

# Cost-Effective Litigation Response through Information Governance

By Derek M. Duarte, Esq., BlackStone Discovery

## INTRODUCTION

The modern workplace is a tangle of infrastructure and data. Electronically stored information (“ESI”) can reside in a plethora of locations: personal computers, mobile phones, network drives, cloud storage, backups, collaborative workspaces, portable storage media, etc. Without a framework for managing the various data locations and access points, it is easy to lose track of data, improperly respond to discovery requests, and incorrectly implement retention policies and litigation holds. It is impossible to preserve critical data if there is no defensible method for locating it and preventing its deletion during routine maintenance, data migrations, or staff errors.

As courts have become more aware of the importance of preservation of ESI, they have begun to impose more stringent penalties for failure to preserve ESI. Courts may impose a range of sanctions including monetary sanctions, attorneys’ fees, adverse inference instructions, preclusion of evidence, or dismissal. A solid information governance plan will help prevent the errors that result in spoliation as well as demonstrate to the courts a good faith effort by litigants to preserve relevant ESI, which is often a factor considered by courts prior to imposing sanctions.

Managing electronic data in response to litigation is a complicated and usually expensive process compressed into a short timeline. Once a lawsuit has been filed, the court imposes deadlines which require large volumes of data to be identified, collected, processed, reviewed, and produced in a limited time frame. This time constraint, to an unprepared litigant, can result in errors in case strategy, inadvertent disclosure of confidential information, and ultimately, extreme costs.

Blackstone Discovery’s Litigation Response Plan addresses all of the aforementioned issues inherent in litigation by leading with strong information governance. A strong information governance plan enables early case assessment, accurate case budgeting, superior discovery conference preparedness, defensible preservation and collection, streamlined review, significantly reduced costs, and optimal litigation outcomes.

## IG & CASE ASSESSMENT AND BUDGETING

The faster counsel can understand the case, the more cost-savings are available. A robust information governance system allows a company to quickly identify and collect relevant ESI, which creates more time for analysis and assessment prior to discovery conferences, settlement discussions, and substantial investment in legal fees.

The extra time allows for Blackstone Discovery to utilize Early Data Analyzer technology to first assess the size and nature of the data, its potential for reduction via culling and filtering, the impact of preliminary search terms, and establish an accurate case budget. Additionally, Blackstone Discovery can utilize Technology-Assisted Review algorithms to identify key documents in the case, to identify the

volume of documents outside counsel must review to make its initial case assessment. The early case analysis and budget translates to a lower initial legal cost, realistic cost projections for litigating the case, and superior factual data with which to decide if a particular matter is worth litigating.

Furthermore, the factual and budgetary information can be used to inform outside counsel's approach to early discovery discussions with opposing counsel. The information can be used to ensure that outside counsel properly represents the burden of certain paths of discovery and is empowered with the appropriate data to prove to opposing counsel and the judge that certain search terms or culling approaches would result in unduly burdensome e-discovery expense to your organization. This approach can greatly narrow the scope of discovery, reduce costs, and help avoid situations where your organization becomes obligated to an expensive discovery path because outside counsel did not engage in early discovery discussions with a data-driven approach.

An information governance plan will help your organization obtain the necessary factual and budgetary insights when cost-reducing decisions are still in the hands of your organization. Blackstone Discovery can help your organization avoid the discovery trap that results in being locked into an expensive discovery path and voluminous expenditures before any useful case assessment can be established. Take control of your litigation response and costs with Blackstone Discovery's information governance and early case analysis approach.

## ABOUT THE AUTHOR

*Derek M. Duarte is the Vice President of Technology Solutions at BlackStone Discovery where he manages the eDiscovery Consulting, Forensics, Client Solutions, Data Operations, and Development Infrastructure and Security Groups. Derek holds a Juris Doctor from the University of California, Hastings College of the Law and is admitted to practice in California.*

*With years of experience across the EDRM spectrum, Derek works firsthand with complex, large datasets, leverages cutting-edge technology to expedite the data analysis phases and provides expert consultation for clients undergoing discovery requests or seeking to bolster their information governance and litigation-readiness plans.*

*He is responsible for the construction of comprehensive, client-specific solutions that are pragmatic, budget-conscious, and effective for years to come.*