



Cyber Hot Topics Webinar Series:

Data Management Plans: A Key to Effective Litigation Readiness

July 19, 2017

Presented by: Ty Dedmon and Sarah Miller

Data Management Plans: A Key to Effective Litigation Readiness

- Why have a Comprehensive Data Management Plan
- Goals of a Data Management Plan
- Elements of a Data Management Plan
- Legal Considerations for Data Retention and Litigation Holds
- Specific Plan Drafting Strategies

Why do you need a *comprehensive data management plan*

- Comprehensive consideration of all types of data generated or stored by your organization
- Comprehensive evaluation of all the ways your organization utilizes its data
- Comprehensive assessment by multiple stakeholders, including:
 - Business Operations
 - Legal
 - IT

Why do you need a comprehensive *data* management plan

- “Data” is not just emails
 - Office
 - Databases
 - Images, Video, and Unstructured Data
 - Collaborative Software
 - Cloud
- Electronically-stored Information → Information that is created, manipulated, communicated, stored, and best utilized in digital form, requiring the use of computer hardware and software

Why do you need a comprehensive data management *plan*

- Exploding data volumes mandate proactive management
- You don't want discovery issues to drive the merits of your lawsuits
- Benefits the organization before, during, and after litigation

Goals of your Data Management Plan

1. Risk Management

- Increased Institutional Knowledge of Data Practices
- Legal
- Cyber Security
- Regulatory and Statutory Requirements
 - Industry Specific
 - HIPAA
 - Sarbanes Oxley
 - FOIA
 - IRS

Goals of your Data Management Plan

2. Cost Control

- Quantifiable
 - Storage Costs
 - Backup Costs
 - Litigation Costs
- Unquantifiable
 - Stress
 - Time

Goals of your Data Management Plan

3. Litigation Readiness

- Smaller data sets
- More relevant data sets
- Less interference in business operations
- Duty to preserve

Elements of an Effective Data Management Plan: Overview

- Data Map
- Acceptable Use Policy
 - Rules for using company equipment and network
- BYOD Policy
 - Rules permitting use of personal hardware for accessing company information and applications
- Communication Policy
 - Rules for how members of organization communicate with one another and others about the organization
- Document Retention Policy
- Litigation Hold Procedures

Elements of an Effective Data Management Plan: Data Map

- Data Map: Summarizes location of data, and analyzes how data moves from one system to another.
- Comprehensive → Defensible
- Includes:
 - Identification of all IT systems and their purpose
 - Identification of native file format, and other formats, of stored information
 - Identification of preservation and deletion capabilities and practices of each system
 - Identification of responsible IT personnel and organizational users for each system

Elements of an Effective Data Management Plan: Document Retention

- A policy document that defines an organization's legal and compliance recordkeeping requirements
- Must be written
- Must comply with legal obligations
- Must be enforceable
- Must be communicated
- Must be verified
- Must be capable of altering for litigation

Elements of an Effective Data Management Plan: Document Retention

- Checklist
 - Define how, where, and how long paper and electronic records are kept in ordinary course of business
 - Define how and when each type of record is to be destroyed (automated/employee responsibility)
 - Define enforcement mechanisms and penalties for noncompliance
 - Define resources for questions/appeals

Elements of an Effective Data Management Plan: Litigation Hold

- Litigation Hold = An interruption of document retention schedule due in order to comply with litigation preservation obligations.
- Necessitated by legal obligations – should be process driven by counsel

Legal Considerations: Litigation Hold Duty to Preserve

- When
 - “Reasonably Anticipates”
- Who
 - Key Players
 - Custodian Interviews
 - Consider Where
- What
 - Relevant data
 - Proportionality, Custody or Control

Legal Considerations: Litigation Hold Notices

- When
 - As soon as Duty to Preserve attaches
- Who
 - Issued by legal
 - Data custodians
 - Point person for questions
- Case Summary
- Proper Maintenance

Legal Considerations: Litigation Holds Meet and Confer

- 26(f) Meet and Confer
 - Rules and Schedule for ESI parameters
 - Counsel's responsibilities
 - Opportunity to gain significant advantages in the case

Legal Considerations: Consequences

- FRCP Rule 37 - Sanctions
 - Preliminary requirements before sanctions can be considered
 - If party “intended to deprive,” sanctions may include:
 - Presume last information was unfavorable to party
 - Instruct jury that info may/must be unfavorable to a party
 - Dismiss or default judgement

Legal Considerations for Data Retention: Protection from Sanctions

- 37(e)
 - Exemption from Sanctions
 - Lost
 - Unrecoverable
 - Routine operation of electronic information system
 - Note: this is for relevant data that is not subject to a litigation hold at the time of the routine deletion process

Specific Data Plan Drafting Strategies

- Seek Uniformity – No Exceptions (for C suite)



Specific Data Plan Drafting Strategies

- Automation is your friend



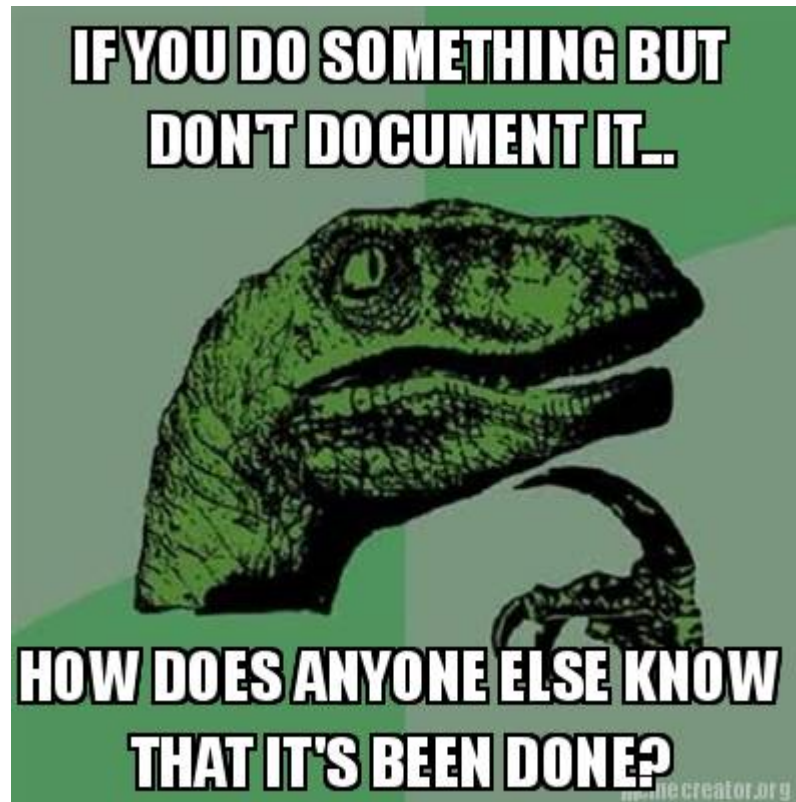
Specific Data Plan Drafting Strategies

- Find the right balance between using schedules/appendices v. streamlining guidance into a single document



Specific Data Plan Drafting Strategies

- Keep Thorough Records of Your Decisions



Questions?

Bradley