

## How to determine if DIY e-discovery is right for you

Author: David Meadows

Publication: InsideCounsel

Date: December 2, 2011

Most corporate legal teams and their outside counsel realize the importance of preparing for the inevitable run-in with electronically stored information (ESI) in investigations and litigation. In fact, corporations and law firms are increasingly working to in-source some aspect of e-discovery to save money and gain control. According to the 2011 DIY Discovery Trends Survey, 86 percent of corporations and law firms are conducting some aspect of electronic discovery in-house or in-firm.

Though few attorneys question the need to be prepared, new and innovative ways to address e-discovery challenges leave many feeling overwhelmed by the multitude of do-it-yourself (DIY) and service provider choices available in the marketplace. Many corporate legal teams are in a state of constant re-evaluation when it comes to e-discovery, asking themselves questions such as:

- Can my organization better manage costs and increase control over discovery?
- Can my organization hire the talent needed to manage and execute the in-sourced technology?
- Which aspects of e-discovery are best in-sourced or outsourced?
- Which aspects of e-discovery are best left to my outside counsel?
- Under what circumstances should my organization be working with an outside discovery expert?

Some organizations are considering whether to invest in a DIY solution, while many more are wondering how to find the right mix between in-house and provider-based services. Making these decisions can be taxing, with potentially millions of dollars on the line, especially in a still-emerging field of options. In an outsourced model, service providers add value and expertly perform the heavy lifting, allowing you to concentrate on your core business functions or the merits of the case without worrying about e-discovery intricacies. For in-house DIY solutions, the promise of more control comes at the expense of your staff being taxed with maintaining and operating the systems.

To complicate the equation, law firms and corporations disagree over who decides whether to in-source or outsource e-discovery. According to the 2011 DIY Discovery Trends Survey, 90 percent of in-house counsel state that the primary decision maker is the corporation. On the other hand, 43 percent of law firms say that it is their decision, not their client's. Differences in e-discovery tools and processes between law firms and their corporate clients are driving this discrepancy, as each team seeks to leverage its own technology investments or support established processes and provider relationships.

Unfortunately, there is no one-size-fits-all method to determine when to use DIY discovery tools and when to consult an outside service provider or law firm expert. Each company needs to reflect on the unique nature of its type and volume of matters, tolerance for risk and resources needed to perform the work. Here are some key questions to help guide your decision-making:

- **Staffing Resources:** To what extent does your organization have the staffing resources to dedicate to e-discovery?
- **Infrastructure and Technology:** What amount of infrastructure and technology can your organization's IT resources support?
- **Data Security:** How would you rate your organization's internal security staff and procedures for handling sensitive data?

- **E-Discovery Volume:** How often does your organization conduct e-discovery matters in a given year?
- **E-Discovery Complexity:** How complex are the e-discovery matters that your organization anticipates?
- **Control:** How much of the Electronic Discovery Reference Model (EDRM) does your organization hope to control in-house?
- **Compatibility:** What importance does your organization place on flexibility to move matters between in-house and outsourced e-discovery service providers?

With e-discovery options evolving at warp speed, your company cannot afford to be left behind. New technology promises faster, less expensive and more intuitive results, but organizations that are unwilling to adapt will not reap the benefits of these advances and can easily fall behind. There is no right or wrong answer. If you are feeling lost, do not hesitate to bring in a discovery consultant to help you evaluate the options, establish procedures and determine the best investments for your needs.