

## Discovery Technology Group™

### E-mail Retention: Readiness Survey

E-mail now represents the largest source of new documents and records generated within a company, and the most troublesome from a retention perspective. The informal nature of the medium, coupled with its interminable electronic form, can cause companies to spend huge sums of money storing, retrieving, and ultimately producing notes which have little if any value for business, regulatory, or litigation purposes. Indeed, retaining excessive amounts of e-mail can cause technical problems, lead to business inefficiency, and cause a host of litigation-related troubles. At the same time, failure to properly retain e-mail records or to prevent e-mail deletion during litigation can lead to hefty regulatory fines and court sanctions.

The following survey includes questions designed to explore whether your existing document retention policy adequately covers e-mail, and what potential problems your company's e-mail retention plan may cause down the road. It will provide us with a basis for further discussion and examination of how to create and maintain the right document retention policy for your business.

### E-Mail Retention Questions

1. Do you have a written e-mail retention policy?
2. If yes, how long has the policy been in effect?
3. Who maintains the e-mail policy for the company?
  - Records Manager
  - Legal Counsel
  - Information Technology Manager
  - Other (please specify title or department)
4. What type of system does the company use to manage e-mail retention? (Check all that apply)
  - E-mail products such as Microsoft Outlook, Netscape, or Eudora
  - Electronic Records Management Software
  - Backup tapes
  - Paper-based document retention
  - Other (briefly describe)

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5. Does the company destroy all e-mail over a specified age?
- Yes, 30 days
  - Yes, 60 days
  - Yes, 90 days or longer
  - No
6. Does the company have a system that automatically purges e-mail after a specified period of time?
- Yes     No
7. Does the company implement maximum mailbox sizes to limit how much mail may be stored by a single user?
- Yes     No
8. Which of the following best represents how the company maintains backups of email databases?
- Use the backups for emergency purposes only
  - Use the backups for archival purposes only
  - Use the backups for both emergency and archival purposes
9. Which of the following are included in the written e-mail policy?
- Policy for company use of e-mail
  - Policy for personal use of e-mail
  - Statements regarding how long e-mail should be kept on the system
  - Expectations of privacy of e-mail
  - Employer monitoring of e-mail
  - Organization's ownership of computers and e-mail
  - User's duty of care in drafting e-mail
  - Other (please briefly list)
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
10. Does the company classify e-mail into specific categories for archival purposes?
- Yes     No

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11. If you answered "Yes" to the question above, who is responsible for specifying the categories? (Check all that apply)
- Individual users
  - Department level managers
  - Corporate level management
  - Information Technology management
  - Legal counsel
  - Records management personnel
  - Finance or accounting management
  - Other (briefly describe)
12. Does the company create and maintain an audit trail for all e-mails?
- Yes     No
13. If you answered "Yes" to the question above, which of the following are included in the audit trail?
- Receipt of a message
  - Archival storage of a message
  - Opening a message
  - Forwarding a message
  - Deletion of a message from the desktop client
  - Deletion of a message from the archives (if the archives are handled outside of the client software)
  - Replying to a message
  - Printing a message
14. Does the company use encryption and digital signing of all e-mails and attachments throughout the archival process?
- Yes     No
15. Does the company provide any guidance to help the company determine whether certain e-mails are considered official records?
- Yes     No

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16. If you answered "Yes" to the previous question, which of the general types of email are considered as official records?
- E-mails containing contracts
  - E-mails containing agreements
  - E-mails containing financial information
  - E-mails with personnel related content
  - E-mails with insurance related content
  - E-mails containing personal messages
  - E-mails containing meeting invitations
  - E-mails with routine notices
  - E-mails with non-offensive jokes
  - E-mails containing newsletters
17. Which of the following best represents the frequency with which the company has been required to produce e-mail records to support regulatory compliance.
- Never
  - Once within the last year
  - 2 to 5 times within the last year
  - More than 5 times within the last year

## e-Discovery Related Questions

18. In the event of litigation, is there a written policy on litigation hold?
- Yes     No
19. In the event of litigation, are employees monitored to ensure that they are complying with discovery requests?
- Yes     No
20. In the event of litigation, what mechanism does the company have in place to suspend electronic mail disposition?
- Yes     No

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21. Which of the following best represents the frequency with which the company has been required to produce e-mail records for litigation?
- Never
  - Once within the last year
  - Two to 5 times within the last year
  - More than 5 times within the last year

**JMBM's Discovery Technology Group™** counsels clients on preparing ahead of time to respond to requests for electronic information in litigation; complying on an ongoing basis with regulations requiring records retention; and having an IT system that supports these goals while still providing efficient and cost-effective infrastructure for day to day company operations.

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