ELECTRONIC DISCOVERY: A SMART FIVE-STEP APPROACH

When you hear the term "electronic discovery," do you have the urge to bury your head in the sand?

Sorry. Not an option. These days, every lawsuit – from a divorce to a complex litigation – can involve records that are stored electronically. Furthermore, judges have become more educated in this area. Once considered secondary information, electronic data is now a primary source.

When requesting electronically stored data, how can you be sure you've captured it all? Too narrow a request can cause you to miss essential information. But the "give me everything" approach doesn't work either.

Here's a cost-effective method for zeroing in on the data required in a discovery action.

1. Make a roadmap. First, draw the topography of the IT infrastructure – including servers and other data stores; workstations; mobile and remote devices; software, Internet and intranet applications; and the connections between them all. You need the complete picture this will provide.

2. Track the data flow between all systems. The systems a company uses evolve over time. For instance, an IT department frequently upgrades its company's servers. Understanding how information moved from server A to B is essential. It's possible that non-current data was stored rather than transferred. As a result, information critical to your case may not be on the company's servers.

3. Understand the relevant data. Examine a discovery request to determine exactly what you're looking for. Narrow the environment to the issues involved in the suit. Identify which employees are related to the issue. For instance, in a case of fraud, you would request data, spreadsheets and memos from the accounting department. You wouldn't be concerned with manufacturing.

4. Find out who does what. Interview employees and document their responsibilities. By doing so, you'll discover which people are likely to "touch" the relevant data in the course of their duties. Understand the way data flows between employees. Which software programs do they use? Where are the caches of information related to their departments?

5. Put it all together. Overlay the request for production onto your topography, data flow and knowledge of the systems. You'll more easily pinpoint the repositories where you should look for relevant data.

Finally, get started early. This allows you to be more targeted in your request and better informed about the evidence that exists. Take time to ask the right questions, and you'll save money and minimize the time you spend poring through irrelevant data.

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