

# Information highway

**Deborah Blaxell & Chris Dale** trace the path of data following the instruction of a software & services provider

Lawyers and clients are often unsure about what happens when they instruct a litigation services and software provider. Marketing materials inevitably reduce the processes to headings and bullet-points using a limited vocabulary; technical specifications are just that. Neither leaves a potential buyer of services with a clear understanding of what happens once instructions are given to collect data for litigation, for responding to a regulator's inquiry, or for internal investigations. Those facing their first case involving electronic documents may struggle to understand the concepts. These are best explained by simple descriptions of what happens from the moment instructions are given.

## Taking instructions

The provider will need to understand the time-frames involved, the objectives of the project, the risks involved, the client's budget and the resources available to assist with the project. It is very important at this stage that the provider, the client and the client's lawyers communicate fully to ensure that each party understands the roles and objectives of the other parties.

## Preservation

There is no second chance to preserve data and a prudent provider will usually advise the client and its lawyers that it is important to preserve widely—preserving only a narrow amount of data early in the investigation exposes the client to a potential risk that crucial evidence relating to issues yet to be considered may be permanently lost. Once the data is preserved, the client and its lawyers will be free to dip into the ring-fenced data sources as required.

## Collection

Ideally, collection will be a joint exercise between the provider and the client's IT team. Many factors will combine to dictate whether a provider attends at the premises or has a merely advisory role.

## Processing & hosting

Processing is the stage which is least understood by those new to electronic disclosure, perhaps because it is a generic term with wide connotations. In the present context, it involves a set of computer applications which extract the maximum information from the data which has been collected and then uses that information to guide decision-making as to the next steps. The end result is a much smaller dataset and a series of reports which give an informed assessment of the case. Once processed, the remaining data either moves to a hosted platform or is placed in a load file and exported to an alternative system, for example, at the law firm, that enables the review team to look at the documents.

## Analysis

Analysis is another seemingly technical term which embraces a range of easily understood concepts. The recurring theme of value to the company or its lawyers is that documents of a like kind can be grouped together. These features can make the ultimate review experience a more efficient and cost effective exercise.

## Review

Document review is inevitably the most expensive stage in a typical exercise because it traditionally involves the reading (often at lawyers' hourly rates) of all documents

which have survived the prior processes described above.

The conventional approach, particularly in the context of formal proceedings such as litigation, is that the clients, or more usually their lawyers, set a team of paralegals and trainees to conduct a "first-pass" review while more substantive work, such as privilege review or issue coding, is undertaken by more experienced, and hence, costly associates. Not every company or law firm has the resources or experience to undertake a large or complex review at short notice. The lawyers, or their clients, may instead choose to outsource the review, that is, to engage the services of a process-driven document review company. A small number of providers offer an on-shore document review service bringing qualified lawyers with relevant subject-matter and document review experience to work with the law firm and its clients to undertake all or the first pass of the review.

## Summary

An effective response to urgent regulatory investigations, internal investigations, litigation and the like requires preparation. The tools and techniques described above are an important part of the establishment of an effective response. However, it is the implementation of a strong process-driven approach, devised with the assistance of solution-driven experts that will ensure that, whatever the matter, the company's response is confident, timely, defensible and proportionate. **NLJ**

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