
6 Tips to Enhance eDiscovery Practices

Caught in the middle of an investigation or audit? With these simple points, you can optimize eDiscovery processes and facilitate the best possible outcome.

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Introduction

Considering the circumstances that organizations within the healthcare industry encounter – whether it be an abundance of regulatory guidelines and increasing scrutiny around adherence to these guidelines, the pressure to keep up with rapid modernization and evolving technologies, or the constant risk of security threats that could compromise critically sensitive data – it is difficult to fully avoid falling foul of compliance hazards.

Due to these challenges, organizations may sometimes find themselves in situations whereby information is requested at a moment's notice, such as internal investigations, regulatory requests, or litigations surrounding potential suspicious activities. If one of these instances takes place, the need for eDiscovery arises.

For example, if there is a litigation for a suspected data breach, it is vital to sort through records, compile audit trails, and collect relevant evidence. This evidence will be presented to prove integrity, provide context, and refute liability as effectively as possible.

eDiscovery teams will go through a collection of files and communications to help build a strong case, which can include electronically stored information (ESI) like emails, texts, records, audio transcripts, statements, photos, databases, and more. In the case of a breach, this would mean going through communications and records involving affected individuals to detect instances of sensitive data being shared.

At the start of the eDiscovery process, eDiscovery teams will typically identify, preserve, and collect ESI that is relevant to the litigation case. Then, legal teams will conduct a review of all gathered

data to analyze trends and refine it into a comprehensive case file. At the end, evaluated results will be presented to the opposing legal team. In certain situations, some legal teams will conduct the eDiscovery process from beginning to end, whereas some eDiscovery providers can assist with the review portion.

eDiscovery is intensive and requires diligence, analysis, and fine-tuning – meaning that a thoughtful approach can make a big impact. We've compiled a list of the top six tips organizations should consider to optimize eDiscovery and generate the best results.

1

Assembling and Delivering Metadata

Modernization means that digital communication platforms have swiftly become central tools within workplaces, though compliance teams are still working to manage risks associated with them. While tricky for the compliance team, the increase in digital data has proven to be useful to eDiscovery efforts.

One of the most advantageous aspects of eDiscovery compared to outdated paper records is the ability to apply granular filters that sort through and pull metadata. ESI allows organizations to build an audit trail of communications and confirm significant details like timestamps, dates, and senders.

Despite having many benefits, it can be hard to maintain the natural state of electronic conversations, especially as platforms and applications advance. Since widely used applications are more multi-dimensional and layered, eDiscovery teams must assess how much of an original conversation or channel's environment can be translated to static information. This will include details like file transferring or photos – so that all data can be presented clearly, with structure, in evidence files.

During an eDiscovery process, teams will need to sort through collections of data to generate a central file of relevant information, pulled across platforms. The production of a central file ensures that data is more easily navigable while allowing for a summarized account of information.

During this step, it is critical to collect and organize even the finest of details that can be used as proof or evidence to develop an airtight case.

To expedite this process, organizations should maintain and store business data in a data management system, such as [Global Relay Archive](#), which offers capabilities like broad searchability during a particular time period or more granular searchability that focuses on specified criteria like senders/recipients, keywords, and attachment types.

eDiscovery teams can also assist in collecting documents on network drives or desktops. Since this information can't be automatically saved to your archive, it's useful to utilize a solution that specifically identifies and pulls data from all storage locations.



The benefit of the eDiscovery tools available in Global Relay Archive is that organizations can quickly and easily search and review hundreds of data types simultaneously in a single repository while ensuring that they're only producing relevant data.

Global Relay's eDiscovery team

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Building a Strong eDiscovery Team

Given the time, effort, and attentiveness required for eDiscovery, it is important that organizations employ an eDiscovery team they can trust. Ensure that your internal teams are knowledgeable about the process, associated timelines, how to access ESI, and the best ways to compile it into a strong case.

Map out your eDiscovery process and determine how the legal teams at your organization can prepare. Then, identify the points at which outside sources like lawyers and third-party providers need to contribute their services.

Though an additional expense, storage solutions are essential to appropriately and compliantly preserve information so that it is accessible for investigation purposes.

While working through eDiscovery, collaboration tools will be essential for an effective team. As well as this, organizations should map outlines of the information that each team and external provider should be allowed to access to simplify the process and reinforce security.

Specified case administrators within eDiscovery teams should retain access to all data and carefully share only relevant workflows with reviewers. Be sure to organize and protect all communications between key eDiscovery players as they handle a case.

While automated processes and data review tools will assist in identifying patterns and pulling information that could be relevant to a case based on inputted keywords, it is equally beneficial to have a knowledgeable team who can read through presented data and understand the context to tell the story within that data.

Simultaneously, compliance and eDiscovery teams should pinpoint any challenges associated with the process, and collaborate to devise plans for how to untangle them if they surface. Global Relay's eDiscovery team has found that data volume, cost, timing, and know-how are the most common challenges organizations face when handling eDiscovery.

3

Data Structure, Platform Use, and Info Governance

Data structure, platform use, and information governance should be top of mind for teams when preparing for a legal or regulatory audit. Without knowledge of the routines surrounding these topics, eDiscovery will become increasingly difficult to manage. Avoid a situation where you have an incomplete library of data or unclear platform use documentation when a timeline is imposed on your organization.

First and foremost, do you know where your data is stored, as well as the layout of the data management system you utilize?

Relevant teams need to know how to access files and data instantaneously and should be well-versed in how to navigate the related system easily.

If you're using a third-party solution, can you gain access to files and export data immediately? Can you ensure that your organization has complete control and oversight of the implemented system?

When a legal case involves specific departments or teams, it is important to know what platforms and systems that team utilizes to narrow down the area of focus. Moreover, if employees use personal devices as opposed to business-owned devices or desktops, that is another point to consider.

This is especially true when it comes to information governance. Organizations must have a framework around their data and distinct classifications that help sort through information more accurately, making it easier to understand.

Depending on the size and scope of a project, eDiscovery teams will go through a copious number of files when handling a case to search for information and weigh its relevance. For the countless files your team sorts through, only a small percentage of information will end up in the final case file. With this in mind, creating frameworks around your data so that it can be reviewed promptly is key.

Additionally, some emerging communication channels may not be familiar to organizations and could prove to be difficult to access and monitor. To mitigate this, involve legal teams when adopting new applications so that they can examine how a platform operates and strategize an effective and straightforward way to collect ESI if necessary.

4

Review the Steps of the eDiscovery Process

The electronic discovery reference model (EDRM) is a ubiquitous framework that depicts the steps associated with the eDiscovery process.

The process of eDiscovery often comes with tight timelines, which means that organizations must clearly understand not only the steps of the process but the length of time each step is projected to take in order to completely and efficiently gain ESI.

Identify which teams will be able to assist with each step of the process. Third-party solutions like Global Relay's eDiscovery team specialize in the Identification, Preservation, and Collection phases illustrated in the EDRM.

These are fundamental phases, as they are where appropriate teams determine what data to pull and procure compelling pieces of evidence that will comprise the case. This is an urgent process that necessitates quick movement, though eDiscovery searches must be conducted before a timeline is set since delivery and timing are tied to data size.

From this point, organizations have multiple options, ranging from continuing the EDRM process with a third-party eDiscovery team or working with a legal team to examine the data and put the case file together.

Additionally, third-party teams can even review evidence to assess its relevance to the case. While this is typically a step associated with legal teams, it's beneficial to scope out third-party offerings and packages that include external review to determine the most cost-effective option.

Don't set yourself up for a situation where you are ill-prepared for an investigation when it occurs. Have a guideline that you can refer to so that you can act immediately and capitalize on the limited time available.

Using an eDiscovery provider can be cost-effective because of the efficiency and weight off of internal teams. In the same vein, eDiscovery providers can handle the intricacies of the process, leaving more time for internal teams to deliberate the investigation holistically instead of focusing energy on identifying and gathering data. In conjunction with Data Services teams, eDiscovery solutions can provide accurate and complete results in a short time.



The eDiscovery team can run refined searches to exclude irrelevant messages before they are exported. This can greatly reduce the overall costs, especially in the hosting/review stage, which is typically charged based on volume.

Global Relay's eDiscovery team

A third-party eDiscovery solution also allows for improved scalability and opportunity. Internal teams may be limited in tools available to handle elaborate investigations, and even if they are able to take them on, it may necessitate sacrificing a lot of time and resources. In this sense, recruiting an eDiscovery tool that's built to handle large discovery projects is instrumental.

External providers that specialize in the eDiscovery process can go through a wide range of ESI with a fine-tooth comb, and also pull ESI stored in locations worldwide in accordance with the compliance needs and regulatory requirements applicable to your organization.

5

Understand Privacy Laws

Maneuvering privacy can be especially complicated when it comes to eDiscovery. Due to the varying laws in specific areas of operation, what could be permissible in one jurisdiction may be unlawful in another.

For example, the California Consumer Privacy Act (CCPA) requires that businesses inform consumers about how they are using their personal information, which impacts eDiscovery. Specifically, the CCPA makes it possible for consumers to request that personal information be deleted, though there are a few exceptions, including if information is needed for legal purposes or to detect security incidents. The specifics of the Act's stipulations are onerous for legal teams who must work around guidelines carefully.

Without thorough documentation outlining what is and isn't allowed in the location where your organization operates, it could lead to breaches in data privacy. To combat this issue, there are features organizations can implement to protect data and privacy when handling an eDiscovery process.

The Global Relay eDiscovery team explains some features that a secure archive can offer to defend privacy:



Global Relay Archive has an Analytics tool to help identify patterns. When given the necessary criteria, the eDiscovery team can exclude sensitive information, such as messages that are deemed Attorney-Client Privilege or contain Personal Identifiable Information (PII).

Global Relay's eDiscovery team

In addition, ensure that any eDiscovery team your organization elects to utilize has signed non-disclosure agreements and understands that all requests are to be treated as confidential. eDiscovery providers should only access client data with the approval of authorized individuals, and all data must be transferred with encryptions in place to confirm safety.

6

Decide on a Trusted eDiscovery Provider

Perhaps the most impactful step is utilizing an eDiscovery provider that can deliver successful results at pace. A provider who can offer maximized efficiency, rapid information capture, and clear analyses of data will be critical to the success of an eDiscovery process.

While this solution is valuable, historically hesitation has lay in the belief that these services are too costly. Since eDiscovery can be a complex undertaking, it can be greatly beneficial to calculate and document the amounts associated with the process and build them into business costs in case the need for them arises. When debating how to manage eDiscovery provider fees, Global Relay's eDiscovery team advises organizations to consider the most pertinent information related to the case at hand:



Rather than request everything that an individual has ever sent/received, consider narrowing the scope.

Global Relay's eDiscovery team

Many eDiscovery tools also leverage artificial intelligence (AI) and analytics, and can be trained to filter data to only identify what is relevant to the case through patterns and anomalies. This helps discard irrelevant noise so that organizations can obtain useful information.

For example, analytics and AI tools can be used to only target messages with a specific emotional language and compile the conversations to decipher the underlying message. These features can also be used to trace patterns, like the spike in conversations during a certain time of day, which support the eDiscovery process by building a story through collected data.

In addition, eDiscovery providers like Global Relay have the ability to instantly place legal holds on information so that it can't be erased, meaning that there is no need for custodian oversight. Integrated hold tracking makes it possible to mark the information that should be preserved as case files are being compiled.

Conclusion

eDiscovery is an involved, inevitable step that healthcare organizations must take when undergoing a legal or regulatory investigation. Therefore, being prepared and aware of what to expect if the situation occurs is beneficial to streamline the process and jump into action.

With over 60 years of combined eDiscovery experience, Global Relay's expert Audits and eDiscovery team can offer instant data access, clear classification of vital communications, and cutting-edge analytic tools to understand the story behind your data.

Global Relay's Audits and eDiscovery team runs thousands of searches a year, for hundreds of clients globally. From the time a request is made, searches are typically turned around within 24 to 48 hours.

Assess your eDiscovery processes and deliberate the best way to handle each step. Do you know the breakdown of all the internal and external teams that would be involved? While you may have internal teams to take on the responsibility of eDiscovery, weigh how external eDiscovery solutions could alleviate pressure and save time and resources so that you can focus on other aspects of the case.

Reflect on how your data is protected and stored. Structured, navigable data is advantageous in a plethora of ways, especially when it comes to building a strong defense. Not only does structured data allow for quick searches and exportation, but it also means you can filter out irrelevant information and focus in on what matters.

The potential for risk has become increasingly complex in the evolving healthcare environment, and any loose ends could lead to complications that can be avoided. Deliberating these tips, how they apply to your organization, and the changes you can implement to kick-start preparations can mean the difference between success and struggle and will put you in a much more favorable position should the need for eDiscovery emerge.



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