

The eDiscoveryJournal Report:

Legal Holds for Enterprise Archives

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About the Author



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Introduction

This research paper explores the process of creating and documenting a legal hold initiative on an enterprise archive or content management system. Placement of defensible legal holds is essential before expiring the vast quantities of non-record content that are pouring into your digital landfill. This paper explores potential strategies, issues, best practices and documentation templates.

Defining the Pain

Many corporations rely on email and file system archives to preserve ESI. However, turning on Exchange Journaling or proactive PST migrations are just the first steps. In order to actively expire non-records and delete Electronically Stored Information (ESI), the corporate legal department needs confidence that any ESI potentially relevant to all their active matters has been placed under legal hold. Without this assurance, the potentially intelligent corporate archive becomes merely an ever expanding storage repository, hindering expiration policies and raising the risk and cost of legal compliance.

Storage

The volume of corporate email and related communications continues to grow year after year. Corporations managed communication storage by forcing users to either delete emails or move them to offline storage containers such as the Microsoft Personal Storage Table (PST) file. This transferred the storage to relatively cheap, unstable local drives from expensive, redundant network storage. This coping method also made consistent records designation and retention almost impossible. It turned corporate citizens into communication hoarders as they struggled against mailbox limits. Instead of reducing the overall volume of email and files, these policies actual forced users to make multiple copies scattered across laptops, network shares and other offline media. With overall ESI growing at 40+% per year according to some sources, it is easy to understand why many corporations are starting to re-evaluate their early infinite retention policies adopted to mitigate the risk and complexity of actively expiring non-record ESI.

Discovery cost

The sheer cost for corporations to preserve, collect, process and review all this ESI has become one of the strongest motivations to reassert control of their global information assets. The 2006 amendments to the Federal Rules of Civil Procedure recognized ESI as evidence and set forth new legal requirements that raised the risk and cost of discovery. The highest priority discovery obligation of most corporate counsel is the preservation of potential ESI in matters. The vast majority of published discovery sanctions have involved spoliation or failure to properly collect potential evidence. Many corporations with high litigation profiles or regulatory requirements invested in enterprise archives or other content management systems to enable global preservation through Exchange Journaling or other automatic versioning mechanisms. This managed their risk, but results in a digital landfill without a documented, defensible legal hold process.