Ch-ch-ch-changes:

IG Says it's Time to Make a Change. But How?

BY NATHAN CURTIS

Information Governance (IG) has gained increasing attention across many business verticals in recent years and law firms are taking notice. IG is often mistaken for Records and Information Management, but IG is broader in scope, taking into account who has access to what information across all physical and electronic storage, whether on-site, using firm infrastructure, or in the cloud. IG considers information security and data protection, privacy, network intrusion risk, e-Discovery ramifications, data value to the business, as well as records disposition. In short, IG's goal is to maximize information value to an organization while minimizing risks and costs.

Where do firms start?

Historically, end users are disconnected from the business case for IG, and so the "what's in it for me" factor has been lost in translation. Clients are, in fact, driving this change in response to increased regulatory compliance needs as well as ongoing data breach threats. As custodians of their data, clients are mandating new processes to their firms, or even selecting firms based on their ability to effectively govern their data—but attorneys tend to (and should) be more focused on the practice of law than governance of data. Success in delivering an effective IG program is only possible through modifying end user behavior, making IG an ongoing change management program.

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Launching such a program requires the attention only a C-suite leader can garner when allocating resources and driving collaboration across practice areas. Identifying the steering committee, with defined roles and responsibilities follows. The committee should be comprised of a small group of representatives typically from Administration, IT/IS, RIM, HR, and General Counsel who will focus on driving results and ensuring the program remains on target.

Develop an elevator pitch, onboarding literature, lunchroom posters, training specific to the audience, and ongoing refreshers. Think in terms of workplace safety programs and the ongoing effort involved. This is about shifting the workplace culture and how employees regard information assets.

Policy Development

IG policy is crucial in creating a defensible program, it's essential that firms have a formally adopted document they can reference in guiding user behavior. Once the steering committee is identified and engaged, a risk assessment should be performed to identify security gaps that help drive policy. Firms should determine whether ethical firewalls are in place, how personal smartphones are used in client communications, whether USB drives are encrypted or CD/DVDs password protected, and whether staff use unsanctioned cloud file share applications like Dropbox.

For instance, are firm employees using network share drives for scratch work or are they using these as an alternative to saving files to the records management system? Does the firm have a means to wipe business data from personal smartphones when employment ends? Is confidential data stored – and forgotten – in cloud file share applications? Conducting end user focus group sessions is a great method to uncover unique ways in which staff operate.

Once firms have a grasp of workflows - and workarounds – that staff employ, drafting IG policy can begin. Policy needs to address the handling of all file formats across all data locations. Physical records, e-mail, electronic files saved to network shares and the document management system (DMS), data tape back-ups and so on all need to be accounted for. Consider adopting a standardized naming convention to streamline file searches.

What access restrictions will the firm apply to certain files? For instance, will everyone have access to all client/matter files in the DMS? Who will have access to personnel files, firm budgeting files, documents that outline the firm's growth strategy? How will this be monitored going forward to ensure staff who transition from one administrative role to another, or who transition from one attorney team to another have appropriate access rights? An audit schedule is an important inclusion in IG policy to identify and close gaps while highlighting training opportunities.

Consider policy carveouts for unique situations, such as those that exist with Wills, Trusts & Estates. It is critical not to make exceptions outside those specified in IG policy in order to maintain a defensible program. Also consider incorporating into client engagement letters options for handling all physical and electronic records - the burden of hosting terabytes of client data shouldn't fall on the firm. Bear in mind that records "disposition" is not always synonymous with "destruction". Returning client records at the end of the retention period is an appropriate means of disposition, as is destroying attorney notes and firm billing records on the same matter at end of life. Both means of disposition should be called out in the policy document as well as end of life options incorporated into client engagement letters.

Retention Schedule – Electronic and physical. Address "data is cheap"

Once the policy framework is in place, the retention schedule now has a place to call home. Firms should consider the trigger event that starts the retention clock. This is typically matter closing, but when exactly does this occur – once final judgement is reached in a case or when billing is closed in the firm's accounting system? If the latter, how will you handle situations where matters aren't closed according to policy and remain unnecessarily open for years on end? This may require callout in your policy.

Also bear in mind when a retention schedule calls for the disposition of records, this accounts for all forms of records, physical and electronic, regardless of storage location. Imaging file boxes to be kept indefinitely so that physical records can be shred is not

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a viable solution. Remember, IG is about improving information value to an organization while reducing risk and cost.

Retaining electronic files indefinitely leads to the challenge of wading through a bottomless pit of data - searches take longer and result in inaccurate hits. The value of these information assets is lost. Retaining too much information increases risk and the opportunity for reputation loss in the event the firm's network is compromised by cyber thieves. Retaining documents beyond what is required can also lead to damaging information brought to light during future discovery.

There's a common misconception that data storage is cheap. While it's true that the cost per GB of data is steadily decreasing the explosion of data available to, and retained by, firms is increasing at a significantly faster pace.

A study by Gartner projects the average business will add 35% more data year over year, amounts to storage capacity requirements doubling every 2 years. Metajure reported that on average lawyers handled 50% more documents between 2013 and 2015 and it is expected that this will rise with further adoption of electronic means of communicating. Furthermore, approximately 75-80% of business data is duplicate information. The cost per GB for storage hardware is only part of the equation, firms should also factor the cost of expanding IT labor resources and software to keep pace with the growing need to manage information assets.

Two methods can be employed for developing your firm's retention schedule. First is the DIY approach, whereby the IG professional or Records Manager researches retention requirements using the Code of Federal Regulations. This is a laborious undertaking and consideration must be given to all jurisdictions in which a firm operates. For ease of managing these schedules, it is often a best practice to select the maximum retention for a given record type that applies across a firm's footprint. The proposed schedule must be vetted, typically by General Counsel.

The second approach is to utilize a 3rd party that specializes in this field and employs attorneys who research retention regulations. For a fee, such organizations will manage the research and development of your customized retention schedule and feed this into an online database, which is updated as regulations change and can be easily searched by record series for reference. These databases are typically equipped with a review and approval workflow that tracks when schedules are adopted and updated, along with sign off by those designated with review and approval rights. With either approach, annual refresh of retention schedules should be conducted at a minimum.

Technology Stack

Keeping track of digital files across a firm's email application, document management system, review database, trial presentation software, network share drives, and so on can seem daunting. Applications do exist that facilitate compliance by connecting these disparate storage locations, such as enabling the migration of legacy email to DMS, where it can be managed by the Records Management System according to retention. Network crawl tools are also available to auto purge files that haven't been accessed in a period of time, as outlined in IG policy. Bear in

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mind firm culture when deploying technology. Certain firms may be early tech adopters and aggressive in their approach whereas IT may need to take a more active role, such as assisting with email migration to DMS.

Strong Change Management Leads to Adoption Success

Involve representatives from each practice area in focus group discussions on topics such as DMS directory structure and file nomenclature. IG policy is crucial in guiding user behavior and a population that helped craft components of this stand a greater chance of program ownership.

Secure quick wins early on once your new IG policy and retention schedule are in place, such as off-site records disposition and associated storage savings. Tie this into a renegotiation of your off-site storage contract, even if mid-term on your agreement. New providers are often willing to provide incentives that offset early termination penalties while offering permanent removal and/or destruction allowances that allow the firm to adopt a sustainable storage partnership. Highlight these successes in town hall meetings, ongoing training, the firm's intranet, lunchroom posters, etc.

The growth of data and its incumbent increased regulatory changes is the new reality of doing business, and why data management issues top the concerns of Chief Legal Officers—and therefore, part of the relationship attorneys now need to preserve. Even though historically attorneys have been disconnected from the business case to prioritize IG processes, the time is now—and forever. **ILTA**

Nathan Curtis, a Six Sigma Yellow Belt, brings over 20 years of experience working with law firms in the U.S. and overseas in developing industry-first solutions across Information Governance, Litigation Support, Digital Imaging, and traditional Office Services. As a consultant for Mattern, Nathan is focused on emerging technologies and their application in the legal environment, driving results through Mattern's customized RFP process, and overseeing service, technology and policy implementations.