



It's Time to Bring eDiscovery In-house

Technology, Privacy, and eCommerce



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For several years, the largest enterprises with substantial amounts of litigation or heavy regulatory

burdens have found that they can save time and money by bringing eDiscovery operations in-house. Recently, as a combination of trends has made insourcing more practical, more legal teams from the traditional “mid-market” have begun to in-source litigation-related tasks.

In Exterro’s recent [2018 In-House Legal Benchmarking Report](#), 78 percent of the respondents represented legal departments with 50 or fewer staff, and 57 percent of the respondents had fewer than 50 new legal matters per year. But, interestingly, 69 percent of the respondents conducted the majority of their litigation services in house, up significantly from just over 50 percent in 2017.

Organizations can achieve substantial benefits from performing even part of the eDiscovery process in house. They can reduce their external legal spend by relying on in-house teams to preserve, collect, and potentially even review electronically stored information (ESI) related to civil matters. They gain transparency and predictability, including the ability to schedule and budget more accurately. And finally, they can reduce risk by ensuring that reasonable, defensible measures are taken promptly in response to potential litigation.

These benefits have been available for years, though, so what has been fueling this recent rise in insourcing? And more importantly, what can corporate legal teams that don’t perform eDiscovery in-house learn from it? Three separate forces are contributing to this trend.

In-house legal spending is increasing

In 2018, the [2nd Annual Blickstein Group/Exterro Study of Effective Legal Spend Management](#) found 48 percent of respondents expected in-house legal budgets to grow, compared to 25 percent in 2017. Brad Blickstein, principal at the Blickstein Group, explains further, “Legal budgets are expanding, but almost all of that expansion is in-house spend. Folks are starting to build up their teams; they’re starting to bring work in-house. Spend outside the law department is relatively flat.”

But the rise in internal budgets doesn’t indicate a lack of discipline. Thirty-nine percent of respondents cited “moving work in-house” as one of the best ways to control legal spend when compared to spending on external vendors and law firms. When asked specifically about eDiscovery, the case is even clearer. The survey found that “bringing more of the process in-house” was the most effective means identified for controlling eDiscovery spend, cited by 75 percent of the respondents.

Legal departments are adopting legal project management (LPM) principles

The desire for transparency, accuracy, and defensibility goes hand in hand with LPM principles, which include the use of dedicated project managers and/or legal operations professionals, optimized workflows, and project-specific schedules and budgets. While the [2018 In-House Legal Benchmarking Report](#) revealed room for growth (e.g., 34 percent of organizations rely on attorneys to manage eDiscovery activities, rather than project managers), 65 percent of respondents consider their departments to have “structured,” “managed,” or “optimized” processes in terms of project management principles, and three in five departments review and assess their policies and procedures once or twice a year.

Technology gives teams the ability to “do more with less”

Given the ever-expanding volumes of data at play in corporate litigation, legal departments either need to increase staffing or adopt technology solutions just to keep pace with eDiscovery requirements. In terms of cost effectiveness, the scalability of legal technology makes the decision to invest in software clear-cut. The [2018 In-House Legal Benchmarking Report](#) found that the average in-house legal team was using 3.5 dedicated legal software tools. Two of the top five technologies in use were dedicated eDiscovery tools: legal hold technology and data collection/processing technology, while a third technology in the top five, document management software, has obvious eDiscovery applications, as well.

Learn from other organizations

For law departments in-sourcing eDiscovery, the lessons learned by other organizations can help ensure a successful transition. Here are three pieces of advice that can help ensure an insourcing initiative succeeds.

Start on the left side of the EDRM

[E-Discovery Maturity by the Numbers: Data from the E-Discovery Maturity Quiz](#), a report based on data from a joint EDRM/Exterro research initiative, teaches us that aside from matter closing (a largely administrative task), organizations performing in-house eDiscovery are most mature in the early stages of the EDRM. They wisely invest energy in information governance, identification, and preservation to lay a solid foundation for eDiscovery, minimize the risk of sanctions, and leverage their expertise in their own IT infrastructure.

Solid information governance policies and procedures help ensure not only that vital business data is preserved, but also that outdated data is defensibly disposed of, mitigating risk. Meanwhile, documented, repeatable legal hold practices to identify and preserve ESI demonstrate good faith and reasonable efforts in the eyes of the court, as cases like [New Mexico Oncology and Hematology Consultants, Ltd. V. Presbyterian Healthcare Services](#) demonstrate.

Embrace project management principles

While arguing a case may be more art than science, eDiscovery is not. The volume of civil litigation (and the attendant eDiscovery obligations) demand that modern enterprises treat eDiscovery as a business process. To ensure that in-sourcing eDiscovery yields the expected cost and time savings, legal teams must define roles, workflows, schedules, budgets, and metrics for the eDiscovery process — and then measure success against them.

For organizations that have yet to bring eDiscovery in-house, all too often they treat it as a reactive fire drill, tracking legal holds in spreadsheets, scrambling to find repositories in which relevant data resides, or paying exorbitant legal fees to have outside vendors manage the process. Fortunately, enough organizations have moved these operations in-house, so best practices, workflows, and technology recommendations are all readily available.

Choose eDiscovery technology that meets your needs and goals

Of course, a critical component of any effort to insource eDiscovery will be the choice of technology. The right choice complements existing processes and improves both their efficiency and their effectiveness. The wrong one introduces needless complexity and redundancy to an already effective

workflow. For organizations with limited goals in eDiscovery, this might mean software that automates and manages legal holds only, but for organizations that want to maximize savings, a [software platforms that manages eDiscovery](#) from preservation of ESI to its production for trial may be appropriate.

There are more technology considerations than the scope of eDiscovery operations to be supported. Do you want the ability to analyze ESI before collecting it, allowing you to make case strategy decisions earlier in the process? Do you want to leverage artificial intelligence (AI) during the review process, with the software suggesting codes and routing “most-likely-relevant” documents to human reviewers first? Is it important to have automated workflows, minimizing the risk of delays between stages of the process, or integrations with HR systems that safeguard against data loss when an employee leaves the company? All of these features exist in eDiscovery technology on the market today; they may be requirements for one organization but unnecessary to another.

Finally, prospective software buyers must understand their own IT environment. What sources of data will they need to preserve and possibly collect from? Microsoft Office 365 has many valuable eDiscovery capabilities but cannot collect from other data sources. Many, if not most, organizations need to consider data sources that include not just Office 365 documents, but also desktops and laptops, mobile phones (whether company issued or your own device), social media applications, instant messaging tools, and non-Microsoft cloud applications. Ideally, the chosen solution should integrate with all of these data sources, making preservation, identification, and collection seamless.

Many legal departments have already brought parts of the eDiscovery process in-house, as trends in budgeting, legal project management, and technology have combined to deliver benefits in predictability, efficiency, and risk minimization that general counsel can ill afford to ignore. However, late adopters can still accrue additional benefits. New developments in eDiscovery technology give legal teams the ability to get to the facts of a matter faster, cheaper, and more defensibly than ever before. The rise of eDiscovery platforms that manage the process from end-to-end reduce the risks of human error, data transfers, and re-work. And deeper integrations with data sources and IT infrastructure can yield greater insight and efficiency to in-house teams, reducing their reliance on costly external service providers and law firms.

Copies of all reports referenced in this article can be found in [Exterro's resource library](#).

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