

How Email Archiving Can Help You Avoid e-Discovery Nightmares

WHITE PAPER

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Fulfilling an e-discovery request can be a nightmare if you don't have the technologies and tools in place to respond quickly and comprehensively. Every company, no matter the size, is vulnerable to being sued. Research shows that 36% to 53% of small businesses are involved in at least one lawsuit in any given year, and 90% of businesses are in litigation at any given time.¹

If you are involved in litigation you will likely have to produce a wide range of very specific documents—most often emails but also documents found in attachments, such as corporate memos, contracts, patent-related information and other unstructured data. Failure to produce these documents in a timely manner can result in your organization losing in litigation, regardless of the merits of the case. Judges these days exhibit little patience for companies that can't produce required documents, often demanding that they be delivered within a very constricted time frame.

The costs involved in merely reviewing documents can be staggering. Researchers conducted several studies a few years ago in an attempt to pinpoint these costs. One showed that companies were spending an average of \$18,000 to review a single gigabyte of data.² That's just to review a gigabyte—not to produce it. How many dozens

1 "You're Going to Get Sued - Here's How Not to Get Screwed," Forbes, July 14, 2014

2 "E-discovery costs: Pay now or pay later," Inside Counsel, May 23, 2012

or even hundreds of gigabytes might be reviewed to cover all potential documents to defend a lawsuit? Another study showed that the costs involved in reviewing documents for relevance, responsiveness and privilege represented about 73% of total e-discovery costs for a single litigation event.³

Why Email Archiving?

If you are not prepared to fulfill an e-discovery requirement, the costs involved in review can put you in a deep hole. In fact, many companies choose to settle winnable lawsuits at the discovery phase rather than go through the expense and hassle involved in fulfilling e-discovery requirements.

In the case of e-discovery, it is trite but true that an ounce of prevention is worth a pound of cure. The most cost-efficient way to avoid spiraling e-discovery costs and other problems that could put your company at extreme risk is to utilize an email archiving solution that allows you to be much more efficient in reviewing huge amounts of data in a timely manner.

Having an email archiving solution is like having an insurance policy—if you can avoid or accelerate a single e-discovery event the solution will likely pay for itself. More than that, email archiving will deliver a wide range of additional benefits to your business, including a reduced storage footprint, improved regulatory compliance capabilities, higher employee productivity and reduced IT complexity in data management.

The key is to choose an email archiving solution that delivers the specific features designed to address the challenges of today's stringent e-discovery requirements. A solution from a leading third-party vendor such as ArcMail® provides much greater capabilities than email archiving solutions from vendors such as Microsoft or Google, whose solutions lack critical functionality required of e-discovery use cases.

What to Look for in a Solution

So what are the key features to look for in an email archiving solution that will ensure that your organization can respond quickly and comprehensively to any e-discovery request? Here are five that are absolutely essential:

- **Data immutability.** For e-discovery you have to be able to show that the data you are providing is complete and accurate. The first questions from any tech-savvy attorney will often be: "Do you have the ability to alter these documents or tamper with them? Can you override your retention policy and delete documents?" If you answer yes to these questions, all of your documents may be thrown out of court. With a solution from ArcMail®, the system automatically routes each email as it is sent or received. From that point on, nothing can be done to that document—not by a user, not even by an administrator. If a retention policy is changed at any point, there is an automatic audit trail of activity that can only be altered by ArcMail®. This is the ultimate insurance for courts that data has not been changed. What's more, it offers customers the potential for third-party confirmation by ArcMail® that the data they have produced is both accurate and complete.

3 "Where the Money Goes: Understanding Litigant Expenditures for Producing Electronic Discovery," Rand Institute for Civil Justice, April 11, 2012

- **Search granularity.** With an ArcMail® solution, every single word in an email or attachment is indexed. This gives your organization unparalleled search capabilities, which greatly improves efficiencies and mitigates the risks of potentially outrageously expensive searches. Using Boolean logic-based search capabilities, ArcMail® email archiving gets extremely granular and allows you to find the proverbial needle in a haystack in a matter of seconds. The solution uses drop-down menus to make it extremely simple for anyone to conduct searches, so that you can have administrators do critical searches based on virtually any set of criteria, rather than paying expensive fees for lawyers to conduct those searches.
- **Retention granularity.** Your email archiving solution should be able to support a global retention policy that affects all users, but is flexible so that you can modify it as needed for individuals or groups, or for certain types of content. This will give you the ability to establish and enforce retention policies that can be defended in court, while also allowing you to address regulatory compliance requirements that may be specific to your particular industry. ArcMail® solutions allow you to build your own rules for retention policies around specific types of content.
- **Legal hold flexibility.** Legal holds are an important aspect of e-discovery requirements. The email archiving system should be able to override the native retention policy with the ability to place a legal hold for whatever reason and at any time, whether it is for human resources requirements, internal investigations, audit requirements or other reasons. Email archiving solutions from ArcMail® place no limitations on the number of hold retainers, and allow you to name each hold container individually. This way when you do a search, you can look through that container, set parameters and easily find all of the appropriate documents you are seeking. You can then simply export those documents to your lawyers. When there is no longer a requirement for the legal hold, the hold is ended and the documents go back to where they belong and are not deleted.
- **File format flexibility.** Many law firms are Microsoft shops and prefer to receive and view information as PST files as opposed to EML files. Format shouldn't be an issue: Your email archiving system shouldn't limit your ability to export files in any format. In addition, e-discovery requests typically require data to be produced in their native format. ArcMail® enterprise information and email archiving solutions support open archiving standards such as XML, PDF, CSV, PPT and other formats, giving customers the flexibility to produce any electronic content in its original format as required for litigation.

Conclusion

E-discovery is one of those requirements that most companies would prefer to avoid, but it is an unfortunate reality of today's business environment. You can't afford to bury your head in the sand. If you are not prepared you could put your entire company at risk. And the longer you wait, the greater the risk and potential cost of having to respond to an inquiry. The amount of data being produced is doubling every two years, according to leading industry research, and the bulk of that data is of the unstructured variety found in emails and their attachments. If you are not properly tagging and archiving that data now, you will be even further behind the eight ball in the future if—more likely when—you have to respond to an e-discovery request.

An email archiving product will provide the technology, tools and processes you can implement in order to avoid e-discovery nightmares. But you have to make sure your solution delivers the features and functions required in today's environment. These include data immutability, search granularity, retention granularity and flexibility in legal

holds and file formats. ArcMail® has been a long-time leader in email archiving and has designed its solutions to help you cost-efficiently address your most pressing and potentially risky e-discovery needs. When it comes to e-discovery, the action you take now can save you a lot of heartache down the road.

For more information on how you can help your organization protect itself against e-discovery nightmares, please visit [ArcMail®](#).