

eDiscovery Technology for Greater Government Transparency

November 17, 2018

eDiscovery technologies are proving to be powerful tools for improving internal records management and retrieval processes that serve to increase transparency into U.S. state and federal government agencies. And without a doubt, they've arrived not a moment too late.

Download the white paper, *The Quest for a Transparent Government: 50 years of FOIA and Public Records Acts*, to learn more about why now is the best time for government agencies to equip themselves with eDiscovery technologies to help them comply with Freedom of Information laws.



eDiscovery: From Litigation to FOIA

Parties in lawsuits use eDiscovery tools such as advanced search capabilities, automation, and technology-assisted review to meet the challenges of collecting, searching, reviewing, and producing massive amounts of various types of decentralized documents and electronic records from multiple sources during the discovery process.

Government agency employees who prepare responses to Freedom of Information requests must perform much the same activities as those performed by attorneys during litigation. Both need to:

- Centralize and standardize vast amounts of electronic records;
- Locate information related to specific issues;
- Review and identify records to avoid disclosing exempted or private information to the public; and
- Produce responsive information under deadline or face penalties.

eDiscovery tools used during litigation are ideally suited to help government agency personnel perform these activities. And, eDiscovery technologies work with proven efficiency and accuracy that's been demonstrated in the legal field for years.

Recognizing the Need for Change

Most officials in U.S. federal and state government agencies recognize that they need to improve their responsiveness to Freedom of Information requests.

It's extremely difficult to argue otherwise. According to an [Associated Press analysis](#), the federal government censored, withheld or said it couldn't find records sought through FOIA requests more often last year than at any point in the past decade.

People who asked for records under the Freedom of Information Act received censored files or nothing in 78 percent of 823,222 requests.

- The government said it found nothing 180,924 times, an 18 percent increase over the previous year.
- In more than a third of cases, the government reversed itself when challenged and acknowledged that it had improperly tried to withhold pages.

Some detractors offer these numbers as proof that government officials purposely try to withhold information about their activities so they can operate in secrecy. But we know that the real causes for numbers like these are not criminal in nature. Right from the start, agency personnel don't have the adequate technology to collect, search for, or locate the information necessary to complete the response process.

Search is a major bottleneck in the FOIA process.

The government's own research shows that agencies don't use effective methods to increase search precision. The startling conclusions of the National Security Archive and the Project on Government Oversight 2017 [FOIA Search Survey](#) reveal just how dire the need for improved search capabilities truly is:

- Most agencies appear to not have centralized FOIA search capabilities, which means they cannot search large portions of the agency's records;
- Federal employees often perform slow, unthorough, or otherwise imprecise searches for requested records; and
- Many agencies are unable to efficiently search their emails in response to FOIA requests, and many others do not have the ability to search thoroughly.

eDiscovery Technology is Recommended

The FOIA Advisory Committee appointed a Subcommittee on FOIA Searches, which looked at eDiscovery technologies currently in use by some agencies to better manage their search techniques. The Subcommittee was "impressed by the power of eDiscovery searches and hopeful that their use increases."

In its January 16, 2018 [Recommendations to the FOIA Advisory Committee](#), the Subcommittee said, "Agencies should increase as much as possible the use of eDiscovery tools to search for FOIA requests as much as appropriate and affordable."

Of course, we agree with that recommendation. For a closer at look at how FOIA challenges are managed effectively with eDiscovery technologies, read the white paper, [The Quest for a Transparent Government: 50 years of FOIA and Public Records Acts.](#)