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## Information Proliferation Poses Challenges

In the past decade, records management has experienced an extraordinary evolution. E-mail and electronic records are quickly eclipsing hard copy files in terms of volume. Further, law firms' increased focus on risk management and compliance has highlighted the importance of records management best practices and elevated the records department's profile within the firm.

Records professionals are responsible for managing and protecting the matter file, ensuring that all information related to a matter is known, accessible, classified and subject to the firm's retention schedule. The records manager's role in ensuring proper records handling extends to access-related security as well. Given the rise in electronic information residing in numerous firm repositories, records and IT (along with other departments, such as conflicts) have begun to forge stronger relationships to reduce the risk of internal and external exposure to protect the best interests of the firm.

### Growing Pains Exacerbate Risk Issues

Unabated growth in three primary areas — firm size, information expansion and client expectations — is stretching the ability of firms to keep up with records-related mandates. Consider the following growth categories and the resulting impact on information management:

#### Firm Size

Firms continue to grow with increasing merger activity, aggressive lateral hiring, geographic expansion and increases in the scope and range of services offered to clients. Naturally, the volume of matter-related information has grown accordingly.

Merger activity forces firms to re-examine their records management practices in light of the merged entity's strategic goals. Records management policies, procedures and technologies vary from firm to

firm and must be realigned for consistency, not to mention compliance and client service purposes.

Both merger and lateral activity (inbound) also pose conflicts review challenges that can impede planned growth initiatives if they cannot be reviewed and resolved via waivers or ethical walls.

Finally, business growth and geographic distribution of work-in-process are driving the volume of information in firms. Timekeepers, attempting to manage information overload themselves (e.g., burgeoning Outlook inboxes), have developed practices that may work for them, but often work against firmwide records and risk management initiatives. Further, the job of preserving comprehensive matter files becomes more daunting for records managers.

#### Information Expansion

Firm reliance on digital communication is rising. E-mail, voice mail, electronic documents, scanned documents and images are replacing the need for and use of physical files. Protection of this information for disaster recovery and records retention purposes has taken records from box storage to backup tapes and servers as well as archival systems.

Think about the information created throughout the matter life cycle and the number of firm repositories in which that information resides. At a minimum, new business intake systems feed conflict systems, which exchange information with time and billing and customer relationship management systems, which in turn feed document management, litigation support, case management and records management systems, etc. All of these applications contain sensitive information. Decentralized management of these storehouses has made records classification an issue.

How can firms ensure that, upon the close of a matter, records residing in all repositories are declared and managed according to the firm's retention policy? Since they are the ones most intimate with work related to a matter and relevant records produced electronically, attorneys have become records managers by default.

Realistically, this job is often much delayed or left unfinished as attorneys' primary focus is on billable hours, not sorting through and classifying hundreds of e-mail messages that may or may not be relevant as records. The end result is that records information is often left unmanaged and in disparate firm systems, much to the chagrin of records managers, risk managers and IT personnel (who are called upon to assist with tasks such as responding to discovery requests).

Further, with matter information spread across multiple repositories with differing security standards, it becomes difficult to monitor and manage access policies uniformly, creating challenges for enforcing confidentiality.

With regard to conflicts and confidentiality, the amount of information available electronically at the fingertips of all firm personnel poses a major risk issue. Long gone are the days where firms could monitor and manage this risk manually when physical files were predominant.

## Information workers have more to consider and act upon than ever before and less time to organize it all without risk management falling through the cracks.

Today, firms must use ethical walls technology to help secure these assets. However, information volume impacts the use of ethical walls, too. They must be scalable and extend beyond records management and document management systems to all firm information repositories. They must also be kept up to date as the make-up of the matter team changes. Plus, the proliferation of ethical walls used in firms today makes it harder for timekeepers to truly remember what not to touch, potentially resulting in unintentional accidents and close calls that can jeopardize the firm.

To address this risk, organizations need to go beyond the standard distribution of memoranda. Even with the best intentions, these can be difficult for attorneys to commit to memory given the number of clients and matters with which they deal. More helpful are reporting tools such as Web-based dashboards that provide timekeepers with a clear record of the restrictions to which they're subject or must enforce. Coupled with automated updates and reminder mechanisms, such an approach creates one clearly-defined place where attorneys can go to make sure they are aware of and in compliance with all applicable walls and restrictions.

### Client Expectation Growth

Clients, subject to increasing regulatory and legislative records-keeping requirements themselves (*e.g.*, HIPAA; *Sarbanes-Oxley*), are demanding more from firms, often requiring specific records management and

retention practices as well as proof the firm is adhering to these mandates. Further, clients are acutely aware of electronic information access within the firm and expect firms to be able to properly secure confidential matters or other sensitive client information.

Not only do firms have to maintain their own records retention procedures, they are increasingly called upon to manage client records according to the client's own policies. Clients require assurance of proper retention and destruction practices because a law firm's handling of records can inadvertently expose clients to risk.

For example, a Fortune 10 pharmaceutical company properly disposed of documents according to its retention policy. However, the law firm representing the pharmaceutical company did not. When the company was sued, the firm was in possession of discoverable documents that negatively impacted the outcome of the case and had significant cost implications for the pharmaceutical company.

Clients expect their law firms to protect their sensitive information, not just externally, but internally as well. Clients may have special requirements for firm information handling practices, especially with regard to how data is accessed and communicated within the firm. For example, the firm may have a client that has special concerns regarding potential press leaks or even the fact they have solicited legal advice. Clients involved in intellectual property (IP) pursuits, where the mistreatment of IP such as patents or trade secrets may have dire consequences, may have different requirements. Others may set requirements based on the mandates imposed on them, whether they are regulatory or statutory in nature (*e.g.*, SEC rules) or specified by their own customers or partners.

Information workers have more to consider and act upon than ever before and less time to organize it all without risk management falling through the cracks. For example, a confidential matter may be protected in the document management or records management systems, but what about in time and billing? Or, what if records related to a matter have been destroyed in accordance with the firm's retention policy, but backup tapes of the information still exist? Given the multiple systems law firms use to conduct day-to-day business, integration and automation are essential.

### Remedies to Ease the Pain Automatically

Firms are increasingly aware of their susceptibility to records and information management security-related risks. Some firms proactively identify and address these issues, typically leveraging cross-functional teams (*e.g.*, records management, CIO, risk partner/general counsel, conflicts management, managing partner) to ensure a comprehensive outcome. Others are forced to respond reactively due to liability insurance concerns, complications arising during mergers, client mandates or litigation, etc. Fortunately, once firms recognize (whether proactively or reactively) the need to take action, there are viable solutions available to address some of the core risk issues. The key is streamlining and automating information throughout the matter life cycle to minimize end-user intervention and to better assure compliance.

Prior to implementing technology solutions, firms must address several nontechnical issues that will influence the success of needed records

and information initiatives. The first step is to develop best practices and then set rules and procedures for defining and implementing security policies. Next, stakeholder responsibilities must be decided and documented, including determining which parties own what parts of the enforcement process and the specific duties associated. Finally, staff must be educated regarding policies and practices to highlight the reasons for change and increase the likelihood of compliance.

Firm growth requires that new best practices be employed to replace any manual and *ad hoc* approaches to securing firm records and information. Streamlining the application of information security management tools can go a long way toward minimizing issues associated with mergers, laterals and activity volume. When applied pervasively (across multiple firm repositories, not just records management and document management systems), they are a workable and defensible solution.

How does it work? Ethical walls are created and applied to numerous firm repositories. This triggers automatic notification, logged for audit purposes, to inform affected personnel that an ethical wall has been created and to outline the associated restrictions. Additionally, reports are generated so that affected personnel have a consolidated, “at a glance” view of the walls to which they’re subject.

Once established, the ethical walls are monitored, maintained and updated in real time, automatically extending and repairing themselves in response to new clients, matters and attorneys. Again, all changes, as well as potential breaches, are logged to provide a comprehensive audit trail.

This technology and resulting processes represent a significant security enhancement throughout the matter life cycle from memorandum notification, on which many firms presently rely, whereby the security of records and information is directly dependent on an attorney reading and committing the details of a memo (*e.g.*, excluded from this practice group) to memory for the duration of the matter.

With a comprehensive security platform in place, firms can more readily manage conflicts related to merger and lateral hire activity. Instead of thwarting growth, turning down business or struggling to meet client requirements for managing conflicts or confidential matters, firms are able to confidently bring in business.

Information growth challenges firms to balance the need to provide end users with access to information and productive work tools with the need to adhere to records management, risk management and security initiatives. When it comes to preserving records, firms should consider

an automated approach to matter-centric declaration of electronic documents from document management system and Outlook folders, as well as other firm repositories, into the records database.

This approach can be achieved by automating the integration and specific information sharing among the relevant firm repositories, using processes based on firm policies and procedures as opposed to end user action. Firms can control particular records mandates (*e.g.*, based on area of law; client/matter, client specified, etc.) as well as set trigger dates for the auto-declaration process (*e.g.*, date matter closed, billing date). Integrated workflows can be set up to automatically perform records tasks according to firm-specified policies (*e.g.*, when a client matter is closed, generate a report detailing information in all specified firm systems related to the client/matter number).

For confidential matters and conflicts of interest, ethical walls can again be applied to ensure that information is locked down and unauthorized access is prevented

Client expectation growth requires firms to step up their records management and security measures in order to attract and retain clients. By developing best practices and leveraging appropriate technologies as highlighted above, firms can do more than provide lip service, they can actually document their ability to adhere to both firm and client mandates for retention and confidentiality.

Interestingly, using ethical walls to manage information growth can actually spur firm growth when leveraged as a differentiator in firm marketing outreach and RFP responses.

## **Regaining Peace of Mind**

Today’s business landscape requires law firms to take greater steps to manage and protect their clients’ interests as well as their own. The scope of information created and managed in law firms is constantly expanding, along with client and industry-related requirements.

Not only is the workload growing, the risks associated with keeping up with volume are increasing also. Firms must take a critical look at their practices pertaining to records management and security, identify areas of inefficiency and exposure, and bring together relevant firm personnel to work on developing best practices and implementing effective solutions.

There is no one-size-fits-all solution. Fortunately, there are technology products available today that address multiple firm information management needs in a flexible and automated way, providing both firm and client with some peace of mind among the growth chaos.

*This article was first published in ILTA’s March, 2007 white paper titled “Records Management — Beyond the File Room” and is reprinted here with permission. For more information about ILTA, visit their website at [www.iltanet.org](http://www.iltanet.org).*