Defensibly Dispose and Manage Your Information

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Problem 1: Known Repositories

- Known and obvious
Problem 2: Other Repositories

- Not so obvious
Problem 3: Unclear Responsibility

- Data managed by different employees

- NOT:
  - Consistently managed
  - Known what the data is
  - Known who owns the data
  - Known who controls the data (who is the custodian)
Problem 4: Focus Differs

- IT – focus on business continuity and disaster recovery
- Legal/Compliance – focus on enforcing policy
- General Counsel/Risk Management – focus on retaining information and applying legal holds
- Business Units – focus on managing information based on their own needs
Response: Have a Plan

- Governance – develop or enhance policies, procedures and RRS
- New Data – implement and audit policies going forward
- Legacy Data – develop strategy and procedures to deal with legacy data
Disposing of Data is OK

- Arthur Andersen – courts ruled
  - Retention policies....are common in business
  - It is not wrong for a manager to instruct employees to comply with policies

Disposing of Data is OK

- Courts look at four issues
  - Reasonableness
  - Good faith efforts
  - No duty to preserve at time of disposing
  - Consistency of following procedures
Why it is OK

- You’ve acted reasonably, in good faith and documented adherence to your policies and procedures

- Relevant court cases:
  - Pension Committee of the University of Montreal Pension Plan v. Banc of America Securities, LLC, (2010 WL 184312 S.D.N.Y.)
5 Steps to Take

1. Assess Current State
   - Review RIM policy and procedures
   - Interview stakeholders (Legal, IT, Tax, Compliance, etc.)
   - Identify scope and content of repositories
   - Identify departed employee materials
   - Assess available tools for gathering information and metadata
5 Steps to Take

2. Conduct an Analysis

- What can easily be identified and assigned a RRS category (quick win)
- Identify any bulk classification folders or repositories
- Determine how to dispose of electronic material
- Develop a business case
  - Assess approximate savings
  - Procedures aid in efficiencies across groups and the organization
  - Reduces risk by properly managing (eliminates duplicates and ROT)
5 Steps to Take

3. Define Disposition Strategy
   • Document your processes and obtain all necessary approvals (from business unit owners up to stakeholders)
   • Project Team – include representatives from all areas
   • Communicate – key to get stakeholders to understand the program so they are comfortable with it and employees are reassured it is ok
5 Steps to Take

4. Identify Characterization Attributes
   - Divide legacy data into groups for further due diligence
   - Identify quick win opportunities
   - Example elements to consider:
     - Associate “created/modified by” metadata to a business function
     - Identify information older than the longest non-permanent period on your RRS
     - Consider other characteristics, such as data created, date last accessed, departed author/recipient, etc.
     - As otherwise reasonably informed by other business unit, industry or specific circumstance
5 Steps to Take

5. Implement Disposition
   - Follow and document processes and automate where you can
   - Identify records eligible for disposition
     - Apply categories from RRS
     - Apply other characterization attributes
   - Obtain approvals
   - Prepare supporting documentation
   - Determine appropriate disposition method
   - Execute appropriate disposition method
   - Update RM tracking system as appropriate
   - Attach destruction certificate with internal documentation
Where to Start

- Strategically
  - As part of a new or ongoing RIM or IG initiative
  - As part of a strategic sourcing initiative to manage centralized costs
  - In response to “lessons learned” from previous discovery experiences

- Tactically
  - Office relocations
  - Business unit/Department consolidations or splits
  - Mergers, Acquisitions or Divestitures
  - Consolidating off-site storage facilities
Benefits

- Decreased Storage Costs
  - Reduced volumes of electronic, paper and other physical items lead to decreased storage costs

- Improved Employee Productivity
  - Less information reduces time employees need to search for information

- Reduce Risk
  - Keep what is needed, dispose of rest; reduces exposure
Important Take-Aways

- Defensible Disposition Process:
  - Assess Current State
  - Conduct an Analysis
  - Define Disposition Strategy
  - Identify Characterization Attributes
  - Implement Disposition

Be Proactive, not Reactive!
Important Take-Aways

- Know what you have
  - Where it is, who is responsible for it
- Develop a plan
  - Policies, procedures, RRS
  - Classify information
- Be consistent in applying disposition across the organization
  - Reasonable, good faith efforts supported by documenting actions taken
THANK YOU

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