

Electronic Record Retention



Businesses involved in litigation that fail to preserve electronic information are handing a powerful weapon to courtroom opponents. Even businesses with a solid case can suffer consequences if they can't provide electronically stored information, known as ESI.

ESI includes e-mails, text messages, word processing documents, spreadsheets and other documents stored on a company's servers. The key to protecting your ESI is knowing what information you store, and where to find it. Sounds easy enough, but technology infrastructure can run deep. Here are some tips for organizing your ESI so you can locate critical information in no time.

Access e-mail: E-mails may exist in a number of different mail folders, including the Inbox or Sent Items folders in Microsoft Outlook. They may also exist on an e-mail server. That server might be housed at your place of business or off-site at an Internet Service Provider (ISP). E-mails are also stored on mobile devices, such as BlackBerries. Important e-mail communication might also exist on network servers and backup tapes.

Seek and find information: With many businesses offering flexible work options to employees, information is not necessarily housed on company servers. You don't want to lose track of important documents that could be stored at remote locations.

Understand What to Save: The responsibility to save all information begins, at the very latest, upon learning about any lawsuit. For the party filing the suit, the obligation arises at the latest when it becomes likely that a lawsuit will be filed.

Businesses can be overwhelmed if they become "pack rats," keeping data they do not need. The responsibility to preserve ESI is not infinite. Businesses can and should develop document retention policies that permit them to destroy old information in an organized way. However, once litigation becomes foreseeable, that document retention policy must be interrupted with respect to ESI that might be relevant to the case. ●

— **Marcel C. Duhamel**, partner, **Vorys, Sater, Seymour and Pease LLP**, vorys.com

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