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Discovery insights
5 questions about building a corporate discovery framework

An interview with Scott Read, Deloitte Advisory Principal, and Rich Vestuto, Deloitte Advisory Director in the Discovery practice of Deloitte Transactions and Business Analytics LLP.

As the costs associated with discovery continue to rise and can represent a significant percentage of the total cost of any one particular litigation, more and more clients are asking for services to help them control cost, enhance service delivery, mitigate risk and increase operational effectiveness—in essence build out some level of a corporate discovery framework.

Questions	Answers
What is a corporate discovery framework?	The amount of electronically stored information is growing exponentially and is driving up eDiscovery costs and associated risks. Stakeholders such as the Legal department, IT, Compliance and other business leaders throughout the enterprise need to be consulted to fully address these risks. As a result, corporations are starting to take control by handling more of the discovery process in-house. Control measures include establishing a discovery framework of defined policy, multi-departmental communication, processes and use of technology. Additionally, how and when vendors are used is an important first step in building the framework. However, reactionary measures to in-source everything may fail to strike the right balance between a corporation's risk and the value of responses.
When should I consider implementing a discovery framework?	Understanding a corporation's litigation profile—the type of litigation, case volume, potential exposure and regulatory issues—will assist in determining how, or if, a framework should be developed in your environment. It is also important to understand the roles, responsibilities and commitment that may be required to develop and support the framework long term. Many corporations have a knee-jerk reaction and only consider building a discovery framework in the wake of a painful, complex and expensive litigation. But undertaking the effort before that high-stakes litigation takes hold will allow for careful planning, less disruption and, if put into place before the inevitable litigation hits, can save you money.
How do I start to build my discovery framework?	It is important to start with an assessment of how your discovery process operates today. By evaluating organizational documents including organizational charts, sample data sets, metrics concerning your litigation profile, past or template preservation notices and several other types of data, the assessment will identify areas of improvement as well as areas of largest exposure. Specifically, the assessment issues analysis of Strengths, Weaknesses, Opportunities and Threats ("SWOT") evaluation. Once the current state is understood, developing a vision of the target or desired framework across the dimensions of people, process and technology will define the roadmap of incremental improvements that can be put in place to develop a defensible discovery approach.

Questions	Answers
What are the most common challenges?	Corporations often believe that solving this problem is as simple as buying technology. While technology can be part of the solution, considering all elements of the framework including policy, process and the role outside vendors play will provide a foundation for long term effective discovery management. Other considerations include coordination among all stakeholders in legal, IT and the business. Ownership of this process is a shared responsibility that will require all parties working in conjunction to create a defensible process.
What are the possible savings?	Establishing a framework to control what and how much data ultimately gets to the document review phase is critical to reducing costs, since the document review step in discovery is often the most expensive part of the process. As an example, using a standard suggested by the United States Court System, it is safe to estimate a gigabyte of data consists of approximately 100,000 email messages of 1.5 pages each. Now, if we assume an average review attorney getting paid at a rate $25 per hour can review 4 emails each minute; that gigabyte worth of data would cost over $10,000 to review. This example illustrates that controlling that cost of review starts upstream through better management of front end discovery processes . An ROI of $10,000 per gigabyte culled prior to review, can justify the costs of leveraging eDiscovery technologies in house.

Our take: Corporations will continue to look at ways to reduce cost and risk in discovery by taking more control of the process.
Building your discovery framework with the appropriate policy, process, technology and personnel will enable you to take control of both cost and risk. The prospect of significant cost savings can't be ignored. Determining how a framework approach can benefit your corporation can only be known after a detailed assessment and discussion.

Contact

For more information, please contact:

Scott C. Read
Principal, Deloitte Advisory
Deloitte Discovery
Deloitte Transactions and Business Analytics LLP
+1 612 397 4702
sread@deloitte.com

Richard Vestuto
Director, Deloitte Advisory
Deloitte Discovery
Deloitte Transactions and Business Analytics LLP
+1 212 436 2044
rvestuto@deloitte.com