



## The Disconnect Between Legal and IT Teams

Examples of what each side doesn't know

#2 in a series of 4 whitepapers.

Circulate this document to IT, Legal, and company management.  
It can be used to start a dialog, get consensus, and get action taken.

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This whitepaper is published by Waterford Technologies, Inc., makers of the popular MailMeter archiving solution. For more information on MailMeter, email archiving, retention policies, ediscovery, FRCP, compliance, etc. go to [www.MailMeter.com](http://www.MailMeter.com).



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## Background

If your organization has still not made a decision to archive emails for business and legal purposes (FRCP, SEC, FINRA, and other regulatory or compliance purposes) or you are frozen (or still debating) in the decision cycle (keep everything vs. don't keep anything), then this whitepaper is for you.

Our goal is to provide understanding of both the legal and IT issues and offer ideas and suggestions to resolve the differences while meeting your business goals and mitigating the risks.

### **Over 80% of an organization's business intelligence is in email records.**

Sales commitments, discounts, change orders, PO corrections, shipping changes, cost overruns, late deliveries, price changes, back orders, purchases, legal document changes, confidential information, etc. are transported through email.

## The Disconnect

- Lawyers are worried about saving emails in an archive since they are discoverable records. Nearly every legal action includes an order to produce relevant emails.
- When your organization is aware that "there is good potential for a legal action" (even before they have been served with a subpoena) you must take formal actions to preserve any records that may be called as evidence or asked for in discovery. This includes notifying people not to destroy email records and tracking responses to the notices (litigation hold).
- The Federal Rules for Civil Procedure mandate that attorneys "Meet and Confer" to establish the "what do you have and where is it" for all electronic records expected to be searched.
- Your organization's users believe they need to save every email they ever sent or received forever (just in case).
- The IT team has to maintain backups and is tasked with making most ediscovery searches – which is time consuming, potentially expensive, and has a large potential for errors.
- Legal holds may require that copies of current mailboxes and messages on backups need to be recovered and placed in a separate, protected location.
- While the policy debate goes on, the mass of messages in the email server continue to grow and cause long backup times, potential for longer recovery times, and reduce reliability.

## Examples of Disconnects between Legal and IT Staff

### 1. Records retention policy is that users manage and decide what to retain instead of having a central email archive.

Legal	IT
Each user knows what information should be saved. They are the custodians of the data.	Individuals have huge mailboxes, waste storage, create PSTs that need to be backed up, and lose information.
Users should only save important items.	Users always save everything. They don't have time to housekeep and save emails in "save" special folders. They never go to Sent Items and drag messages out to special "save" folders.  Backups and storage costs grow.
Allow users to use PSTs to keep Exchange Server size smaller.	This makes backing up even larger since there are multiple copies of the same email everywhere.  We can only back them up if they are in network shared folders.  PSTs get corrupted and we have to recover them for users.
For e-discovery, we can just ask a user to produce emails they have saved.	A lot of the time the emails needed are from ex-employees. IT ends up digging out the old mailboxes and PSTs.
If users do not have the emails, then we don't have to produce them.	IT has backups that need to be searched. Other users were copied on many emails and must be produced.
As long as we follow a standard policy, we are okay.	It may be our policy, but very few people follow it or find ways around it to save emails.

**2. The cost of reviewing email records is expensive.**

Legal	IT
We haven't decided on a policy yet.	Individuals save everything. We use mailbox quotas to control the storage problem, but then the users create PSTs that need to be backed up.
For a litigation hold, we just tell users not to delete emails until we notify them.	The storage problem gets bigger since we can't offload any emails from the email server.
Reviewing emails by outside counsel is extremely expensive.	Why not put in an archive so we can just search for specific emails and reduce the number of emails we give to outside counsel.
Getting emails is not expensive. We can just ask IT for a copy of their mailbox or to search the backup tapes.	What about copies from backups? What about all the PSTs? Restoring email backups is a huge expense of time and equipment.
Outside services can be used to process backup tapes and search for specific emails.	Those services are much more expensive than if we ran our own archiving solution.

**3. We haven't had an e-discovery legal action.**

Legal	IT
Yes we have, however we just ask individuals to print out what emails they can find.	Don't need to archive since we haven't ever had a request from legal to produce anything.
Yes we have, but when we asked IT to do it, they came up with a huge cost and time to get the data. So we negotiate to settle.	Legal asked us once and we told them what it would cost.
Yes we have, but when we looked at how many emails we would have to read through to find the right ones, we gave up because it was too time consuming and too costly.	Once legal asked for a copy of a mailbox, so we gave it to them. We don't have time or expertise to review all emails in someone's mailbox.
We ask people to save emails related to projects and contracts in case we ever need them.	For ex-employees we make backups of their mailboxes.
The judges are become more technically savvy. We can't avoid production of email records like we could in the past.	I've proposed an email archiving solution before, but it gets lost in determining who will pay for it – IT or legal. So nothing happens.

**4. Reduce legal costs.**

Legal	IT
Ask IT to do more.	Don't have budget or time.
We are pulling work back from outside counsel – don't have time to review emails.	E-discovery tools searching an archive would save money.
Don't have budget for e-discovery solution.	Archive and e-discovery solutions are not expensive and will save legal review fees.
Archiving all email is dangerous – lots of documents to review.	With archiving solutions we can search and pull out only the emails that are relevant.
If we had an email archive, could IT do the searches?	Since we already do them now, having an email archiving discovery solution would speed it up a lot.
If IT searches the archive, then we absolve the legal team for errors in data production.	Why can't legal personnel do the searches themselves?
We don't know archiving and search technology, so we see it as a dangerous and difficult area.	Email archiving is cool. It could save us so much time and money.
If we had an email archive, could we search the archive ourselves?	No reason for IT to do it.
We could do a better job of Early Case Assessment.	Sounds good to us.

**5. Our policy is to delete emails after 90 days.**

Legal	IT
This protects us from having too much e-discovery data.	Users forward emails to their personal accounts, save emails to their desktop and stuff them in folders or on pocket drives.
	We have people on legal hold that have emails from three years.
	We have backup tapes in a vault that are six months old.
Deleted emails may be needed – change orders, contracts, etc. Print them if important.	People print lots of emails. Isn't that expensive to search?

## 6. IT - Why can't we use archiving for storage reduction?

Legal	IT
Don't want to archive everything.	Storage reduction is just removing attachments from emails in the email server. It doesn't preserve any emails.
Messages must be absolutely deleted according to our policy.	Attachments are disconnected when the message gets deleted.

## 7. Legal terms – does IT need to know them?

Legal	IT
FRCP – Federal Rules for Civil Procedure	Means I may be called into a deposition to describe how we manage our email server, backup processes, and how we looked for information.
Meet and Confer	Legal has to argue with the other side about what we have to go look for.
Deposition	Lost day of work – with stress. I get asked very technical questions that I have to explain in non-technical terms.  Could I get fired for telling the truth?
Custodian	Who holds the data – is it IT's responsibility?  Isn't the user responsible for making sure they don't delete emails if they are on legal hold?
Legal hold	Make a copy of a mailbox.  There is no way we can protect a mailbox from a user deleting messages. How often do I need to save backups for? If a backup has lots of people on it, isn't that data exposed to discovery?
E-discovery	We have to search through mailboxes, PSTs, and backups for emails. It takes a long time.

### 8. IT terms – does Legal need to know them?

Legal	IT
<p>Put a tape in, press a button, and go home.</p> <p>They don't realize the time the backup takes, the cost of equipment, and the cost of recovery.</p>	<p>Email Server Backups</p>
<p>Outlook Personal Storage.</p> <p>They don't know that they are easily corrupted, not easily searched, and full personal emails.</p>	<p>PSTs</p>
<p>Method to capture all emails for specific users or groups of users automatically before a user can delete them.</p>	<p>Journaling</p>
<p>Repository of emails and/or attachments that is outside of the email server. It can be synchronized so emails deleted in the email server are deleted from the archive.</p>	<p>Archive - storage</p>
<p>I thought when I deleted an email, it was gone.</p>	<p>Deleting emails don't get deleted from the email server for 30 days. We have an "oops" setting so users can recover mistaken deletes.</p>

### 9. Who is responsible for legal protection of email records?

Legal	IT
<p>IT.</p> <p>We notify them and they must take steps to protect information.</p>	<p>Email Server Backups</p>
<p>End users.</p> <p>We notify them and they must take steps to protect information.</p>	<p>We have the backup tapes (email server and PST files) for as long as they need it.</p> <p>We don't know if users are deleting emails.</p>
<p>Legal.</p> <p>For any emails produced to the court or outside counsel.</p>	<p>We gave them a copy of the mailbox in a PST.</p>

## Ideas and Suggestions

An email archiving solution brings value for legal, IT, and the business.

- Employees know that every email sent or received is kept as a company record for 7 years or longer. This insures that employees know not to waste resources on personal or frivolous mail.
- It prevents obvious use of the organization's email for non-business use since employees realize that every message is saved automatically.
- **Litigation hold is easy.** IT marks the message in the archive. No notices to users are needed. No user can delete messages in the archive.
- When email is reviewed internally, it is marked or "tagged" as privileged, needs review, responsive, case #, etc. and it remains with the message so future legal discovery is less expensive since messages have already been reviewed.
- Any ediscovery action can now be satisfied with internal staff who do the searches requested, review and mark the messages (big cost reduction), and export only the relevant emails to PSTs to hand to outside counsel.
- **Outside counsel costs are lowered.** There are significantly less emails to review. The litigator is familiar with the archiving solution and knows the searches produce all relevant email messages (nothing can be deleted by users from the archive). The meet and confer sessions go smoothly.
- Their need for business intelligence is satisfied – any user or manager can search the archive by date, keywords, customer, or person to find any critical email. The "needle in the haystack" can be found in seconds.
- IT is happy since email messages in the email server are removed after one year. Backups are smaller and recovery is easier. No more running out of disk space.
- **Depositions are easy.** A simple declaration of a description of the system and procedures usually suffices.
- **Retention management is absolutely controlled.** Messages can be destroyed by department, age, subject, person, content, etc.

Circulate this document to IT, Legal, and company management. It can be used to start a dialog, get consensus, and get action taken.

## Message to legal

- Stop delaying a decision. It will only get worse in IT and create more legal problems (*read the blogs on the Guidance Software case*). Data is getting lost or destroyed and you haven't taken any actions to reduce your legal costs.
- Email archiving systems are not that expensive. In our experience the reduction in legal review costs on your first discovery action pays for the cost of the software.
- **Protect the business** – start collecting information now. You can always change your data destruction policies. Remember, you have anarchy now – people are making their own decisions. If you have a reduction in force, you may have lost years of good messages that can save you money in the future.

## Message to Business People

- **Protect the business** – start collecting information now. You are losing valuable data because people are wasting time managing to mailbox quotas (what should I save?) or sending valuable data outside the company to personal email accounts (and you don't know it).
- You can also improve productivity by letting users know you will keep everything so they can find it if they need it. No more dragging and dropping messages into folders or wasting time housekeeping to meet mailbox quotas (that's why executives have bigger mailboxes).

## Message to IT

- Lawyers are not bad people. They have a tough job. They look to you to provide the insight into how to meet obligations without huge expenses. They will probably want IT to make the investment in email archiving because they are struggling with more cases and less money.
- Do them a favor – have them sit in on a non-technical demo of an email discovery solution. It will help.