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E-Discovery: Cutting costs with targeted collections

Targeted collections reduce the amount of data that needs to be reviewed for production.

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Getting to what's real as soon as possible is one of the best ways to save money in e-discovery. Targeted collections let inside counsel reduce hosting charges, attorney review and production costs by identifying the most important data before collection begins.

Real targeted collections combine talent and tools to reduce the amount of data that needs to be reviewed for production. A good targeted collection plan will:

- **Identify** the key custodians who have responsive data
- **Interview** those custodians to find where the data is stored
- **Involve** the custodians in creating and testing search terms to find responsive documents and data

The Targeted Collection v. the "Data Grab"

Making full forensic images of all custodians' hard drives—and sometimes even email servers—is a common approach to managing document collections in e-discovery. Parties that use this method collect a large volume of data, knowing up front that some of it is non-responsive. They then use search terms and other e-discovery filters to limit the responsive data set.

But collections that just rely on the use of e-discovery tools and search terms to create the data set for use during attorney review and production may have problems and could be extremely costly.

Collecting everything off hard drives and servers increases attorney review and production costs. It also increases the chance of accidental production of privileged information or documents not related to the litigation. And it leaves parties open to possible claims of document dumping during production.

Many of the problems have to do with the limitations of a search-word-only approach to

document collection. Search terms are not an exact science and can be over-broad or too restrictive. They cannot be relied on to find the same documents that an employee could easily identify as likely responsive during a targeted collection.

Running keyword searches also requires some level of processing or outside software. This adds immediate additional costs to "run" the search terms against what is probably a very large data set.

Finally, most people try to avoid missing documents and end-up being over-inclusive during the search term cull—and the bigger data set that results again means more costs for attorney review.

Targeted collections can solve many of these potential problems and greatly reduce costs. By limiting the size of the data set from the beginning, targeted collections save money by requiring less attorney review time.

Targeted collections offer additional savings because they can be done with outside counsel and a good internal IT resource using commonly available tools. In those instances where internal IT doesn't have the tools or capacity to handle the collection, outside collection vendors can be hired. The costs associated with the outside collection vendor will pale in comparison to the cost to run an extremely large data set through search term filters.

Additionally, targeted collections get e-discovery to the review stage faster by eliminating the need to spend time creating, running and analyzing lengthy search term lists. Targeted collections also give inside counsel greater flexibility. Even if a party chooses to preserve entire servers, hard drives and email boxes, there's no need to "collect" all of that data during discovery. Additional search terms can still be run after collection, but information learned by involving key data custodians before the search makes the process easier.

Practical Strategies for Conducting Targeted Collections

A well-planned targeted collection can go a long way to help inside counsel manage their e-discovery budgets. Targeted collections that work will:

- **Identify the key data custodians.** Finding the people in your organization with the responsibility for maintaining potentially responsive data is the best way to find the documents needed to meet the other side's request for production.
- **Use custodian interviews to find where the data is stored.** The interview form should be very detailed and organization-specific as well as litigation-specific. For instance, if your organization uses Blackberries and instant messaging as a means of collaborating and communicating, the interview forms should have questions about these data sources. Also, make sure each custodian is asked who else they would communicate within the organization regarding this topic and, if need be, add those people to the custodian list/litigation hold.
- **Work with custodians to create and test search terms.** Involving custodians in both the creation and testing of data set search terms gives added assurance that the most real data is being collected, reviewed, and produced in response to the other side. When speaking to custodians, ask them not only what common words they would use to find relevant documents, but what acronyms, abbreviations and code words also should be included in the collection.

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