

Defending “Bet the Company Cases: Successful Strategies Including Masterful E- Discovery & Cost Control”

*Business Records and Information Management
Systems*

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Overview

- Key considerations for handling e-discovery in complex litigation
- Anticipated concerns and service gaps in an evolving professional services market
- Fundamental elements of a records management program
- Careful project planning yields long-term benefits and meaningful, lasting change

Key Considerations for Handling E-Discovery in Complex Civil Litigation

- Amended Federal Rules of Civil Procedure (Rules 26, 34, 37 and 45) and the phenomenon of “electronically stored information”
 - Rules are effective on December 1, 2006 but being applied already
 - Rules do not include (i) safe harbor; (ii) preservation requirements or guidance; or (iii) substantive privilege waiver protections
 - Don’t ignore the evolution of state court analog procedures
- Note to Bench and Bar: *“Time for a crash course on e-discovery and decentralized corporate enterprise systems”*
- Dearth of qualified e-discovery professionals within organizations (unique blend of legal, compliance, IT and operational skills)
- Anticipate numerous challenges in collecting electronically stored information large organizations, particularly overseas
- Meeting and conferring about key word and conceptual search processes (consider the use of mediators and special masters)
- Companies need effective records management policies and litigation protocols as a starting point

E-Discovery Planning

Strategic Considerations for Organizations

- Corporate Governance -- Cross functional executive team needed to govern enterprise content management, starting with these basic tasks:
 - Email and file server backup tape inventory and catalogue
 - Records management policy that standardizes backup tape rotation and related preservation rules
 - Litigation readiness protocols, including matter management systems, hold management and electronic information request procedures for accessing email and file servers
 - Who is the custodian of records?
- Law firms as strategic partners: The cost associated with selecting qualified eDiscovery vendor partners
 - Term and concept searches to distill only responsive electronically stored information
 - Third-party archives and production platforms

Addressing the Fundamentals

- Evaluate governance structure and empower corporate executive with authority to lead
- Assess existing policies, procedures, and legacy document management systems
- Create policy and procedures, including records classification scheme, retention schedule and hold management system
- Program branding and awareness campaign
- Change management and organizational behavior
- Audit and monitoring to ensure program integrity

Records Management Goals

Principal Objectives:

- ✓ Establish a global policy to classify, manage and ultimately dispose records generated in the business
- ✓ Establish user-friendly “File Plan” to classify all business records based on content and ensure timely disposition based on prescribed legal requirements or business needs
- ✓ Rationalize accumulated backlog of electronic and paper records and timely destroy or retain business records as required under the File Plan
- ✓ *The End Game*: To implement an EDMS that centrally archives electronically stored information with bona fide information lifecycle management using the File Plan
- ✓ Always demonstrate ROI and economic benefit of compliance

Summary of Benefits & Impact on ROI



AAIM International Research Material

EDMS and Return on Investment

Importance of Strategic Integration and Change Management

- Technology and business plans cumulatively shape and “Co-Evolve” to create “Virtual Organizations”
- Executives and employees both need to participate in developing, configuring and deploying an EDMS
- Three-part, iterative process should be envisioned:
 1. Network infrastructure and architectural development
 2. Business Process Analysis and Workflow Changes, if needed
 3. Examine new processes and re-organize where needed
- **Strategic Change Management = Success**
 - Better understanding leads to engagement, buy-in and support
 - Broad-based ownership by all constituents levels
 - Complex organizational and cross cultural dynamics need attention
 - EDMS must go beyond performing old tasks with new tools – it must enable invention of new methods to operate more productively

Timeline

Year One

Year One

4th Quarter

- Formulate project plan for policy rollout
- Identify and train Record Managers
- Introduce BRIMS themes to employees
- Issue Records Management Policy
- Identify vendor partner for shred services
- RFP process with EDMS vendors (if needed)

3rd Quarter

- Launch web portal for collaboration on program development
- Task force to approve EDMS recommendations
- Draft new record management policy amendments
- Conduct EDMS vendor evaluations (if needed)
- Develop themes and awareness campaign
- Memo re need to appoint record managers

2nd Quarter

- Convene task force for briefing and strategic planning
- Extend EDMS study to major business units
- Conduct survey to create Business Function Index & Retention Schedule
- Assess inventory of legacy paper backfile stored at offsite facilities

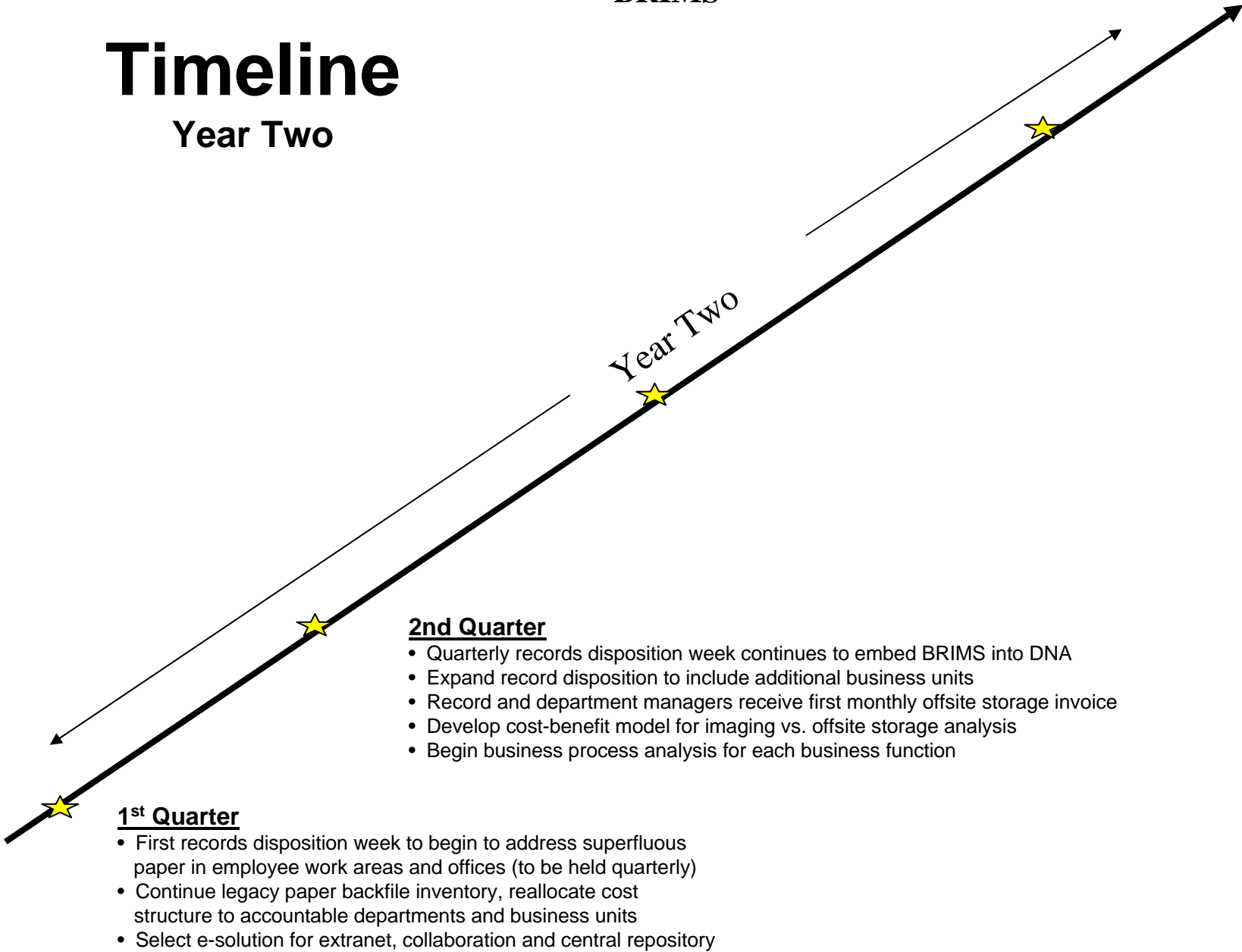
1st Quarter

- Project launched with memo to senior management from CEO forming task force
- Gaps analysis and assessment of corporate electronic document management systems
- Gaps analysis and assessment of corporate records management policy
- Email backup tape inventory and suspend backup tape rotation if necessary



Timeline

Year Two



Year Two



2nd Quarter

- Quarterly records disposition week continues to embed BRIMS into DNA
- Expand record disposition to include additional business units
- Record and department managers receive first monthly offsite storage invoice
- Develop cost-benefit model for imaging vs. offsite storage analysis
- Begin business process analysis for each business function

1st Quarter

- First records disposition week to begin to address superfluous paper in employee work areas and offices (to be held quarterly)
- Continue legacy paper backfile inventory, reallocate cost structure to accountable departments and business units
- Select e-solution for extranet, collaboration and central repository

EDMS Next Steps

Where we are...

- Outmoded/overloaded email and network infrastructures
- Unknown enterprise email usage metrics
- Unknown enterprise network capacity
- Varying email retention standards
- No backup tape archive standards
- Limited email storage capacity and lack of central document repository causes overly large mailboxes and use of PST files
- Collaboration overly dependant on email
- Outside counsel and internal professional service teams do not understand e-discovery nuances and requirements
- Corporation needs policy audit, review and remediation plan



Where we want to be...

- Executive Steering Committee & working groups established and accountable for EDMS initiative
- Inventoried & secured email backup tapes
- Backup tape rotation standardized and based on disaster recovery needs only
- Standardized desktop images across enterprise
- Quantified enterprise network capacity
- Records management policy and procedures in place and effectively applied across enterprise
- Litigation protocols and hold management extended to electronically stored information
- Law department and outside counsel communicating over secure extranet to manage litigation and e-discovery
- Designate one law firm as e-discovery firm



Where we are going ...

- EDMS deployments underway across enterprise with centralized document repository and global intranet for leveraged, global knowledge base
- Ingest email and file server backup tapes to central platform for hold management and proper disposition
- Execute process for email disposition
- Introduce instant messaging, collaboration tools and other methods for communications to reduce email traffic and overall risk associated with email