

epiq focus

Beyond Discovery:
Reducing the Cost
of Investigations



Introduction

The tools normally associated with discovery or disclosure in litigation can be used to reduce costs, resource pressures, and risk when used to compile information for investigations. Obviously your business doesn't aim to be involved in regular investigations. However, with increased globalization and ever-changing regulatory regimes, it is something you need to prepare for, not just in your home jurisdiction, but in all the jurisdictions in which you do business.

Whether it's an internal HR investigation or a full cross-border regulatory investigation, companies are facing mounting challenges and increasing risk. How do you identify, gather, and preserve data across multiple platforms in multiple jurisdictions in a defensible way that meets local requirements? Using forensics, analytics, and technology-assisted review can help reduce the mountains of data to reasonable and relevant evidence.

Why use evidence technologies?

Defensibility

Even in investigations, the preservation and integrity of evidence is vital. While you may not face the fines for spoliated evidence you would in litigation, data that is improperly collected could derail investigations and potential settlements. Using an eDiscovery provider to identify, preserve, and collect your information protects metadata, ensures no data is lost or altered, and can help you avoid fines or punitive measures.

Cost reduction

In addition to the risk protection of defensibility, using eDiscovery tools to categorise and assist in the review of your data saves time and money. More importantly, it takes the burden off of internal teams and reduces the need for costly outside counsel to do relatively basic tasks, focusing your legal spend on what is important.

Phase I: Information Governance

Information governance simply means managing all of an organization's information in accordance with regulatory, legal, business, and information technology requirements. Today, many businesses operate across multiple jurisdictions, so information governance must take into account the local and regional requirements in each area. Organizations may use information governance to harmonize and synchronize the often competing or overlapping needs and priorities of various information stakeholders.

Areas of information governance to consider include:

- Records and information management (RIM)
- Legacy data disposition
- Litigation, arbitration, and investigation readiness
- Office 365

Understanding the data you hold and managing it with effective information governance procedures ensures that when an investigation does arise, the right information is easier to locate and access and that unnecessary information has been removed from systems.

Phase II: Identification, Preservation, and Collection

Once an investigation has started, it's necessary to identify both the sources (legal entities and custodians) that hold the data, and the locations where it is stored. eDiscovery professionals use questionnaires and custodian interviews to locate data in email, on network shares, mobile phones, hard drives, personal computers – even chat rooms and instant messaging tools.



After the data sources have been identified, local regulations may require you to preserve that data in a specific way. Custodians of the data may be instructed not to dispose of anything potentially related to the investigation. Technology can also be used at this point to prevent data removal from electronic sources. Preservation is vital to ensuring data is defensible and can be used effectively.

Collection is exactly what it says: Collecting data from the identified sources for use in the investigation. But it can also be used as a tool to preserve the data. Forensic specialists use software designed to capture data exactly as it is stored in the source system. The software takes an exact copy without changing data itself or its metadata, such as last-accessed or creation dates. The copies can then be stored as backups for future analysis and processing. You can use collection services to preserve data beyond investigations as well. It can preserve data when employees leave the organization or when you're making significant IT changes and need exact copies for future reference.

The dangers of self-collection

While using your in-house IT teams may seem like it could save time and money, it carries the risk of damaging the data and its accompanying metadata. This could impact defensibility. Frequently, self-collection leads to delays and increased costs, as companies have to go back and re-collect the data.

As outlined above, using an eDiscovery provider can ensure that data and its supporting metadata is preserved in a defensible way. Using a third party also offers an objective view of the process, which

can help avoid the risks of confirmation bias. While there is a cost associated with using a provider for this phase, it often prevents multiple re-collections or incomplete data, saving money in the long run.

Phase III: Processing

Once collections are complete, the next critical step in a project's lifecycle is processing. Project managers work with clients to associate subsets of collected data (data sets) with owners (custodians) to ensure proper tracking. Project managers also document the settings for processing, including what time zone to normalize the data in, how to handle password-protected items, and how to apply deduplication rules. Project managers consult with you to provide time estimates for this phase to help you effectively set timelines and budgets for the project.

Processing includes extracting item-level records from compressed formats such as email archives, zip files, and forensic images. Each item's metadata – e.g., dates, file extensions, creator name – is indexed and can then be used to group items together or reduce the total population of records.

An eDiscovery provider should have a robust and tested set of standard operating procedures to help guide you through this stage and ensure accuracy and defensibility. You should receive detailed reports after each phase of processing to help ensure success in the next phase: review. Whether it's related to processing settings, general filtering criteria, or nuances related to the data set, making the correct decisions in this phase helps facilitate the review phase.

Phase IV: Review

Document review is typically the most time-consuming portion of the EDRM. If the work in the earlier phases is not carried out correctly, it can lead to increased costs during review. In this phase, the contents of the documents are assessed by experienced reviewers to identify which documents are the most relevant, and which documents may need immediate escalation to the case team.

Reviewers also identify which documents have privilege status and whether there are any specific issues relating to the investigation. Throughout the review, the details of the documents are considered and your legal team can begin to see how their evidence can either support or weaken their case.

Your legal team will provide the document reviewers with a specific set of criteria to review the document against. Document reviewers then review the documents on a technical review platform, coding the documents against that criteria. By leveraging discovery technology, case teams can streamline review using tools such as email threading and deduplication, perform random and targeted quality control of the review team's work product, and track coding decisions in real time. Review platforms also allow reviewers to electronically redact records and annotate documents for reference later in the investigation.

At the outset of a project, legal teams often employ contract reviewers as a lower-cost alternative to associates charging standard law firm rates. These contract reviewers help to reduce the full data set to a smaller pool of highly-relevant documents. To guide the reviewers, case teams prepare a coding manual documenting the background and key players in an investigation. They also define the criteria the reviewers need to make judgements on documents for relevance, privilege, and issues.

Review managers lead the contract review teams and monitor the reviewers' progress. They also perform quality control on decisions to ensure accuracy. The review manager acts as the main point of communication between the review

team and the legal team, escalating queries and documents where necessary, and reporting on the status of the review. It's important to note that professional document reviewers have experience on many reviews, which helps them understand the most cost-effective way to organize a review using the technology available.

Phase V: Analysis

While we are treating analysis as a separate phase, it's important to note that analysis actually happens at several points throughout the project. Remediation, identification, collection, processing, and review all employ elements of data analysis to help teams sort through the large volumes of data in many investigations.

Analysis can include the use of search terms to locate potentially relevant records. Searches can be used to cull records from the review set or help organize the review by grouping relevant records together. Processing and review platforms both use search terms augmented with powerful syntax tools such as proximity searching, wild cards, and more complex criteria. These can help categorise and reduce the number of documents. For example, you can use analysis to identify patterns in phone records.

Proximity searching: Searching the system for a key word within X number of words from another word. Example: find "apple" within five words of "pear."

Wild cards: Searching for variations of the same word. Example: jump, jumps, jumper, jumping.

Additional criteria: Many customized variations. Example: finding patterns in phone numbers or social security numbers



epiq efficiency

More advanced analysis methods fall under the umbrella of technology-assisted review (TAR). TAR uses algorithms to assess the content of records to both cull review documents to the most relevant and help organise reviews around similar documents or concepts.

Some examples of TAR include :

Predictive coding: A subject matter expert identifies relevant documents from a random sample. The properties and information in those documents is used to feed algorithms that evaluate the remaining population. This workflow allows you to prioritize your review by promoting the most likely relevant documents to the front of the review queue. Other variations of this workflow allow you to determine the set of documents most likely to be relevant based on levels of recall. This significantly reduces the population of documents requiring review.

Concept clusters: Documents are evaluated for similar words and grouped into clusters, often put into graphical reports to make the connections between records simple to evaluate.

Email threading: Emails in a common exchange or thread are grouped so that a reviewer can read a single thread as one inclusive document, instead of reading the same emails repeatedly due to each new email in the conversation.

Near-duplicate analysis: Contents of similar records are compared to minimize duplicative review of similar drafts or versions of documents.

TAR providers can help you determine which of these methodologies is best suited to your project

and data. They can develop cost-effective solutions for your goals and can be relied upon in court to testify to their methodologies.

Phase VI: Production

In the production phase, the evidence gathered through eDiscovery is compiled into the desired format (e.g. native files, or PDFs) for review by regulators or internal departments. Only non-privileged records material to the investigation are included in these document sets. As relevant documents are identified during review, they're coded to be easily identifiable during production.

The project manager will work with you to help determine the relevant population while also providing consultation on any second-level review workflows that may assist the case team in finalizing the production set. Project managers use custom quality control processes to ensure that the production is comprehensive while also ensuring that only documents identified as requiring disclosure (e.g., relevant and not-privileged documents) are disclosed.

Phase VII: Presentation

In the presentation phase, your data and information is presented before an audience. In the case of an investigation, this could mean a tribunal, regulatory hearing, or simply internally. A robust process throughout the other phases of the EDRM can ensure a smooth presentation of your evidence.

Transcriptions

Court reporting services may not sound like it belongs here, however court reporting goes beyond the courtroom. A court reporting or transcription service can help you transcribe or record meetings or interviews throughout your investigation. Audio transcription services can be particularly helpful if you need to record a meeting over the phone, with many services providing written transcriptions in less than a day. If the matter is referred to a tribunal or hearing, court reporting may be required.

The people factor

When you're managing an eDiscovery project, even outside of litigation, a project manager can be a key factor in the success of your project. A project manager acts as an extension of your case team and can help you:

Manage time and cost: Project managers have experience and knowledge to advise case teams on best practices and options that can set expectations, save time, and reduce costs.

Solve problems: Project managers' extensive experience on a wide array of matters mean that they can guide clients through challenges and build solutions tailored to your needs.

Keep the project on track: An objective project manager outside of the case team can ensure that goals and deadlines are met.

Project managers guide clients through the challenges of disparate data sources. They help review software usage and best practices, and help you integrate technology solutions. They also manage production/disclosure specifications, and any custom technical requirements. Using a project manager can ensure more defensible, cost-effective, and streamlined solutions.

Conclusion

Investigations can be daunting. Mountains of data from numerous sources and jurisdictions don't have to mean hours and hours of in-house legal time. By understanding how to use eDiscovery technologies and services traditionally associated with litigation, you can:

- Protect against risk
- Minimise cost
- Minimise the impact to your in-house legal team

Epiq offers a wide array of technologies and services to help you. Our experienced, professional team can help you identify a defensible and secure process to manage any investigation, no matter how complex. From preservation and collection to analytics and review, we will guide you through your investigation.

Learn more about how Epiq can help you by visiting epiqglobal.com.

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Case team

Internal counsel and outside counsel; responsible for managing the case, making decisions on data, and selecting and managing a third-party eDiscovery vendor where required.

Data set

The total set of data collected and processed. This data can be grouped and/or categorised into subsets based on specific criteria.

Technology-assisted review (TAR)

The process of having software classify documents electronically. A set of sample documents is reviewed by expert reviewers and fed into software to help it identify documents and data relevant to the review. Helps expedite the organisation and prioritisation of the documents.

Simple active learning (SAL)

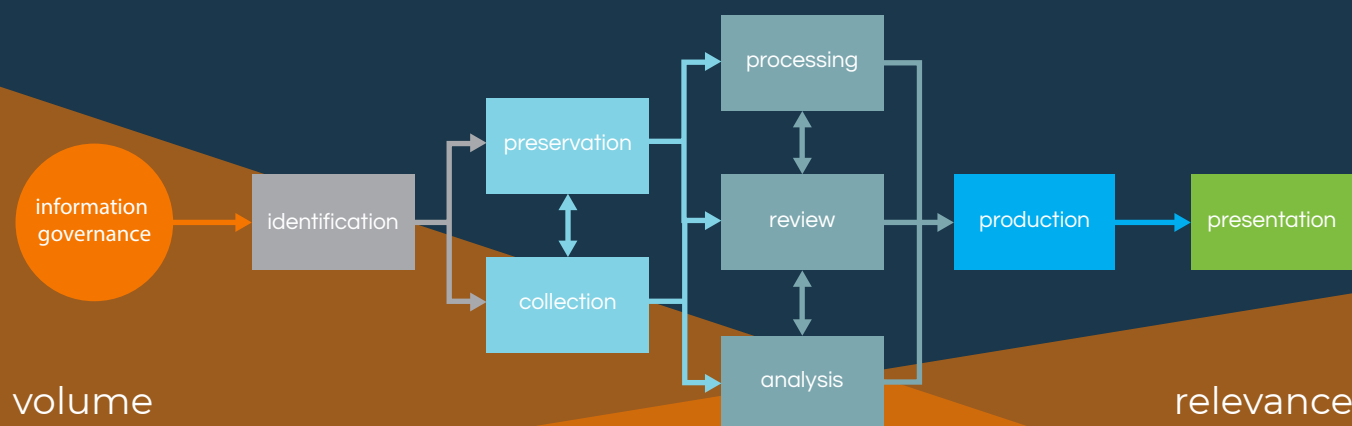
A version of TAR where a large sample of documents is reviewed and fed into the software. The software then compares all documents to this sample and ranks the documents' relevance based on the key words, phrases, or other criteria (such as email senders) in the sample documents.

Continuous active learning (CAL)

Another type of TAR where the software learns as it reviews. In CAL, a small sample of documents is reviewed and fed into the software which then it begins to identify relevant documents. Human reviewers check those documents and confirm their level of relevance in the software. The software essentially 'learns' what is relevant based on the reviewers feedback and continues to identify more relevant documents.

Electronic Discovery Reference Model (EDRM)

A model that outlines the phases of an eDiscovery project. It outlines the standards for recovery and provides guidance on the process of gathering and processing electronic data during a legal case.



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A dark blue world map is centered in the background. The continents are outlined in a lighter blue color. The map shows the Americas, Europe, Africa, Asia, and Australia.

80+ offices 14 data centers 5,500+ people



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