5 Steps for Gathering Electronic Data Effectively

As the legal community becomes more educated about the issues surrounding electronic discovery, the number of document productions involving electronic data increases. While organizations are often obligated to produce electronic evidence, this duty is frequently not supported with well-defined processes for finding and collecting the information. Gathering electronic information such as email messages, letters, memos, spreadsheets, and other critical electronic documents can be a complicated and expensive process if not planned and carried out correctly.

This analysis allows for the creation of an efficient and appropriate plan for gathering data for electronic discovery that is specific to the client's situation.

Step 1: Consider Suspension of Data Destruction Procedures

When litigation is pending or imminent, usual procedures for electronic data destruction or recycling may have to be suspended. If this situation arises, a plan for halting destruction of electronic records—for example, disabling email autodelete features and suspending backup tape recycling—is essential.

If there is any indication that deleted files may need to be recovered, hard drives should be immediately imaged to avoid overwriting deleted files. It is also possible that user hard drives are wiped when employees leave the company or move to other job functions within the same organization. If your organization is anticipating a request for electronic data, consider implementing a policy that calls for the archiving of user workstation data when employees depart.

Step 2: Define Scope

With assurances that no data is being destroyed, the planning process can continue by clearly defining the scope of the data-gathering project. The following list is an example of the types of questions that should be addressed:

- Who are the custodians of interest?
    - Based on specific document requests?
    - Based on geography, department, or job function?

- What are the dates of interest?

- Must deleted files be produced?

- Are backup tapes within the scope of the project?
    - If so, must all tapes be restored?
    - If so, are monthly, quarterly, or yearly snapshots acceptable?
    - In what form must the data be produced?
    - Can current in-house IT staff handle the workload, or does it make sense to contract data-gathering consultants to help?

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Step 3: Identify Relevant Data

Organizations often have disparate technologies, multiple geographical locations, and employees with vastly different access rights to information services. All of these issues add to the potential difficulty of determining where electronic evidence may be stored.

It is important to gather as much specific information as possible about the layout of the organization's information services. A good place to start is to consult existing documentation. However, as organizations often fall behind in maintaining current information, it is not enough to rely solely on documentation. Best practices also include conducting thorough interviews with the technical points of contact at each location to verify the documentation and ultimately determine where all relevant data resides. With this information in hand, create a diagram to show how the relevant data is distributed throughout the organization.

The following sample interview questions will help you determine where and how a corporation's electronic evidence is stored.

Email Information

- What types of email servers are deployed throughout the organization?
- Are mail services centralized?
- If not, where are the mailboxes of the relevant custodians?
- What are the email server policies?
- How long is email allowed to stay on the server?
- What are the mailbox size limits?

File Server Information

- What types of file servers are deployed throughout the organization?
- Do users have home directories? If so, on what servers?
- What are the size limits for each user?
- Does the organization utilize shared folders?
  - Are they accessible by all employees?
  - How are shared folders organized?
  - By department, geography, or job function?
- How are file servers backed up?

Step 4: Prepare Data-Gathering Plan

Once the interview process is complete and the information is aggregated, a customized retrieval plan can be developed. A data-gathering plan may include:

- A diagram of the data to be gathered.
- A project plan for all physical locations.
- A summary of the anticipated impact on operations, and plan for minimizing business disruptions.

- A summary of any anticipated problems.

- Identification of all members of the data-gathering team.

- Identification of any outside data-gathering consultants involved in the project.

- Identification of points of contact for each location.

- An inventory of the hardware and software tools to be used.

- An outline of the specific collection procedures that will be used.

- Detailed work product checklists for technical staff completing the collection work.

- Chain of custody instructions for all involved parties.

- Arrangements for shipment of the media containing the data gathered.

Step 5: Conduct a Pilot Test

Once the data-gathering plan is complete, it should be reviewed by a data-gathering professional to ensure that the procedures are comprehensive and forensically sound. Upon acceptance of the data-gathering plan, it is important to test the procedures on a sample of non-relevant data. This test will be good practice for the individuals involved, and will reveal any potential problems with the data-gathering plan.

Additional Considerations:

Evidentiary Integrity

Maintaining evidentiary integrity is critical in any electronic data-gathering project. It is important to never work with the original evidence. A pristine copy of the original data must be created before review or analysis of the data begins. Without this safeguard, there is no way to validate that the evidence is authentic. Integrity of the meta data must also be considered. Many commodity copy tools make changes to the file dates, and other meta data may be inadvertently changed if proper precautions are not taken. Be certain that any procedures employed will preserve all original meta data.

Chain of Custody

It is essential that the chain of custody of the gathered data be tracked throughout the process to prove that the integrity of the evidence has been maintained. This documentation must be kept and readily available for review throughout the life of the evidence—from gathering or receipt to presentation in court. At a minimum, the following information should be documented:

- Date, time, and place of collection or receipt.

- The name of the individual who collected or received the evidence.

- A description of what was obtained, including media-specific information.

- Media type, standard, and manufacturer.

- All movement of evidence (evidence transfer) and the purpose of the transfer.

- Physical (visual) inspection of evidence.

- Procedures used in collecting and analyzing the data.

- Date and time of check-in and check-out of media from secure storage.

Conclusion

Creation of an electronic data-gathering plan is an essential component of many cases today. Defining the boundaries of the document production is an important element of preparing an effective plan. Finding the balance between the need to obtain electronic information and the desire to contain costs is critical. With proper guidance, however, the task will be much more cost-efficient and less time-consuming than paper document retrieval.

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