

Records Management's Role in E-Discovery

Agency records management puts into place a system of repeatable, defensible policies, procedures and processes prior to litigation. Records Management can arm attorneys with the realities of this system, allowing attorneys to conduct productive Meet and Confer sessions that limit the impact of discovery production by not leaving agency policies and procedures open to interpretation or misunderstanding.

- Early Case Assessment (ECA) Team
 - Attorneys
 - Litigation Support staff
 - *Records Manager*
 - IT

- Regular, documented, disposition of Electronically Stored Information (ESI), including email, can result in:
 - Less discoverable ESI that could potentially be used against an agency
 - Faster, more reliable E-Discovery searches for potentially relevant information
 - Decreased review and production costs
 - Safe Harbor – ability to demonstrate that lost or overwritten ESI was the result of routine, good-faith operations

- Pertinent Records Management policies to have in place prior to litigation:
 - Records Management Policy
 - Records Retention Schedules
 - Proof of regular, consistent implementation and disposition via Records Disposal Forms / Tracking
 - Additional Pertinent Records procedures
 - Public Records Policy
 - Convenience/Reference Copy Guidelines
 - Technology/Computer Use Policy
 - Assist IT in development of *Data Map* based on record series (retention schedules)

- Why the Records Manager **must** receive the litigation hold notice:
 - If the records manager is not aware of the litigation hold, he/she cannot prevent destruction of records, setting the office up for potential spoliation claims
 - When the hold is lifted, it does not automatically mean that all of the ESI can be disposed of. Even though the information is no longer needed for litigation, there may be other legal requirements, such as retention periods, that have not yet expired. Disposing of information prior to the expiration of retention periods presents other legal ramifications. The Records Manager can assist IT in determining which information can be disposed of and when.

- Records Manager's Role in preparing Legal for Meet and Confer
 - Use retention schedules to assist in eliminating non-relevant record series
 - Use retention schedules to narrow time-frame of records available for discovery
 - Present realities of records practices instead of leaving it open for interpretation and misunderstanding
 - Provide insight into what types of records policies to request from opposing counsel

