

## PM TIPS & TECHNIQUES – NOVEMBER 2007 Are your Project Files ready for an e-Discovery?

*By Cheryl L. Strait*

Being proactive in the face of an ever-changing business environment is a constant challenge no matter what the industry is. Trying to second-guess an impending litigation discovery request is equally challenging. Today, more than 90 percent of business activities are handled through electronic means. In December 2006, updated Federal Rules of Civil Procedure were published with directions on how electronically stored information should be handled as part of the discovery process within federal courts. Most companies aren't prepared for this type of discovery process. Project managers need to be aware of potential discovery requirements and ensure that project records are being handled in accordance with sound records management practices.

But what exactly is e-discovery? If you Google the word, you will find many good definitions. SearchSecurity.com has a particularly comprehensive one:

*An electronic discovery (e-Discovery) refers to any process in which electronic data is sought, located, and searched with the intent of using it as evidence in a civil or criminal legal case.*

Identifying and collecting electronically stored business records can cost organizations a great deal of time and money. Not properly producing records in response to an e-discovery request can cost a company even more—millions of dollars—in fines and penalties. This experience happened to Morgan Stanley when it failed to produce e-mails relevant to an arbitration case, falsely claiming that they had been lost in the September 11, 2001, attacks. In September 2007, the company lost the case and was ordered to pay \$12.5 million for failure to produce the e-mails as part of the initial discovery process.

Your organization may now be recognizing the need to establish appropriate procedures for e-discovery that will enable employees to effectively search and retrieve information from massive amounts of electronic data. The very nature of electronic information means that it is easy to produce and proliferate, lending itself to potentially haphazard creation, organization, and management. Considering how easily electronic information is duplicated, it is not surprising that a typical document in a typical organization exists as 25 duplicate copies in various locations.

Within the realm of a project, information is routinely created, distributed, and stored electronically. When a discovery request is imposed on an organization, discoverable records can come from any place where electronically stored information is housed such as local hard drives, servers, portable devices, websites, collaboration sites, and archival

media. Project files can be included in a discovery search if they contain information that could be relevant to the litigation.

As project managers, it is our role to ensure that project records are governed under appropriate procedures that will enable them to be effectively searched and retrieved. Procedures for properly managing project records include:

- Become acquainted (or reacquainted) with the organization's records management policy and retention schedule.
- Determine if the organization has a classification schema for filing and storing business records. If it does, utilize the standardized nomenclature to file and store project records. If one does not exist, create a standardized filing structure based upon the organization's retention schedule categories.
- Align organizational rules for accessing, viewing, copying, and distributing business records within the project structure. Consider who will be creating project records, how records and information will be disseminated, where records and information will reside, and who will (and should have) access to the information.
- Apply the appropriate security access rules to business applications storing project records. Remember to consider all technology being utilized by project personnel, including personal storage devices such as PDAs, BlackBerry® devices, or smartphones.
- Ensure all project team members know and follow the records and information management procedures.

Project managers should establish the structure for maintaining records and information during project initiation. As more organizations experience firsthand the tremendous costs associated with the lack of an effective e-discovery process, project managers must be proactive in ensuring procedures are in place to govern project records. By making the classification, organization, and management of records a part of your project team's routine, you as a project manager are providing the organization with a model for developing suitable and well prepared electronic records management procedures that will stand up in the event of an e-discovery.



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**Cheryl L. Strait** is a principal consulting manager at Robbins-Gioia, LLC, in the United States. She has more than 20 years of experience in business management, including project management, process re-engineering, organizational change management, and records and information management. Her career includes serving as a global program manager for a records management implementation spanning 34 countries and involving more than 100,000 individuals. There, Cheryl helped the organization successfully manage its records in all phases—creation, storage, retrieval, and disposal.

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