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Doing more with less in government agencies

How government agencies can conserve resources while addressing heavier caseloads, increasing demands for e-discovery, and growing volumes of electronically stored information

Government attorneys may very well feel they are being squeezed in a vise these days. On one side, they face the perennial challenge of very limited budgets with which to either defend their agency against lawsuits or to launch investigations or lawsuits when warranted. This challenge is only exacerbated by sequester-related cuts and other fiscal austerity measures.

From the other side, government attorneys face increasing demands for, and volumes of, electronically stored information (ESI) associated with such lawsuits and investigations, yet do not feel they have the resources to respond to those demands. In fact, participants in an annual Deloitte survey identified the volume of data as one of the top challenges associated with identifying relevant ESI, along with insufficient manpower and lack of technology[1].

Attorneys are not the only government workers affected. Chief information officers (CIOs), information technology (IT) personnel, and records management personnel often support the discovery process in legal proceedings, as well as other activities requiring access to and analysis of data. Responding to discovery and Freedom of Information Act (FOIA) matters is truly a multidiscipline team effort that reaches across many business units and requires cooperation, coordination, and a structured approach.

Other trends contribute to and, arguably, complicate agencies' ability to provide information in a timely manner:

- **Maturation of the e-discovery process.** In the early days of e-discovery, agencies often did not have the expertise or experience to respond to requests for ESI. But now expectations have changed, agencies are increasingly expected to fulfill such requests, and the team supporting these efforts is expected to be trained and knowledgeable. Almost 90 percent of participants in the Deloitte survey felt adequately prepared to *discuss* e-discovery matters with opposing counsel, yet a growing number of respondents felt less confident than a year before about their ability to

manage e-discovery, a reflection of the top challenges mentioned earlier[2].

- **Unique challenges with respect to procuring and deploying up-to-date technology.** E-discovery technology and processes have improved dramatically in recent years and are continually evolving. Due to a shorter and less formal procurement cycle, private sector businesses are often able to buy, adopt, and utilize such new technologies more quickly than the government can. The procurement cycle potentially forces government attorneys and other personnel to cope with a growing demand for alternative e-discovery approaches while not having immediate access to the tools.

Five opportunities for agencies to accomplish more with less

Given the challenges described above, here are five ways that government agencies can deal with resource issues while addressing demands for ESI and the challenges of e-discovery:

Leveraging analytics for e-discovery. Analytics refers to a broad category of statistical tools that allow users to intelligently process large amounts of data. Analytics tools include text analytics, link analytics, geospatial analytics, predictive coding, sampling, and dynamic review — each of which helps attorneys cut through the noise of excess data to identify what is important. Analytics are also more reliably uniform: while three different reviewers can look at a document and tag it three different ways, analytical tools have the ability to apply business rules consistently.

Although analytics technology can significantly reduce the time and cost of discovery — in many cases condensing months or years of discovery down to weeks or months — it still relies on attorney involvement. In predictive coding, for example, machine learning has to be guided by the knowledge and experience of attorneys. The courts have started to accept analytics as a standard business practice. Not only can it be faster and less expensive than traditional discovery techniques, but it can be more standardized,

1 "Sixth Annual Benchmarking Study of Electronic Discovery Practices for Government Agencies," Deloitte, Spring 2013.

2 Ibid.

delivering consistency and quality and therefore defensibility.

Reconsidering in-sourcing and outsourcing models. Some agencies prefer to use internal resources for e-discovery and invest accordingly in the people, processes, and tools to support it. This approach provides the maximum level of control over the process and results. However, it also often results in situations where they either have idle resources when e-discovery demand is low or inadequate resources to meet high demand. Both scenarios may be inefficient from a cost perspective: there may or may not be other work for idle resources to do, resulting in budgetary leakage; and when high demand straps an agency's resources, the agency may have to pay a premium to secure necessary resources outside and on short notice.

An alternative to this approach is to establish long-term outsourcing relationships and negotiate favorable prices for those services. Much like cloud computing, this approach enables an agency to scale resources as needed to meet demand, only paying for those services that are consumed. The issue of control can be addressed through service-level agreements or the like. Longer-term relationships also allow for established processes and procedures to be implemented, which facilitate greater efficiency and consistency in the resulting work products. This model also allows the remaining internal agency resources to be assigned to the most important functions, cases, or investigations.

Instituting effective practices for people, processes, and tools. Agencies that institute effective practices around data collection, review, and production — and, most importantly, consistently follow those practices — should enjoy reduced costs due to improved process efficiency, less redundancy or overlap in efforts, and potentially fewer mistakes. Importantly, the consistency and standardization of processes that result from such practices may also contribute to a more defensible position than if agency personnel simply follow their own individual preferred processes. No industry standard yet exists for e-discovery, although a handful of discovery providers have achieved certification from the International Organization for Standardization. However, certain reference models and standards exist for e-discovery that may prove useful as individual agencies establish their own effective practices or adopt practices developed in other agencies.

Reusing data repositories. The idea of reuse is a powerful one. If an agency has already collected information once, why should it go through the process again? By either creating a reusable repository of information or documenting where specific information is located, agencies can save significant time and money. Indeed, many agencies are already doing this with their responses to FOIA requests—some have implemented repositories like "FOIA online" (foiaonline.regulations.gov) to make already-discovered information easily available to the public.

Implementing cloud computing. Vivek Kundra had already won renown for his ability to cut costs from government IT systems when President Obama appointed him as the first U.S. Federal CIO. At that time, the government had numerous data centers that had been built to handle maximum "burst" workloads of the various agencies. However, most of the time these data centers were only 20 percent to 30 percent utilized. Kundra implemented a "cloud first" policy to eliminate the heavy investment in hardware, software, infrastructure, and personnel required to keep the data centers running.

Under such cloud computing models, agencies can now operate on a pay-for-what-you-use basis, and can dynamically scale resources up and down depending on demand. As a result, numerous agencies have moved at least part of their IT operations to the cloud. Most notably, the Navy announced in early April 2013 the Department of Navy Approach to Cloud Computing, in which it said that it was moving a large cache of information to the cloud to be easily accessed by the public. Security remains a key concern in the cloud environment, but the government and providers are addressing this concern through programs such as FEDRAMP, as well as understanding what data is being stored in the cloud. Data that is already released to the public or designated for public consumption intrinsically requires a lower level of security protection.

Less *can* produce more

As tight as budgets are now for federal agencies, the vise is likely to squeeze even tighter in coming years. As a result, federal attorneys, CIOs, and administrators will no doubt continue to search for more efficient and cost-effective ways to meet the growing demand for ESI and e-discovery. Technology certainly can help, but the people aspect of the challenge should not be underestimated. Agencies will need to address organizational, change management, and cultural issues at the same time they deploy analytics tools or move workloads to the cloud. The good news is that considerable opportunities still exist to gain efficiency and reduce costs in agency operations. The result can be not only leaner, but more effective organizations.

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