**INFORMATION GOVERNANCE:**

**Myths and Realities: Legal and Public Disclosure**

**MYTH #1: We already have really good search tools for e-Discovery, that’s all we need!**

**Reality:** A number of issues surrounding public disclosure are a direct result of the neglect of the agency to devote resources to managing records and information and having a robust records management program in place.

Searching in response to a public records request or discovery through all of the different places (silos) where records are being stored takes many hours, days and months of time, and many thousands of dollars are spent in the effort. That is also not taking into consideration the time spent away from providing the agency’s critical core functions and services.

The typical search for an agency involves:

* Searching multiple network drives (S drive, U drive, and so on)
* Searching multiple SharePoint sites (how many are built and then forgotten?)
* Searching an email system (Outlook or other email archiving systems separate from network drives and separate from any of the other related records)
* Searching laptops, tablets, cell phones and smart phones if used for business purposes (can involve multiple devices for multiple employees)

And those are just the places you know about! There are also records that may be squirreled away in places that provide consumer level services that staff think are okay to use and haven’t informed records and disclosure staff of their use nor are there any policies and procedures in place to inform staff of appropriate use:

* Personal drives
* Stored in a public “cloud”
* Online file sharing services (such as Box)

You can have the most robust key word/context/Optical Character Recognition (OCR) search tool on the planet, it still costs more and takes more time for it to search through the massive volumes of unstructured data agencies have created and are not managing.

Doing what seems to be a simple search on the surface ends up being just the tip of the iceberg when you realize there are massive amounts of data that have remain unseen until you start looking (there tends to be a lot of ROT (**R**edundant, **O**utdated and **T**rivial) underneath there!

Controlling the volume, organizing information, and getting rid of the ROT *up front* and as part of the business process strategy avoids creating those icebergs in the first place, and records disclosure and disclosure/discovery compliance happens with much less effort and expense.

Talk about process improvement!

Simply implementing e-discovery “solutions” without understanding and addressing the fundamental problems in the lack of managing records and information is akin to rearranging deck chairs on the Titanic.

Unless you implement records management strategies and decisions up front and turn to avoid the iceberg you are going to hit it. It’s just a matter of when. Changing course is much less expensive than an actual disaster, which tends to make the front page news and can have costly consequences.

The courts are not sympathetic to excuses, nor are they interested in the “why not”.

The courts are asking for details and deposing IT and records staff and asking hard questions as to the searches performed (or not) and bringing agencies to task if found lacking in their due diligence. There have been instances where the courts are imposing higher fines and penalties to send a message and serve as a warning.

Hiring more attorneys and the application of law will not solve the problem. If you don’t have your records house in order you will continue spend more resources and money to respond to records requests and run a higher risk of lawsuits.



**Being reactive always costs more than being proactive**, and you can feel more confident in defending a lawsuit knowing you are appropriately managing your records and information than having to scramble and spend hours and hours and lots of money trying to locate the information you need when you need it.

A robust enterprise records and information management system will eliminate the need for additional tools, and reduce costs in both storage and licensing/maintenance of multiple systems that only serve a single function.