

COMPLIANCE WEEK

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Records Management: A Governance Crisis?

By Elizabeth Judd — December 4, 2007

A new survey says that only 7 percent of senior executives and board directors consider records management a top issue for their company—compared to a whopping 40 percent of law departments on the front lines of litigation and growing demands for speed access to relevant electronic data.

The study, the *Chief Legal Officer 2008 Strategic Planning Survey* by consulting firm Lexakos, validates a growing suspicion among records management experts that too many executives still don't understand the rapidly proliferating collection of data their companies are amassing and the attendant legal risks.



“A Post-It note may seem like a nothing, but it may be the core of a legal case,” notes Carol Choksy, president of ARMA International, the trade association for records and information management professionals, and CEO of IRAD Strategic Consulting.

Choksy

Even the term “records management” is subject to debate. Some refer to “Records” with a capital “R,” classifying only personnel, tax, and environmental documents in that category. Official records like these are fairly easy to manage; regulations often stipulate how long they must be kept, and companies generally treat these documents with care.

More worrisome are the e-mails, random jottings, voicemails, instant messages, and other informal communiqués that employees generate every day. New “e-discovery” rules for how to handle such information in civil litigation, now in place for a year, do shine a spotlight on this area. Unfortunately, they seem to be illuminating the fact that most employees just don't know how to handle these impromptu records.

“For most communications, there's a fast-food mentality. You fire off an e-mail, and that's how people communicate,” says Rick Wolf, founder of Lexakos and former chief compliance officer of the now-defunct Cendant Corp. He notes that an estimated 97 billion business e-mails are generated each day worldwide, nearly five times the volume just five years ago.

This over-accumulation of information—Wolf calls it “corporate plaque” —creates legal

risk. Wolf says companies have “poor processes and controls around how people communicate.”

That shouldn't be so, he argues. With e-mail messages turning out to be a smoking gun in everything from Microsoft's antitrust trial to the collapse of Arthur Andersen five years ago, “Records management is becoming difficult to trump as a priority,” he says. “And to a company, no one's comfortable that they're nailing this thing.”

Who Owns Records Management?

The Lexakos study found that 43 percent of companies assign responsibility for records management to their legal departments; another 20 percent assign it to IT.



Barnett

That question of ownership is a serious one. Tom Barnett, head of the e-discovery and compliance departments at the law firm Sullivan & Cromwell, emphasizes that records management draws on many different areas of expertise. “For a large corporation, records management has to be a collaborative effort between legal, IT, and the compliance department,” he says.

Ideally, Choksy says, ownership will reside wherever the records manager has “the most lasting leverage.” Too often, she's seen the role relegated to facilities or corporate support services, areas with little influence in a company.

Finding the right ownership for records management is critical to robust governance, Wolf says. “There's a corporate governance crisis because there's a lack of consistent ownership of content and records management,” he says.

Getting Personal

Choksy notes that water-cooler conversations have been replaced with e-mails, and secretaries no longer tend walls of filing cabinets. When documents became electronic, there was a vague sense that the technology would take care of the filing—when this wasn't the case at all. The truth, Choksy says, is that records need to be maintained like any other asset.

April Dmytrenko, a managing director at Huron Consulting Group, points out that a good records management program begins with committed support, clear vision of the scope of the undertaking, and a focus on best practices. A formal written policy—something one-third of the law departments surveyed by Lexakos don't possess—is also important.

Next, companies need to create an effective program to train employees. Lexakos found that a mere 5.5 percent of companies are very satisfied with the records management training that their employees receive.

In an April 2007 survey, ARMA found that 45 percent of information managers and human resources professionals don't train employees on managing records as well as ARMA believes necessary. Even those companies with formal information management training often neglect important topics. Although 79 percent of companies provide training on e-mail and 75 percent on legal holds, ARMA found that only one-third cover voicemail and even fewer (29 percent) address instant messages.

Training is difficult, Wolf says. "There's a high risk of unpopularity because when you talk about changing people's e-mail habits, it gets personal."

And yet training is "where the rubber meets the road," says Matt Kivlin, a marketing director at Iron Mountain, a Boston-based company specializing in the storage, protection, and management of information.



Kivlin

When training employees on records retention schedules, Dmytrenko encourages creativity so employees participate and the information sticks. On the first day, there might be 30-minute training sessions, followed by a "clean-up day" in which everyone wears casual clothes, eats pizza, and applies the training while it's fresh.

"Everyone is a records manager these days," Dmytrenko emphasizes. "That's how companies need to approach it."

Making a Business Case

Records management is suffering an image problem, perhaps because lawyers tend to do the evangelizing. "If you say records management is a legal problem, people will glaze over," Wolf says. "It's a compliance nightmare if lawyers have to constantly run around, shaking their finger at everybody." He argues that what's needed instead is a sound business case for getting records management under control.

H5, a San Francisco-based company that's developed a methodology for culling information and maintaining only those records relevant to legal proceedings, offers such a case. H5 CEO Nicolas Economou estimates that retaining outside counsel to review documents costs \$1 a page; in a major lawsuit, that could mean \$20 million to \$50 million in ultimate costs. If, instead, a company can systematically assess its e-mails and other documents and only keeps the 10 to 15 percent that might possibly be relevant to legal or compliance issues, document reviews will cost far less, Economou says.



Economou

H5 uses information retrieval algorithms to identify which documents should be saved; the method is roughly akin to how the IRS searches for “red flags” when deciding which tax returns to audit. Economou maintains that a company could lop off more than half its downstream costs of litigation by reducing the overall number of documents, e-mails, and back-up tapes saved.

“Here’s the reason to be more proactive,” he says. “If you look at a three-year financial plan, the return on investment here is probably as big as any other initiative you could undertake anywhere else in your company.”

Given the state of most companies’ records and the rate at which more are accumulating, implementing an effective records management program won’t be easy. “This is a 10-year problem,” Wolf insists. “It’s not going away anytime soon.”

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