

Discovery requests

Knowing when and how to proceed can save thousands and the case. **Interviewed by Steve Trusty**

If you or your company is involved in any type of legal matter, you are going to receive a discovery request. Whether that request seems quite daunting or relatively simple, your next step can mean the difference between winning and losing, and it can greatly impact the cost of supplying what is requested.

“Waiting to handle it later is not an option,” says Robert Moody, partner and forensic technology practice leader at Berenfeld Spritzer Shechter & Sheer LLP. “It is almost certain these days that the discovery process is going to include electronic media. You need to make sure you are providing all the data requested, in the proper form, without providing unneeded information that adds to your costs. You need to know what you can and can’t delete. It takes time and expertise to do it right.”

Smart Business talked with Moody for his insight into the steps to take once a discovery request is received.

What is the first thing to do upon receipt of a discovery request?

Call your attorney and ask for a meeting to discuss what your obligations are and how to meet them. Too many people put off the request or don’t start the process immediately because they feel they’ve done nothing wrong and they can get what is needed by the deadline. That approach can create considerable extra expense and add to the potential of losing the case. It is also important to know how to respond if the request is too vague or broad. If the request is too narrow, you might miss essential information. The ‘give me everything’ approach, if not handled properly, can cause unnecessary work.

It should be noted that while your IT department can help provide essential information, it usually doesn’t have the understanding or appreciation for litigation. You need to get help from those that work with these situations on an ongoing basis.



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You may have read about cases like the recent Morgan Stanley case, where a company relied on internal people more than it should have. If the company had involved electronic forensics from the start, it would not have suffered as it did.

How should I prepare for this meeting?

Bring your IT person and anyone else who might have information and works with the files and stores information. Map out your IT infrastructure. This map should include all data stores, including servers, workstations, mobile and remote devices, software, Internet and intranet applications, and the connections between them all.

During the meeting, expect to have questions asked about how your company works, how paper and electronic files are handled and especially areas that pertain to the case. This meeting should be broad to make sure that everything is discussed. The scope can be narrowed

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from there. Develop a work plan from this point forward.

What should the work plan include?

The work plan should help to identify and map out a strategy for collecting and preserving the information needed. Specific custodians need to be identified. Specific locations of electronic and hard data must be determined. How everything is going to be preserved must also be nailed down. A general budget should also be started. It can best be completed after the identification phase.

Isn't this going to be an expensive process?

Not nearly as expensive as it might be without proper planning. The most expensive portion of the discovery process is attorney review. That review can account for up to two-thirds of the total e-discovery costs. The next most expensive cost is usually housing the data. The least expensive costs are identification, collection and preservation. When these three are done well, the cost of housing production and review are more controllable. If you determine that only 50 files are needed instead of the 100 files you initially thought, it is easy to see the potential savings.

If you spend the time and money needed on the first phases, you can reduce expenses throughout the rest of the process. Time will be spent on pouring over relevant data rather than irrelevant data.

Early discovery could also lead to an earlier settlement. If there is a smoking gun in the data, knowing it exists and being able to use it can help you minimize the cost and time involved in closing the matter. <<