How law firm teamwork makes the information governance dream work

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by LegalRM

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Information is a critical asset for every business – but for law firms it's even more serious because information is one of the few real assets you have. As such, firms are waking up to the need for robust, firm-wide frameworks for managing information. As to how that's done, in truth many firms are still struggling with the practicalities of embedding the information governance (IG) they need. In this article, **Chris Hockey** outlines the approach he's taken previously as former information governance director at a mid-sized firm based in upstate New York, while **Chris Giles** of LegalRM offers a sector-wide perspective.

We won't dwell too long on what information governance is and why it matters so much to law firms. IG is simply how firms manage their information assets across the entire organization to help achieve two things: on the one hand business success, and on the other risk mitigation.

The business success bit comes from efficient information management that furthers the firm's objectives. It's about how vast amounts of data are held and organized to enable quick retrieval, effective collaboration and overall operational efficiency. It's about embedding a cross-disciplinary approach to information sharing, and nurturing a climate wherein the adoption of appropriate innovation and emerging technologies becomes easier.

IG also facilitates efficient e-discovery processes that reduce costs and comply with court requirements. It includes effective record lifecycle management and systematically purging records the firm no longer needs to retain. It's also about identifying gaps in systems or procedures that when filled will make information flow more effectively.

Firms with strong IG also put themselves in pole position to institute effective knowledge management, which is about creating and using knowledge to the firm's benefit. It could be a case of providing timely access to reliable, relevant and comprehensive information that supports better-informed decision making. Or about capturing, preserving and processing institutional knowledge and extracting the maximum value from the information held in the firm.

Risk mitigation

Meanwhile, the risk mitigation bit of IG comes from the need to consistently safeguard information, especially client confidentiality. This is part and parcel of maintaining compliance with regulations (GDPR, CCPA), with client requirements (letters of engagement, OCGs) and with professional obligations (ABA, SRA), thereby avoiding penalties, potential disputes and reputational damage.

On that note, it's also critical for law firms to maintain client confidence and trust. Robust information governance will help you build and consolidate your reputation for handling client data responsibly and securely, which is the bedrock of many a long-term relationship.

Still under the risk heading, firms also need IG to underpin business continuity and disaster recovery planning. If the worst happens your recovery will be infinitely easier and quicker if the firm's information assets are well organized and protected. Part of information governance is about backups and disaster recovery procedures that minimize potential downtime.

As to what IG is in practice, according to the international standard on IG concepts and principles, it's basically a bundle of policies, processes, procedures, roles and controls that the firm puts in place to help it meet information-related operational, regulatory, legal and risk requirements. But it's also a lot about buy-in. Everyone in the firm should understand and take seriously their own information-related obligations, risks and opportunities. The question becomes: "How do you make that happen?"

No-one can decide where it sits

As with much in life, successful IG is about wanting it enough. Senior management need to be committed to the concept and ideally a member of the senior management team needs to take ownership of driving IG through the firm, from top to bottom. Critically, and among other things (eg: providing direction, helping overcome obstacles, communicating goals) this person will ensure that adequate resources are allocated to IG to enable it to take root and thrive. But who is this person?

It's a vexed question. Something that Chris Giles, CEO and Founder at LegalRM, observes is that law firms vary widely in structure, capacity and approach. Each is its own unique fiefdom and one of the sticking points when it comes to embracing IG lies in pinning down who in the senior management team will take ownership of it. The danger is that it either falls between the cracks with no oversight and no cohesive approach to a strategy, or it becomes a bone of contention.

"I know of one firm, for instance," says Giles, "that can't even agree on a retention schedule because their Head of Knowledge Management wants to keep

everything forever and says destruction is not needed and a General Counsel who's pushing back and asking practice teams to weigh in."

He adds that each firm has a unique set of challenges in terms of getting IG policies and procedures even created, because no one can decide where it sits. He often sees IT working in "its own world" focused on application efficiency, security, backups and business continuity, while Records Management specialists are in a different world, focused more on matter mobility and record lifecycle management, but there is often no discussion between the two. Risk Management is another discipline that might claim IG, yet without IT & Records input may not understand the process, data and application challenges. In reality, however, successful IG really does take a village, or a community at least, within the firm that shares a single vision on the need to get it done.

Policies and procedures

How do you get IG started at a law firm? One of Chris Hockey's first big tasks was drafting the firm's information governance policy. To do so, he looked at other organizations' information governance policies in other industries – not least because, as he drily notes, "Legal is not always ahead on these things." He also reached out to different people in the info-gov world and asked if they could share their thinking and draft policies. He then applied what he'd learned to the context of his firm.

Hockey explains that the information governance policy exists to establish the fundamental high-level principles of IG at the firm, set responsibilities and reporting guidelines for committee members and other personnel, and to provide a framework for IG across the firm.

It also references the key components of IG, which include matter lifecycle management, information security and incident management, technology and data governance, IG awareness and education, and privacy and regulatory compliance. Each of these in turn may well merit its own policy. Hockey says it's also important to develop a data governance policy that looks at data classification systems, tagging and metadata.

He also notes that to some degree the information governance policy he drafted was aspirational. "It's consciously meant to be kind of future thinking, in terms of what is the ideal state. This policy represents

our ideal set-up and configuration, and how we're going to get there. I really wanted to leave room for us to grow into the policy we were creating."

Once drafted, it was reviewed by the CIO and sent out for a further review to a third-party Chief Information Security Officer (CISO) with lots of IG policy experience. She mainly checked if anything was missing, not clear, or redundant, e.g. covered by another policy. Then other members of the administrative team had sight of the policy before it went forward to the steering committee (see below).

This sequencing is because, notes Hockey, "We really wanted to make sure that we were uncovering any potential pitfalls ahead of time. We wanted to understand what might cause consternation with the end users that ultimately we're trying to affect change with. Not necessarily to remove those issues but to at least be in a position to be upfront and say, 'We understand this might be alarming, or maybe it's not what you're used to doing, but here is why we've put it in the policy.'"

Steering a path

Thereafter, the linchpin of the firm's successful IG strategy was the firm's monthly Privacy and Security Committee on which there were 12 members, including the COO and the General Counsel. The other members represented the different practice groups across the firm. They came from different levels and locations, and included some more senior members, some associates and generally one or two summer clerks. This core was refreshed every January to ensure a continual infusion of new blood.

Including lawyers from different practice groups and levels was key. "What we were trying to do," Hockey explains, "is to make change happen with the attorneys. If we could get the representative attorneys on the committee behind our ideas and efforts and really explain the challenges to them, it's much easier for change to happen because they will take it to their peers. It's coming from attorneys not some guy higher up. It has a bigger impact."

Rolling an IG policy out

The committee's formal role was to approve and sign off on all the related IG policies. Policy enactment is largely controlled by processes and procedures. Hockey tried to keep committee members out of the weeds to some degree when it came to procedures.

About the authors

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Chris Giles is CEO of LegalRM, which creates market-leading software, services and solutions for records, risk and compliance management and serves some of the world largest law firms, as well as blue chip organizations from other industry sectors.

Christopher L Hockey

Chris Hockey is a subject matter expert in information governance, information management, and records management, and provides consulting on these topics to firms, product vendors, and consulting groups.

His tactic was to identify ahead of time those procedures that needed to be brought to the group that might cause consternation and on which there might be some pushback. "We brought these to the group to say: 'This is what we are proposing, I need your help in backing us up on this and helping us communicate it out.' It's not every procedure, but we identify the key procedures that we know are going to cause some issues."

Aside from their formal role, then, when it comes to rolling IG policy out into the wider business, steering committee members also acted as emissaries and champions of change. Hockey observes, "I can say we need to do X, Y and Z, but the firm's attorneys could just say, 'No, we're not doing that.'

"But when I proposed it to the committee and said why and how I believed we should be handling this type of procedure… when the attorneys on the committee got behind that, it was much harder for the end-user attorney to say no. Not least because it now has the backing and support of the firm's established and sanctioned committee." He adds, "For me that's really the crux of having that group. It helps you move these initiatives along and get the buy-in from other end users. Because ultimately nothing can happen without that."

Oversight and controls

The next step is ensuring that processes and procedures are faithfully implemented. To a large extent this is down to resources. Either people need to be in a position to monitor activity, or systems can be implemented that monitor or enforce new processes and procedures. For example, Hockey's prior firm had introduced a firmwide implementation of Microsoft OneDrive.

Among other advantages, this was helping to solve the problem of 'shadow IT' where individuals inadvertently or habitually save matter material in places where the firm formerly couldn't see it, eg: their desktops. Now desktop folders are connected to OneDrive. The firm also developed the capacity to run various reports that are evidencing the transition away from what Hockey calls "the old Wild West" when anyone could create a folder anywhere, and save anything in it.

Also, in relation to oversight and controls, Hockey followed the 80:20 rule, which is another way of saying he's solving the bigger problems first. "There was no way for us to monitor everything happening everywhere," he says. "So we identified the really big things we needed to attend to. For instance, we had a big push on email filing into iManage, because we found that as a big pain point when attorneys leave. If they had not filed their emails it created a massive headache for the attorneys taking over and for IT who need to run Outlook searches. We identified that as a priority so one control was making sure attorneys had filed all their emails before they departed."

Upstream thinking

While Chris Hockey accepts that not everything can be monitored, he's also found that another helpful strategy is 'upstream thinking'. In essence, this means that rather than cleaning up data in every system, it's about ensuring it's complete and accurate in the primary upstream data repository. In his prior firm this was the firm's new business intake system. Then, as

data flows down into other systems – iManage and the time and billing system – it doesn't need any more work.

Hence he put a lot of focus into working with the new business intake team on the controls that could be put in place. This is a realm where system design and perhaps even some automation can be brought in. For example, to rein in inaccuracies when form filling, they looked at implementing drop down options menus to replace certain free text boxes. Hockey adds, "More and more we also explored how we could automate different controls, trying to take some of the choice out of various forms. it's definitely part of our aspirational best practice."

In the round, information governance best practice for all law firms should probably include establishing clear objectives, defining roles and responsibilities, and establishing standards and policies that govern how data is captured, stored, processed, shared and protected within the firm. There will be elements of data quality management, and compliance will be a big focus.

Alongside these, firms will also want to develop and nurture a data culture, recruiting everybody in the firm onto the "data team" – so everyone is taking ownership and caring about data. Meanwhile the performance of policies needs to be enforced and monitored. And there will also be a need for continuous improvement, and for policies, processes, procedures and controls to be revisited and updated to reflect the changing needs of the firm and changes in the external environment, including advancements in technology and also changes to regulation.

Chris Giles believes that on the whole it's a tougher journey for smaller firms, who don't necessarily have the bandwidth, or the skill sets on hand with which to tackle all the elements of IG. "I think the smaller firms will look to the big firms for a sort of template and thought leadership and to help them understand some of the challenges." He adds: "They may well know they have problems, but don't have the skills or the time to deal with it."

Chris Hockey agrees. From what he's seen, his former firm was relatively mature in IG practice for a firm of its size. "I think larger law firms have been doing this for a longer time, and they have the resource behind it," he says, "but for everyone else these conversations are going to be very different depending on the size

of firm. It also depends on who in the firm is bringing up IG between the firm management saying 'we need it' and the CIO. If it's the latter, it sometimes takes a bit of a sales pitch to convince the lawyers to get on board."

Hockey says, "We made tremendous strides in just four years, but we were nowhere near where other firms are that have had an IG director for longer. It comes back to when did the firm realize that this was something it needed, and who brought it to the table initially."

Thereafter it's about building the teamwork that makes the IG dream work: building cooperation and synergy between all the parts of the firm to ensure that IG is inclusive, comprehensive and consistent throughout, leading to a more efficient, effective and resilient law firm.

To find out more watch our ILTA Masterclass, on demand, for a discussion on the critical role of community in developing an effective information governance program and discuss best practices for fostering cross-functional collaboration and communication, such as creating a shared understanding of information governance goals and priorities, establishing clear roles and responsibilities, and leveraging technology solutions to streamline processes and promote transparency.

Click here to watch it.

About iCompli, from LegalRM

iCompli, from LegalRM, is an intuitive information governance platform for risk-savvy law firms that want to manage the life cycle of their assets from a single, comprehensive application.

For numerous law firms across the world, iCompli simplifies and automates client file transfers, retention, disposition, and overall compliance of both physical and electronic assets from multiple information repositories, seamlessly and securely.

Plus, it delivers the most powerful physical records tracking database available on the market today. Firms have the option of using iCompli's barcode tracking or RFID capabilities for managing physical records in conjunction with the system's information governance features, all within a simple user interface.

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