

eDiscovery: Litigation and Electronically Stored Information

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Agenda

- Background
- What we've learned
- Implications
- Status and next steps

Background

- Federal litigation rules introduced in late 2006 provide specific guidance for the production of electronically stored information (ESI) in response to litigation.
- The rules include penalties for failure to produce ESI without reasonable justification.
- Our response to all potential litigation has been guided by these rules and has resulted in several key learnings.

Learnings

- Virtually all documents and records are stored in an electronic format.
- University ESI is everywhere and is frequently intermingled with personal ESI.
- University ESI exists in many different formats on different technology platforms throughout the University, and on personal devices.
- Our ESI challenges are not unique and the real impact of the federal rules will continue to evolve.

Experience to-date

	Hold Requests	Discovery Process	Production Process
Medical Campus	18	0	0
Danforth Campus	10	1	0

Activity from January 1, 2008 through October 31, 2008

- Hold requests are very broad and result in large accumulations of data.
- Each hold involves 20-40 hours of IT resource to capture, organize and store files. Additional staff and faculty time is frequently needed to help with requests.
- We have limited experience with the discovery process, but have learned that;
 - the broad approach to holding data creates a significant downstream cost of time and dollars for discovery
 - discovery is complicated by the need to recreate/coordinate multiple technologies
 - time demands for staff or faculty involved in the litigation can be significant

Implications for Computer Use

- Held information may include personal correspondence or records (i.e., anything stored on WU equipment), which may be reviewed for relevance.
- University email and electronic documents that are copied and distributed to personal accounts or devices can expand the hold to include those personal items.
- Our approach to email and file management results in large and unpredictable accumulations of data which adds cost and risk to litigation.

Approach and Status

- An initial taskforce was convened to assess our response.
- Three working groups were established to develop recommendations for;
 - processes and tools to streamline litigation discovery
 - a coordinated WU records retention and destruction policy
 - a communications program to increase awareness of the risks and costs of keeping, copying and distributing electronic information
 - updates to computer use, email and security policies to recognize how technology use has evolved

Next Steps

- Preliminary recommendations from the working groups are being refined and combined into a single set of recommendations.
- The original taskforce will be reconvened in early 2009 to review recommendations and provide direction.