

E-Mail Life Cycle Management

Keeping Watch Over the Rising Tide

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A Purist RM Perspective: E-Mail Needs Maintaining, Not Archiving Use a Lifecycle Management Approach to Keep Only What Is Needed

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Attorneys have transitioned from working with physical records to working with digital ones. They live in e-mail. Most knowledge workers, attorneys included, spend at least half of their day working in e-mail.

The IT advisory firm, IDC, has estimated that more than 60 percent of business-critical information is stored in messaging systems.

In one firm that places no limits on mailboxes, the average attorney's mailbox size is an estimated 1.5 GB. The median is approaching 5 GB, and we've seen the extreme reach as high as 40 GB. As a result, a significant portion of a firm's critical information and client records reside in messaging systems. That material is often stored in a non-structured format accessible only to the author or recipient of the message and, if the attorney has left the firm, difficult to "discover" should a court come knocking. The client file is incomplete without this critical communication being managed as part of the official file.

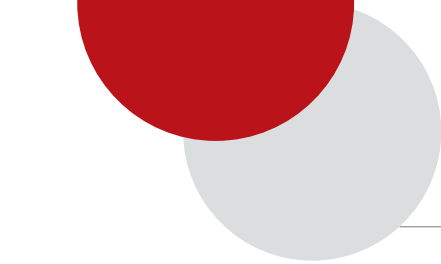
The volume of information being retained by firms in unofficial systems is exploding. The "keep-it-all-forever" approach is no longer reasonable because information is duplicated significantly; some pundits estimate

duplication of more than 50 percent. In addition, once a matter is closed, a majority of the information is never accessed again. "Over-retaining" disorganized information sets up a firm for extraordinarily broad discovery requests, and leads to expensive and time-consuming collection efforts responding to client requests or to legal/regulatory inquiries.

The challenge for a law firm's administration, therefore, is to develop supporting workflows and install supporting technologies that make records management a natural and "invisible" work process for attorneys, one that they find easy to use and can follow during the course of business. Many firms turn to archiving solutions to handle the massive volume of data retained in their messaging systems. An alternative to that approach is to combine software technologies and records management principles that, when implemented, support the lifecycle management of e-mail, which could potentially eliminate the need for an e-mail archiving system.

ARCHIVING IS NOT THE ULTIMATE SOLUTION

Most firms turn to e-mail archiving to alleviate bloat within their messaging systems. While this is a good use for an archiving system, the question should be, "Why does the bloat exist in the first place?" To records management professionals the answer is clear: The massive e-mail volume that most firms experience is



due to ineffective records and information management practices.

Even if a firm begins employing new technologies and processes today, there likely will remain a backlog of unclassified e-mail requiring an archiving system. It is impractical to expect that the entire legacy e-mail collection can simply be moved to a proper repository. To thin this glut, firms historically have introduced e-mail archiving solutions to reduce the burden on e-mail messaging servers. E-mail archives can hold the unclassified, legacy e-mail, and free up the messaging system to perform more reliably. An archive, however, is not the proper long-term solution to manage e-mail.

A LIFECYCLE MANAGEMENT APPROACH TO E-MAIL

Records management is the disciplined approach of managing information throughout its lifecycle and includes several phases: creation/receipt, use, storage, and disposition. Managing e-mail messages as records is no different from managing any other record format; e-mail records should be managed and retained based on the content value of the message. So what are e-mail records? They document a decision, provide evidence of a business transaction, or are messages in which the attorney provides advice or gives evidence of fact, legal thoughts and mental impressions. The record value can be contained with the body of the e-mail message itself or as an attachment.

Best practices dictate that client and firm business records, including those in e-mail format, be moved to a system that can manage them throughout their lifecycle and be purged from the messaging system in a relatively short time; *e.g.*, 30 – 90 days. This practice ensures that:

- **Proper categorization (by client/matter or administrative function) is applied at a firm-wide level, so similar records are destroyed using a consistent, repeatable and documented process**
- **Access to the e-mail by all matter team members**
- **E-mail storage cost reductions are realized when duplication is reduced as e-mail messages are centralized into another system**

E-mail messages should be moved at the “creation/receive” phase or at the “storage” phase of the lifecycle (typically once a matter has closed). If messages are not moved until the “storage” phase, however, then only the author or recipient(s) can benefit from the information contained in the e-mail while the matter is active. This is

the primary argument for moving e-mail messages out of the messaging system as soon as they are created or received.

Where to move e-mail is a more complex question, and largely depends on the firm’s user adoption of the document management system and/or the records management system. Today, a majority of firms move e-mail messages to the DMS, which has become the default repository for electronic matter materials. In addition, recent innovations in the DMS allow e-mail messages to be displayed showing the to/from/subject/received date attributes, similar to the native-messaging system, making the DMS an increasingly popular choice. Furthermore, DMS technology improvements allow firms to define a link between an Outlook mailbox subfolder and a DMS workspace folder so that, once a user moves a message to a mailbox subfolder, the message is automatically filed to the appropriate matter workspace folder. A DMS, however, cannot apply retention rules making a relationship to the RMS, in one form or another, necessary. A smaller number of firms move e-mail messages directly to the RMS and allow its retention module to govern their disposal. We find this option more successful in firms that adopted an approach of managing e-mail messages as records before the wider acceptance of matter-centric workspaces in the DMS.

Leaving e-mail messages in an individual user’s mailbox, even if they are organized in client/matter subfolders, is never a good option for the same reason an RMS’s retention module can’t govern the disposition of e-mail in the messaging system; that is, the inconsistent or lack of classification. While one attorney might label a mailbox subfolder as ABC Co/ American Bank Funding, a colleague might store the same matter’s e-mail messages in a folder called AmBnk because he “just knows” that AmBnk relates only to ABC Co. This practice becomes more problematic when an attorney leaves the firm and the remaining staff must determine what is meant by AmBnk. Furthermore, when responding to discovery requests or arranging for the release of a matter file from the firm, delays can be significant if every member of the matter team needs to be contacted to determine how they have organized their e-mail. If everyone working on the matter team has moved his or her e-mail into a centralized DMS or RMS folder (which is already named with the official client/matter name), then discovery requests and release of records from the firm become far less costly and time consuming.

AUTO CLASSIFICATION TOOLS MAKE MANAGEMENT EASIER

While firms are reporting increased success in having attorneys move e-mail messages to a folder in an official repository using a combination of drag-and-drop and send-and-file conventions, some attorneys continue to argue that it is simply too time-consuming to file e-mail messages. Therefore, firms must seek additional ways to accomplish this task, ideally requiring

little to no attorney intervention. Some choose to use auto-categorization software, which will, based on a user's initial choices coupled with sophisticated algorithms, automatically move e-mail into the correct matter folder. Most BlackBerry users have had similar capability for quite some time. This software is better-than 90 percent accurate, which makes it a very real option for classifying information. These systems also allow users to confirm the choice that it has made in order to prevent misfiling.

To encourage an attorney to properly file e-mail in a DMS or RMS, the period for keeping e-mail messages in a mailbox should be short. Employing an auto-purge after 30, 60 or 90 days should be enough time for the attorney to confirm that the auto-categorization software has properly filed the e-mail.

We envision that most firms will use three systems to manage their client and firm administrative materials: an e-mail system, coupled with an auto-classification tool; document management; and records management. Each has its own purpose and inherent attributes.

KEEP SECURE BY MAINTAINING E-MAIL

There is no doubt that e-mail is an important part of today's client/matter file. E-mail has virtually replaced all other forms of correspondence as the primary means of communication between attorneys, clients and other interested third parties to a matter.

A firm that establishes a process for managing e-mail throughout the lifecycle of a matter significantly reduces its risk. Sanctions against client corporations due to the improper management of e-mail have increased. It is a matter of time before a law firm receives such sanctions. It is also important to point out that law firms are no longer necessarily covered by attorney-client privilege, given their clients' desire to appear more transparent. In today's increasingly tough regulatory environment, corporations are more likely to waive attorney-client privilege in order to receive more favorable consideration from regulators or the court. This puts a law firm's client files and e-mail chaos front-and-center of a discovery request. Therefore, e-mail — just like the other portions of the official client/matter file — must be managed properly to minimize risk to the firm. **ILTA**

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