

Managing your e-mail is simply good business

BY MARVIN PROCTER

We've all read the stories about e-mails that have later surfaced only to cause embarrassment and public scrutiny for some of the rich and famous. And while those stories make for interesting water cooler talk and have a place in the gossip columns, what many business people don't realize is that those same issues could surface for us.

Today's high-tech world of e-mail communication and PDAs has changed the way we do business. And those very useful tools can come back to haunt us as well. For business owners, those forms of communication can be used against us in a court of law.

Some things to consider:

- An American Management Association ePolicy survey conducted in 2005 found that 24 percent of the organizations surveyed had received subpoenas requesting employee e-mails.
- Fifteen percent of the companies surveyed had a lawsuit triggered by an employee e-mail.

In litigation, the cost of discovery for electronic records and e-mails is high.

In a state of New York case, *Wiginton v. CB Richard Ellis*, CB Richard Ellis was required to produce detailed e-mails from their back-up tapes. The cost of discovery was \$249,000. The courts required CB Richard Ellis, the defendant, to pay 25 percent of the cost.

In a sexual harassment, unlawful termination case, *Quinby v. WestLB*, Quinby attorneys asked the court to order and were granted that WestLB produce all e-mails containing Quinby's name on West's servers and backups.

In a similar case, *Zubalake v. UBS Warburg*, when UBS Warburg was not able to produce deleted e-mails, The court found against them stating that the unretrievable e-mails would have substantiated the plaintiff's case.

According to the law firm, Squire and Sanders, "implementing and enforcing a document management policy is the most important thing a company can do to minimize costs and liability related to electronic discovery down the road."

All business owners must employ sound records management practices and procedures to protect themselves.

A University of Georgia study found that companies who were subject to the Sarbanes Oxley requirements had healthier bottom lines than those who were not, Sarbanes Oxley requires businesses to establish controls that ensure they are managing their businesses well and practicing good record keeping.

A GE Capital Mortgage study found that companies that did a good job of implementing technology for their information management saved 46 percent of the cost of labor.

Here are four steps to sound record keeping:

- Establish rules for what constitutes a business record.

Not all e-mails or electronic documents are business records, but many are. It is important to establish policies to determine which are.

- Establish policies for the retention period of records.

Different types of records have different required life spans. Don't keep records longer that you have to; they just take up space, cost you money and can get you into trouble.

- Establish a method to purge records that have outlived their retention period. Again, this will save time and money, as well as reducing risk and cost in discovery if there is litigation.

- Apply the same above rules for e-mails, electronic documents, instant messages and paper documents.

Here are some resources for information on good record keeping:

- Association of Records Managers and Administrators. Lots of information, books, study courses, articles, etc. www.arma.org

- The ARMA chapter in Albuquerque. Contact Mary Beth Hames, chapter president, at marybeth.hames@ironmountain.com.

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GUEST COMMENTARY