and Concordance repositories that contain evidentiary materials coupled with attorney work product. These "information silos" are a loose-end that need to be cleaned up as part of the firm's overall data mapping and disposition process.

Not having an IG program is no longer an option. Sometimes we see the firm has a "draft" records policy that has never been officially deployed. One of the biggest reasons – the firm realized it lacked the necessary visibility into its information assets that would allow for compliant disposition. In other words, they had no way of ensuring they could execute on their own document handling policy. The optics of non-compliance were perceived as less favorable

than no policy at all, and thus everything grinded to a halt. However, firms are recognizing that this is no longer a viable strategy. Client scrutiny as part of the engagement process, the buzz around cybersecurity and data breach, and the ability to leverage existing firm knowledge for business needs mandates a defensible program that ensures the necessary visibility and security of information.

Visibility requires that information is accessible to the necessary individuals. This entails the proper use of systems, setting of permissions, and the adoption of a standardized classification system. All too often in a law firm, users can locate their own materials, but are unable to do so across the practice area. Naming conventions and taxonomies require standardization and a shared understanding throughout the firm. Additionally, sensitive information is sometimes not locked down to only the appropriate individuals (*e.g*, ethical wall considerations or HIPAA-regulated information). Further, institutional knowledge of how to use existing firm system capabilities is often lacking, or worse, the appropriate systems are not used at all (*e.g.*, everything is hoarded in an individual's email instead of within the centralized DMS platform).

An approved policy is the first step toward gaining consensus and starting down the road of deployment. Firms need the ability to point to a governing document that will drive proper user behavior. The policy should define what are administrative and client records. The policy should identify where information should be stored and for

how long. Client engagement letters need amending to address disposition of documents upon matter resolution. Additionally, executive level buy-in of the policy is necessary for downstream compliant behavior to have a chance. The policy should be socialized with key stakeholders, the management committee, and finally the full user population as part of a coordinated change management program.

Next, locating all critical information under firm control is vital. Thus, a data mapping exercise with representatives throughout all departments and practices of the firm to identify all data locations is critical. A data mapping exercise will often uncover information for which there is no current management plan. Examples include 3rd party document sharing sites, physical media such as thumb drives, and systems that house discovery materials. With the explosion in data storage related to ediscovery, this is an area that cannot be overlooked. Regardless

of whether data is on firm infrastructure or with a Managed Services provider, firms must develop strategies that safeguard this sensitive information while in active use as well as account for its ultimate disposition.

Discovery materials often fall out of the purview of traditional records management functions. Historically, firm records resources lacked visibility into these materials as they are housed in separate systems, with these systems often being 3rd-party hosted. However, managing these materials should be no different than any other electronic data store or physical asset.

A record should be created in the firm's Records Management System (RMS) upon discovery database creation. Upon matter resolution, if not pursuant to order or agreement to destroy, the database can be off-lined to physical media and added to the physical client file. The media can be held in on-site physical

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storage specifically for drives, or sent to off-site storage. Regardless, the location should be updated in the Records Management System (just like any other physical record) and be held to the identified retention schedule for the matter. Thus, the media will show up on an eligibility report run by records staff, and will go through the same disposition process as other materials. This may entail contacting the client for the return of materials, or destroying per policy with the necessary approval steps.

A change management program is critical in getting users to change their behavior when it comes to document handling. For example, long-term storage of critical information in email and network shares is a typical practice with most law firms. These silos are locations where the firm cannot leverage the information for business needs nor ensure its compliant storage with ultimate disposition processes per policy. For a successful program moving forward, users need to alter long-standing behavior to migrate necessary information into the Document Management System. Further, standardization of indexing within the Document Management System is critical for cross-user retrieval and any future disposition exercises to be carried out by records staff. This requires a program with orientation, training and change agents to lead the charge. "Quick wins" and internal champions should be celebrated as part of a structural program that identifies key milestones and tracks progress metrics (*e.g,* reduction in size of email boxes or network shares).

While visibility into information was referenced as critical to the deployment of an IG program, the ability to make actionable decisions upon the information is uncharted territory for most firms. It is easy enough to say that users need to move documents from email and network shares into the DMS, but how is that actually done at the tactical level. Users have years of legacy information to sift through, with little to no time allocated to doing so. While users need training to address moving documents on a day-forward basis, there are 3rd party tools that can facilitate the moving of legacy information from email and network shares into the system of record (the DMS) en masse. IT support to stand up these 3rd party tools to facilitate relocating documents from numerous locations, coupled with extensive user training and the setting of milestone dates for compliance feeds into a project plan that defines program deployment. Ultimately, official retention schedules are managed within the DMS for official electronic records, with all ancillary data locations purged per a set schedule. Purging also requires expertise and technology that may not be present. While email purging can be managed within the system itself, purging of the DMS (per retention schedules) or crawling of network shares per a set schedule may require 3rd party drop-ins for the tactical level execution.

For physical records, eligibility reports should be run from within the Records Management System to identify records that warrant disposition consideration. The eligibility report will identify paper records as well as physical media, and these materials should include the client discovery materials moving forward. For legacy materials, there may be a complicating issue with many of the older off-site holdings lacking precise insight into box contents (due to a number of system migrations, vendor changes, acquisition of smaller firms, etc.). Thus, firms will need

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to devise a defensible plan for gaining visibility into box contents in advance of destroying those contents per retention schedules. A "flip-the-lid" reconciliation of the box contents and perhaps electronic media verification may be required if the firm lacks confidence in its historical indexing information. This is yet another element to be added to the project plan for proper remediation calling for resource allocation and milestone dates.

For these process improvements to be sustained and lasting, the firm's leadership needs to understand that streamlining of firm-wide protocols is central to successful implementation. The standardization of tool sets, promotion of the correct user behavior, and the enforcement of methods for purging all ancillary data stores is recommended. Additionally, an extensive change management program needs to address user behavior, workflow, and the integrated use of systems.

Discovery materials need to be part of the firm's overall information management strategy that is outlined in this discussion. Proper document handling should be identified as part of the policy, with visibility and security paramount concerns in this age of exploding ediscovery processing, hosting, review, and ongoing data storage. Ultimately, the materials need to undergo the same disposition process as all other client materials, and this is a practice that historically was treated in a one-off fashion falling outside of normal records handling or governance. However, there is an opportunity for firms to clean up this oversight as they revisit their IG initiatives and deploy programs to address overall proper document handling hygiene. **ILTA**

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