

## **Electronic Discovery - What You Don't Know Can Hurt You!**

Every day thousands of email messages are created as part of a company's standard business operation. Email is growing exponentially and has become so commonplace that it is hard to imagine life before it or how we would live without it.

You might be surprised to find that 90% of corporate data exists electronically; and that 70% of the documents that are created electronically are never printed to paper. Here are some additional statistics:

- 2/3 of the U.S. workforce uses email as part of their daily routine; workers spend from 1 to 2 ½ hours per day handling it
- Over 330 million email accounts exist in just the USA and it's growing daily
- 2.2 billion messages are sent each day – compared with 293 million pieces of first class mail
- 40 billion emails were sent in 1995, and by 2005, the number of emails sent is expected to reach 35 billion per day

The importance and complexity of email has evolved from a few simple text messages to mission-critical documents, such as bids, proposals, contracts, negotiations and a host of other vital correspondence. Email can offer clues to how an organization has conducted its business – providing evidence of the company's decisions, behaviors, and activities.

What is it about email that prompts people to be so bold and brazen in their communications? Email messages often contain very candid thoughts. For some unknown reason, people will speak very openly and often carelessly about what they think in an email message.

Maybe it has to do with email messages being informal and instantaneous, and people not having time to properly reflect upon what they are saying. Whatever the reason, you need to be aware that email messages are more likely to contain blatant truths than their more carefully planned counterparts, letters and memos.

Vast quantities of email reside on network servers, PC hard drives, backup tapes and other mass storage devices. By limiting the scope of your initial discovery request to only certain emails, from certain parties, in a given timeframe, may find a judge to be more inclined to favor a motion to compel based on your more modest request, than simply asking for everything.

Getting more than you bargained for: If your client is the producing party, be very careful to go through the material before turning the information over to the other side. Many IT personnel are so overloaded with support work they may take the easy road to fulfill a request and produce a whole backup tape containing messages and attachments. This is an important point to remember when receiving the opposing parties emails, where the receipt of additional material may help you or overwhelm you.

A point to remember, about attachments, is a user's email box will preserve the actual document attached. There is never a question about the authenticity or version of the attachment since it is a read-only file.

Beware of Viruses! Due to the prolific use of email and the variety of places they come from, many attachments carry viruses. Having processed millions of email and electronic records, your author has found this to be more of a problem than you might think.

How do you handle the emails and electronic files when you receive them? You can look at or search them in their native software, however addressing that subject would require another article.

The traditional way has been to print the emails, print the attachments, bates label the first set and make one or more copies of that set. An alternative and cost saving method is to convert the emails and attachments to images, number the images and review them electronically. In addition, converting the actual text of these documents provides a fully searchable database for assisting your research. Of course, the images can be printed for attorneys that find paper more convenient for review.

Another strategy is to assign temporary numbers, complete the review, then reassign new, sequential, permanent numbers – a process known as resequencing. Be sure you, or your vendor, know what they are doing, this can really get screwed up if you're not experienced!

Electronic discovery is perceived by some to be too complicated and expensive. However, email discovery can be swift and relatively inexpensive when managed properly.

*Open Door Solutions, LLP is a Dallas-based company providing litigation support services and document management solutions to law firms and corporations nationwide. Author Bob Sweat received his education in Business Administration and Economics at the University of Wisconsin and advanced work at Purdue University. He holds a Paralegal Certificate in Civil Litigation with Computer Emphasis from The Center for Legal Technology, Milwaukee, WI, and has years of experience working with local and national vendors on large, complex litigations. Bob is currently a partner at Open Door Solutions.*