



The 2024 Mattern Information Governance Executive Summary



Executive Summary



Objective

Law firms routinely handle large amounts of data, both in hard copy and electronic form, with a majority of this data being sensitive and/or confidential, driving the need for robust information governance (IG) programs. Chief Legal Officers rank key components of a comprehensive IG program, such as cybersecurity, regulatory compliance, and data privacy as the most important issues they face year over year, according to the ACC CLO Survey in 2023.

IG programs are designed for the protection, management, security, and availability of a firm's information, fostering compliance with legal and regulatory requirements, while simultaneously improving the firm's overall efficiency and productivity. At the core of all IG is the desire to maximize the value derived from data, while mitigating the risks and roadblocks to compliance maintaining it presents.

An effective IG policies and procedures framework serves to guide employees on appropriate data use, where information should be stored, and how and when information should be disposed of (returned to client, destroyed, or converted to vital record status). IG programs further help with regulatory and outside counsel guideline compliance (OCG), operational efficiency, and reducing discovery costs.

Mattern's purpose for developing the Information Governance Survey was to answer the primary question most firms pose, but to which no prior industry-wide benchmark exists – what are our peer firms doing in this area?

Throughout Mattern's engagements, with firms of all sizes, this question commonly surfaces regarding a variety of topics, including email retention, digitization programs, or how to curb data sprawl across network shares. Our intent is to keep the survey open to capture evolving IG trends along with new survey questions derived from participant feedback.

We're pleased to share the results.



Key Findings

An overwhelming majority (94%) of respondent firms reported currently having some kind of IG policy in place. Moreover, many firms (86%) have recognized the importance of IG by having positions within their respective firms dedicated to overseeing records/IG.

Cost considerations underscore the financial implications of effective data management. While a significant portion of firms surveyed noted cost-related factors as drivers for creating and implementing IG policies, cost is more of a concern for small firms than large.

Two examples are the cost of hard copy records in off-site storage, which is a concern for 36% of large firms and 57% of small, and the cost of data storage in the document management systems, network shares, email accounts, etc. which is a cost concern for only 9% of large but 43% of small firms.

Beyond the financial implications, several additional challenges manifest themselves in the day-to-day implementation of successful IG programs, most of which are internal to the firm, regardless of size, but do extend beyond the firm's walls as well. For example, over half (54%) of firms say they struggle to comply with outside counsel guidelines.

Even more telling is the overall, substantial non-compliance rate of 44% and endemic cultures of "granting exceptions" reported by both large and small firms (31%). Extracting firms with mature IG programs, and removing those without, we see that 47% are compliant with most IG policy elements.

Enforcement/compliance is clearly the biggest challenge, at firms of all sizes. Overall, only 4% of all respondent firms reported strict compliance with their IG policies (9% of large firms and 0% of small firms). Although mandating strict adherence to any/all IG policies/procedures may seem like an easy fix, taking a step back reveals the lack of enforcement/compliance is far more complex than that and is driven by other IG related variables.



Data Organization

A significant percentage (27%) of law firms indicated they have no formal structure in place for their network share drive content, characterizing these repositories as the "Wild West." This lack of a meaningful folder taxonomy perpetuates poor IG practices, in so much that information cannot be associated with specific clients or matters for the application of appropriate retention schedules and/or ethical walls.

Remediating information in network shares is a daunting task for any IT or IG professional, one that largely results in "kicking of the can" in Mattern's experience, further exacerbating the issue and associated risks. Fortunately, only 17% of firms with mature IG programs report this "Wild West" network share drive situation, with 67% of these firms forcing client/matter folder taxonomy at matter opening and another 8% not permitting the creation of these workspaces at all.

Also, a substantial percentage of firms mention challenges related to unstructured information in network shares, email accounts, and the inability to collaborate effectively (33%) or apply ethical walls (15%) outside of the document management system (DMS).

These challenges suggest firms are striving to streamline information management for improved collaboration and security compliance. These values are also significantly lower in firms having a hybrid paper/electronic IG program (18% and 6%, respectively), due in all likelihood to their more mature IG program and information being appropriately profiled in the DMS, where collaboration can take place while appropriate access rights are applied.



Retention

Additionally, independent of how well a firm’s data is structured, there is the constant struggle regarding retention. Retention is relevant to a wide array of data repositories, including document management systems, eDiscovery databases, network shares, extranet file shares, lawyer, administrative, and support staff email accounts, email archives, and more.

Likewise, clients are communicating their concern over retention practices through prescribing these topics in outside counsel guidelines. Complicating matters, a significant percentage of firms, both large and small (56%), indicated they currently have no strategy in place for limiting data sprawl, and they have not applied retention to electronic files, in direct conflict with client wishes in OCGs.

Responses regarding what to keep and for how long differed greatly. The most common retention schedules adopted by law firms for lawyer email accounts is no retention or unlimited retention (47%). This extends to maintaining former lawyer email accounts indefinitely (33%), and no data purge applied to support staff and administrative leadership email accounts (34%) even following departure (20%).

Email retention practices are improved, however, for those firms reporting mature IG programs in place. 31% have unlimited retention applied to current attorney email accounts and indefinite maintenance of departed attorney email accounts is reduced slightly to 27%.

It should come as no surprise that the common practice of not deleting emails extends to email archives, where the most common retention schedule adopted by law firms is unlimited.

For extranet file share content, the most common retention schedule is also unlimited (37%). This means content in extranet file shares is not automatically deleted and is typically retained indefinitely, or until the IT department is challenged with escalating cloud storage space/costs. Interestingly, only 8% of firms reporting to have deployed comprehensive IG programs fail to address automated data purge in extranet file shares.

Moreover, the most common retention schedule adopted by law firms for unstructured, user-created repositories is unlimited (57%). However, survey results show that this indefinite retention schedule is reduced to only 31% of firms with comprehensive IG programs.

Retaining network share drive information indefinitely is no surprise given the previously mentioned “Wild West” situation most firms describe, translating into a significant data mapping project to unravel. In many cases, a decision as to the degree of risk a firm is willing to accept in purging information without first structuring and aligning it with client/matters is warranted.

For network share drive content structured in client/matter directories the most common retention schedule adopted by the industry is once again unlimited. While this degree of over retention is concerning, the taxonomy exists to make quick work of either aligning content with the rest of the matter file’s retention period or profiling this content to the document management system. Further, no firms with comprehensive IG programs reported unlimited retention applied to structured network shares, with 77% aligning these with the rest of the matter file’s paper and DMS content.

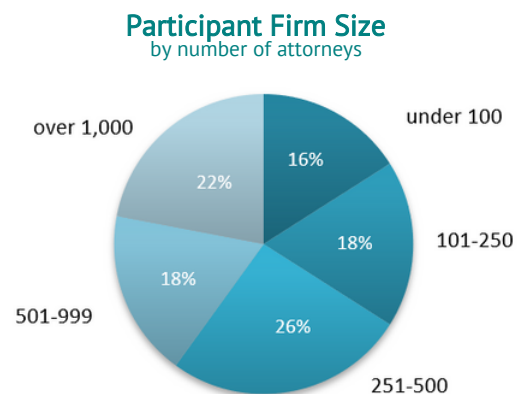
In contemplating litigation as it relates to retention, 44% of firms expressed concerns about the potential for being subpoenaed to produce over-retained information that could harm their clients in future disputes. This risk factor highlights the importance of data retention and risk mitigation from yet another perspective... *if you don’t have it, you can’t produce it!*

The survey also highlighted a majority of clients (65%) are pushing for OCGs to include clearly defined retention limits regarding client-provided information and firm work product, and this push for retention applies to both large (64%) and small (50%) firms.

In summary, the importance of a compliant IG program cannot be overstated. Clients are requiring outside counsel to advance IG initiatives, namely ethical screens and data disposition, beyond a typical lawyer’s comfort zone. However, it’s hard to escape the reality that cybercrime continues to escalate, privacy regulations are expanding, and law firms continue to serve as targets for discovery requests. As evidenced by these survey results, the industry has made positive steps in recent years but has a long road ahead to achieving defensible IG programs.

About the Survey

The survey is the first of its kind, targeting the legal market and taking a deeper look into the specific practices of information governance within law firms. Fifty law firms participated, ranging in size from 21 to 3,000 attorneys. The breakdown by firm size is as follows:



Acknowledgements

We are grateful for the inputs of the law firm information governance professionals who provided their insights and time to this detailed effort that will benefit all law firms, and special thanks go to Leigh Isaacs, CIGO, CIP, Senior Director of Information Governance at DLA Piper for her invaluable insights.

About Mattern

Mattern is the leader in law firm operations consulting and cost recovery solutions. In over 25 years of proven success, Mattern has serviced nearly half of the Am Law 100, 70 of the Am Law 200, and has provided unbiased strategies for measurably improving workflow efficiencies and the cost-effectiveness of firms' office and administrative services, records and information governance programs, in over 500 engagements. To learn more, please visit our website at www.matternassoc.com or email info@matternassoc.com.

If you would like to discuss more detailed information on the results across policy, compliance and enforcement, retention and retention triggers, digitization practices, matter mobility, and software applications, please contact Mattern.



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