

Making the Case for Data Discovery in Legal Firms

According to the American Bar Association's 2022 Legal Technology Survey Report, 27% of law firms reported having experienced a security breach. An increasing awareness of breach risk and prevalence, coupled with growing customer concerns related to data privacy, has led law firms' clients to become increasingly stringent over data stewardship and governance. At the same time, law firms are facing increasing pressure to innovate with data at the heart of the effort, seeking competitive advantage through the introduction of generative AI capabilities and services.

The Problem

Not unlike other industries, law firms' data practices are messy at best. The pressures on partners, attorneys and their staff often lead to disparate information management practices, while the variety of communication, collaboration and document management solutions (DMS) can make the technology difficult to navigate. This means that the DMS (or equivalent) only contains part of the picture for any given matter with the remainder retained in email or personal devices indefinitely, or misfiled in general folders. What's more, client personal or sensitive data is often poorly controlled, becoming mixed in with matter or, worse, shared in routine communications.

Accumulated over time, these patterns have been left largely unaddressed. This means that:

- Firms are not complying with outside counsel guidelines for data retention according to practice area (from HIPAA, through CPRA to the state bar's data privacy compliance requirements).
- Sensitive personal data is stored and spilled into unknown storage environments, ripe for the attention of a threat actor in the event of a breach.
- Precedent is not readily available for re-use or, more importantly, for the training of the Generative AI models which will drive the firm's next horizon for competitive advantage.

There's no law firm that doesn't recognize these issues – just ask any of their IT, governance, records or operations teams. The problem is that prioritizing the necessary change is a challenging task needing leadership, and information governance (IG) or IT teams have no visibility into the data or the risk it presents against outside counsel guidelines or regulations, especially as cases evolve and change over time.

Zero Dark Data

The purpose of data discovery technologies is to provide the foundational capability for achieving and sustaining Zero Dark Data. These technologies build and maintain an inventory of all data assets so that information governance and compliance teams are armed with a clear understanding of data risk and compliance. This enables three key information governance capabilities:

- Conduct timely and accurate data audits for client (outside counsel) compliance and in response to regulatory requirements.
- Identify and resolve areas of misfiling or spillage, whether that be of client matter, the firm’s valuable intellectual property or sensitive personal data, ensuring the necessary retention policies are applied.
- Maintaining an efficient and high-quality information environment in support of legal operations and for timely response to information events such as partner departure, acquisitions or divestitures and legal discovery.

Without an operational data discovery capability, IG teams are effectively required to work in the dark, relying on judgement and experience, rather than data, to direct their efforts. This promotes a reactive rather than proactive posture, leading to significant inefficiencies and incomplete coverage of the firm’s data assets.

Business Case

Investment in a sustainable data discovery capability enables a broad range of data use cases across the firm, yet governance teams can often struggle to make the case to leadership. The following summarizes the business case areas, along with examples of enabled use cases.

Business Case Area	Impact	Use Cases
Data Risk Liability	★★★★★	<ul style="list-style-type: none"> • Assured, evidence-based, response to client audit requests • Reduced impact of data breach or loss • Reduced likelihood of data spillage or loss
Compliance	★★★★★	<ul style="list-style-type: none"> • Application of retention and disposal policies across entire data estate • Accurate and timely response to subject rights requests • Data mapping and minimization for privacy regulation compliance
Data Quality and Value	★★★★	<ul style="list-style-type: none"> • Maintain trusted client matter datasets • Clean data for machine learning training • Efficient and accurate data transfer and mobility, including departing partners
Business Opportunity	★★★	<ul style="list-style-type: none"> • Enhanced brand reputation through demonstrable data stewardship • Develop competencies for an information governance practice
Cost Reduction	★★	<ul style="list-style-type: none"> • Reduced storage and business continuity costs • Reduced load for cloud or repository migration

Of course, this considers only one side of the business case equation. These must be balanced with the costs incurred, be they in procurement and licensing, infrastructure and support, staff time and training etc. The fact is that predominantly, data discovery technologies can ask a lot in terms of infrastructure and especially database storage and computr. That is why cloud-hosted discovery services are becoming available and especially why we have launched our own cloud-hosted service designed to make data discovery cost effective both to implement and sustain.

Conclusion: Life Without Data Discovery

The hard truth, regardless of industry sector, is that revenue-generating staff continually struggle with the tools they are provided for managing their information. Legal firms are no exception; partners and attorneys are under continuous pressure and frequently make errors or take risks with data simply to get things done. This leads to spillage and misfiling of client matter data which, in turn, increases the risk of unintentional data transfer, data loss or breach. Further, when those key staff inevitably move on, these accumulated practices make it difficult and costly to assemble a trusted client dataset. Without the ability to discover, monitor and understand their firm's data assets at scale, information governance teams have always been on the back foot, firefighting and reacting to point issues as they occur. This has led to an accumulation of dark data which obscures these practices and risks.

Driven by the increasing incidence of breach and growing privacy concerns of their customers, the message from outside council is that firms need to demonstrate that they understand where their clients' data is and how it is governed. Data discovery tools make unstructured data transparent and empower information governance teams to understand and proactively manage data risk. This enables them to support revenue generating attorneys, provide evidence-based assurance to clients and, in turn, protect the firm's reputation as a good data steward.

About Us

We're data experts, and our North Star is Zero Dark Data. We believe that all organizations should be aiming for a state of Zero Dark Data so that they can act as good stewards of that data to minimize their cyber risk surface area, protect the interests of their customers, their staff and their other stakeholders. We've been working continuously with unstructured data in the wild for well over a decade and we think the market deserves data discovery products that just work. As a result we are trusted by leading companies and government agencies to help them understand and control their data assets to drive regulatory compliance, reduce the cost of data ownership and improve data quality.

Aside from our fascination with Dark Data, we're engineers, designers, runners, gardeners, chefs, photographers, bikers, parents, skiers, cosplayers, hikers, gamers, travelers, mountain climbers, friends, race car drivers, readers, volunteers, and car enthusiasts. We value loyalty, accountability, and communication and care deeply about creating a sustainable future, supporting charitable causes as proud members of Pledge 1%.

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DARK DATA



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