

## PM TIPS &amp; TECHNIQUES – DECEMBER 2007

Are you ready to advance your organization's  
e-discovery capabilities?

By Cheryl L. Strait

You've just been assigned as the project manager to oversee your organization's ability to respond to e-discovery requests. You may or may not be familiar with the term "e-discovery," but odds are, this is your first time managing a project to improve an organization's e-discovery capabilities.

Finding the definition of e-discovery is as easy as Googling it:

*"An electronic discovery (also called e-discovery or ediscovery) 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."* (SearchSecurity.com)

Your mission begins with deciphering the e-discovery guidelines for the Federal Rules of Civil Procedure, newly revised in December 2006. These guidelines will help you to define your project's end state by giving you an understanding of what your organization's requirements are if it is faced with a lawsuit. These rules apply only to U.S. courts; because they are new, they are subject to a range of interpretation by a judge.

The new e-discovery guidelines contain enhanced rules for litigation pretrial conferences, which can now be used to control and schedule discovery along with discussing the cost and complexity of discovery with the judge. The better prepared your organization is when going into the pretrial conferences, the greater the chances of making a solid case to limit e-discovery requirements. Limiting e-discovery can save your organization significant time and money. On average, a company involved in litigation may produce several million pages during the process of discovery. Of this massive amount of information, only several hundred pages will actually be used by the opposing party. That equates to only 1 percent of the discovered material ever making it as a legitimate part of the litigation. Add to this the fact that it costs several dollars per page to produce and review the material. Included in this per-page cost are the fees imposed by attorneys to wade through and review produced documentation while determining what is and is not relevant to the case. Thus, you are well served to develop suitable and well-prepared procedures for e-discovery.

Improving your organization's e-discovery capability enables it to take control of undue costs. Establishing an effective e-discovery process includes determining and defining:

- Accessibility of data
- Cost to execute a discovery process
- Rate of business disruption when performing discovery

- Compliance with laws and regulations.

To create an effective, yet efficient e-discovery process, make sure that it is:

- Easily understood and executed
- Standardized and rationalized
- Defined with the support of IT, records managers, and legal professionals
- Integrated with the organization's capabilities and resources.

It is common sense that a process that is not easily understood or easily executed can create an undue burden within the organization. Applying the “keep it simple” standard will decrease the degree of education required. However, it is still important to keep in mind that communication and training is always an essential component of deploying new processes.

E-discovery should be standardized and rationalized. When litigation occurs, the organization should be able to initiate a process that significantly reduces the risk of monetary penalties imposed due to non-compliance of a discovery request. A rationalized e-discovery process focuses on key components of searching, integrating, and securing electronic records. Therefore, you will need to ensure proper records management standards that enable your organization's e-discovery process are established enterprise-wide.

An e-discovery process should be defined by a working group that understands records management practices across an organization. As previously mentioned, the working group should include IT, record management, and legal professionals. IT professionals bring with them knowledge about the IT infrastructure and accessibility of electronic information. They can also collect information about the current technology tools available to facilitate an e-discovery process. Legal professionals provide the knowledge and experience associated with legal requirements for e-discovery and the legal business requirements for performing e-discovery within your organization. Records managers provide knowledge and experience in managing records and promote how records management practices can be used to develop a suitable and effective e-discovery process across the organization.

It goes without saying that an e-discovery process must be designed and executed to meet an organization's legal requirements and also be in line with the organization's resource capabilities. An effective e-discovery process requires careful and thoughtful design by the right working group to be clearly understood and applied, standardized, rationalized, and deployed across your organization. As you work through your e-discovery project, heed the revised Federal Rules of Civil Procedure. This guidance will proactively help you to lessen potential cost burdens during times of litigation—instead of leaving your organization financially vulnerable.



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