





# TAME YOUR ESI

### Find it, collect it, preserve it.











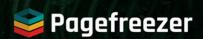




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## EXECUTIVE SUMMARY



The Association of Corporate Counsel (ACC) and Pagefreezer are pleased to present our Collecting Online Data for eDiscovery & Litigation Readiness Report. This report presents the results of a survey conducted in March 2021 of 211 in-house counsel with expertise in data retention and preservation, discovery, and litigation across 23 industries and 22 countries.

The impetus for this report was substantial growth in new data sources that most companies have experienced over the last few years—a trend accelerated massively by the COVID-19 pandemic. Sources such as video conferencing tools, team collaboration platforms, social media accounts, websites, and mobile text messages have greatly increased the amount of ESI that legal departments need to contend with. Moreover, the real-time and dynamic nature of these sources often make them difficult to incorporate into traditional eDiscovery workflows.

This report aims to understand how legal teams are dealing with these new data sources, and to identify key challenges. The results reveal important quantitative insights into the current maturity level of Information Governance (IG) programs and the extent to which legal departments are adequately prepared for the discovery process involved in potential litigation.

The report includes an assessment of IG maturity from the perspective of the legal department based on policies and practices related to data retention and preservation, discovery, and data record production. We inquired specifically about data records resulting from seven diverse data sources, namely cloud-based documents, cloud-based email clients, internal messaging, online meetings, social media content, text and instant messaging, and website content. Results are presented throughout the report for each specific data source and segmented by company size.

Although there are many important takeaways that can be derived from the results, we have identified five key findings outlined below and present these findings with greater detail in the Conclusions section:

- 1 Overall, most organizations' IG programs are in the early or intermediate stage of development and are clearly still evolving. Content management is decentralized across business units in most organizations and very few have automated data retention processes.
- Requests for production are most often handled by turning the data over to third parties. However, built-in discovery capabilities are often used for cloudbased documents and email clients. Large organizations are more likely to use custom-built tools for production requests across data sources.
- There is high reliance on the IT department to produce records. Very few departments are able to produce records themselves quickly and easily. Even IT's involvement is not without challenges.
- Most organizations plan on investing in IG improvements in the next year or have recently made an investment.
- Record retention is a high priority but there is a lack of budget and resources. The lack of time, available workforce, and budgetary constraints are the biggest barriers to more mature data retention and preservation processes.

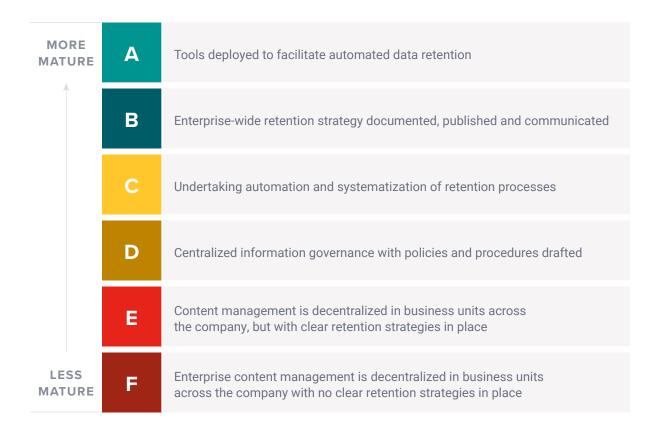
The information presented is of interest to the in-house community and beyond, especially to discovery professionals, those involved in litigation, data privacy, and information security and technology professionals who work closely with legal departments to streamline data retention and preservation processes and comply with existing country-specific and global regulations.

We want to thank all survey participants for their time and expertise, and we hope that you find the results useful.

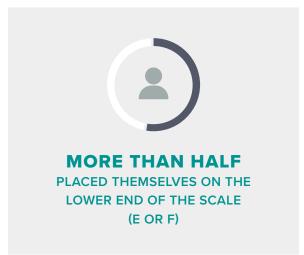
# INFORMATION GOVERNANCE MATURITY



We first asked respondents to rate their organization's overall maturity level with regard to retention and preservation abilities using a six-point scale (A through F) ranging from advanced centralized and automated practices (A) to mostly decentralized and unclear strategies (F).

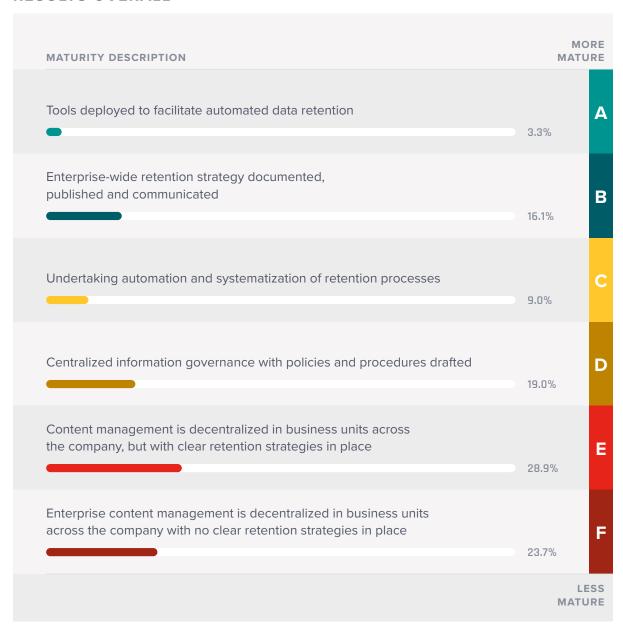






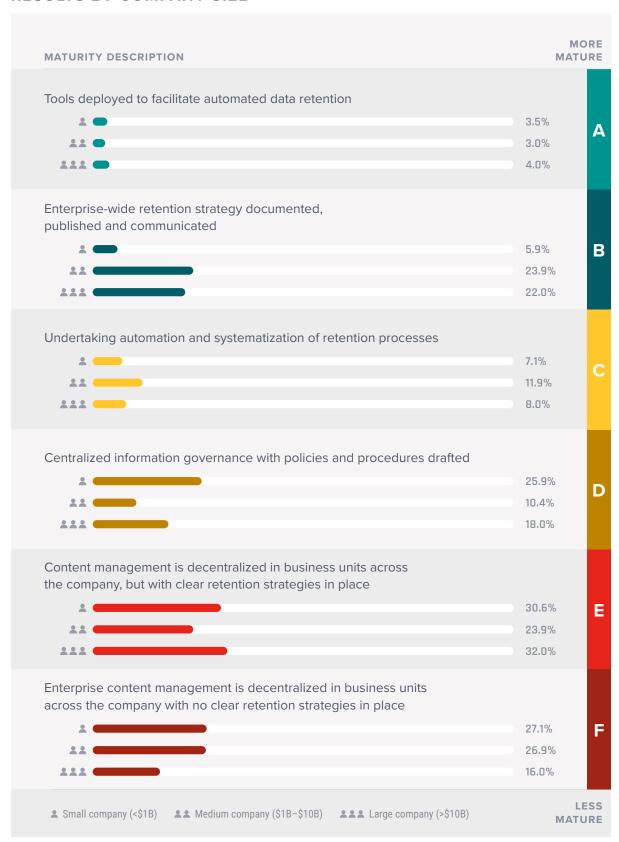
## Q1. Overall, rate the maturity of your organization's retention and preservation abilities.

#### **RESULTS OVERALL**



There were significant differences across company size. Around one in four medium and large companies reported an advanced maturity level (A and B) compared to one in ten for small companies.

#### **RESULTS BY COMPANY SIZE**



After rating their organization's overall maturity, participants were asked to identify which of seven potential categories of data sources their organization has in place. Online meetings, which have become the norm since the outbreak of the COVID-19 pandemic, top the list with over 96 percent of participants reporting these as a data source that exists in their organization, followed by cloud-based documents (90 percent), internal messaging (87 percent), website content (86 percent), cloud-based email clients (85 percent), and social media content (74 percent).

#### Q2. Which of these data sources exist within your organization?

#### **DATA SOURCES**

Online meeting (Zoom, Slack, Google Meet, Teams, Voice Recordings)	96.2%
Cloud-based documents (Office 365, G Suite, PDFs, etc.)	89.6%
Internal messaging (Slack, Teams, etc.)	86.7%
Website content	86.3%
Cloud-based email clients (Office 365, gmail, etc)	85.3%
Social media content (Facebook, Twitter, Instagram, YouTube, etc.)	74.4%
Text/instant messaging apps (iMessage, WhatsApp, WeChat, Signal, etc.)	40.3%

ORGANIZATIONS THAT UTILIZE

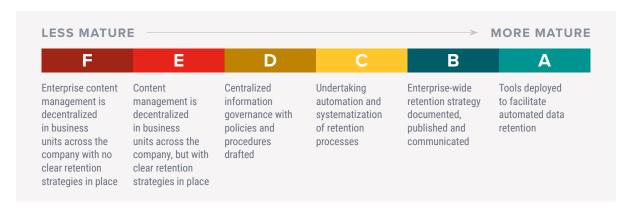
**ALL SEVEN DATA SOURCES** 



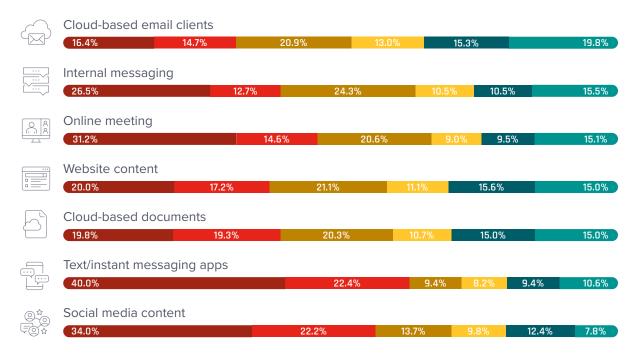
## IG MATURITY BY DATA SOURCE



Once participants identified the data sources their organization has in place, they were then asked to rate the level of maturity across each data source (only among the sources identified as being in place) using the previous six-point (A through F) maturity scale. A full description of the scale used is included for guidance.



## Q3. How mature is your organization's information governance and retention strategies by the following data sources?



The seven data sources are organized above according to the percentage of respondents that reported using the most mature strategy; that is, having tools deployed to facilitate automated data retention (A), from highest to lowest. Cloud-based email clients top the list with 20 percent of participating organizations that handle this data source reporting an A-rate of maturity, followed by internal messaging, online meetings, website content, and cloud-based documents, all with 15 percent of respondents having automated processes to facilitate data retention. Text and instant messaging apps and social media content have the least mature processes.

## DATA PRESERVATION METHODS



Participants were asked about which methods of preservation their organization uses to preserve data for each of the seven data sources. Four response options were provided: No means to preserve data, saving everything in place, selectively preserving in place, and collecting to preserve. The following chart orders the results by the percentage of organizations that indicated that they are collecting data to preserve it, as shown by the percentage bar on the far-right hand side of the chart.

Outside of text/instant messaging apps, organizations are most often either saving everything in place or selectively preserving in place. Twenty-two percent of participants reported collecting to preserve website content, followed by the other data sources with between 10 percent and 15 percent of participants reportedly using this method to address data preservation. Only six percent of participants collect to preserve data from text messages or instant messaging apps. Almost half of respondents indicated not having the means to preserve data derived from text messages, and one-third have no means to do so for social media content.

#### Q4. What is the method of preservation for each data source?



This chart presents the percentage of organizations that reported not having any means to preserve data for each of the seven sources by small, medium, and large companies based on revenue. Larger bars indicate a higher percentage of organizations having no means to preserve data while the smaller bars indicate a smaller percentage. The results show that smaller organizations are more likely to have no means to preserve data across the various data sources than larger organizations.

#### DATA PRESERVATION METHODS BY COMPANY SIZE

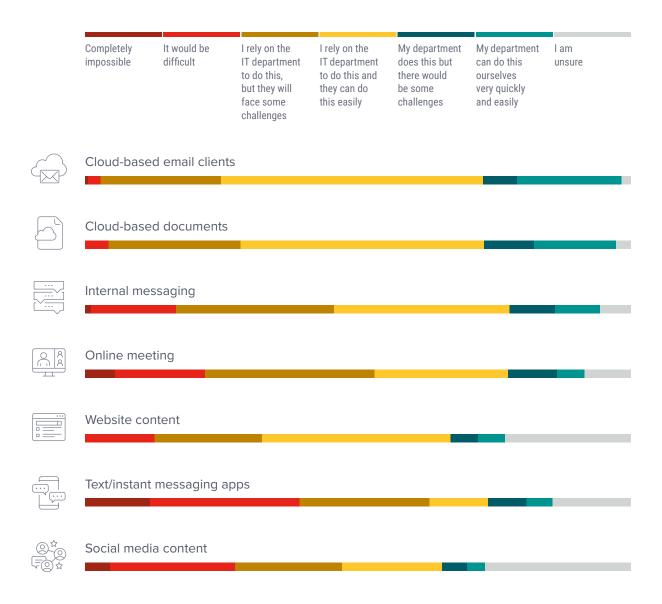
PERCENTAGE OF PARTICIPANTS REPORTING "NO MEANS TO PRESERVE DATA"					
	♣ Small company (<\$1B)		Medium company (\$1B−\$10B)	Large company (>\$10B)	
 Website content	-	17.4%	20.7%	5.3%	
Cloud-based email clients	•	4.2%	1.8%	0.0%	
Cloud-based documents	-	6.7%	5.2%	2.3%	
Internal messaging	_	22.2%	12.5%	9.8%	
Social media content	_	34.4%	34.0%	25.0%	
Online meeting		36.1%	25.0%	6.5%	
Text/instant messaging apps		44.4%	60.0%	38.1%	

## RECORD PRESERVATION



We further asked about the ease with which it would be possible to find, collect, and preserve relevant records for each data source if a legal matter arose tomorrow. Response categories represent the degree of difficulty in doing so, ranging from the ability of the legal department to handle on its own, to needing IT involvement, to being completely impossible. Respondents could also indicate uncertainty.

# Q5. If a legal matter arose tomorrow, how quickly and easily would you be able to find, collect, and preserve relevant records for each data source?



Around one quarter of legal departments can quickly produce cloud-based data records (documents and email) on their own, and almost all participants can do so with the assistance of IT. Sixteen percent of departments can produce internal messaging records on their own, and fourteen percent (14%) can produce online meeting data records without the involvement of IT. For most data sources, however, this is a task that legal relies on IT to assist with. In forty percent (40%) of departments, it would be difficult or impossible to retrieve text messages, and twenty eight (28%) percent would struggle to produce social media records.

The general reliance on the IT department to assist with tracking, collecting, and preserving records across diverse data sources clearly influences the results of this chart, which shows the percentage of legal departments that can produce data records on their own, without IT involvement: none of the categories shown reports fifty percent (50%) or more legal departments being capable of producing records themselves.

The chart however shows a clear progression based on company size, with legal departments in large organizations relying less on the IT department on average regarding record collection and preservation.

#### RECORD PRESERVATION BY COMPANY SIZE

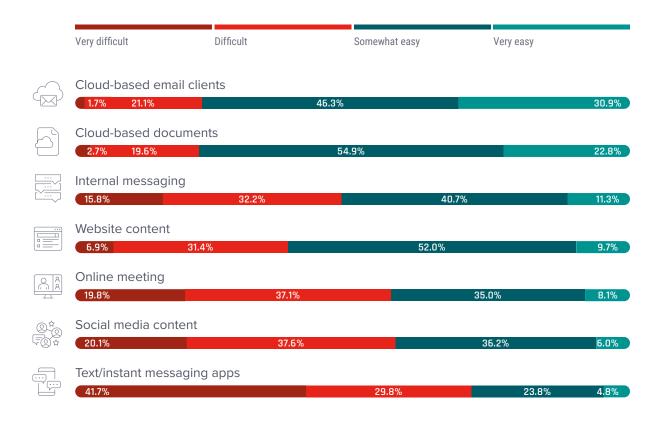


## RECORD PRODUCTION RESPONSE



Regardless of whether legal departments can produce data records quickly and effectively on their own or with the assistance of the IT department, what really matters is that the process is accomplished efficiently. We asked legal departments how easy or difficult it was to produce records in each of the seven data sources in a four-point scale ranging from very easy to very difficult.

### Q6. How easy is it to respond to a request for production of records for each data source?

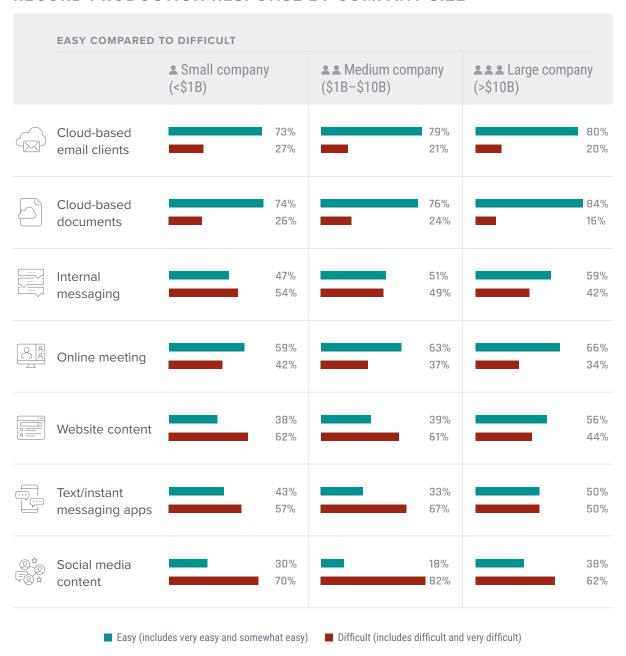


The bar chart allows us to quickly identify three groups of data sources according to the difficulty that legal departments face in producing information records:

- Matching the results of the previous question, cloud-based document and email client records are the
  easiest to track and produce, with around 75 percent of participants reporting it to be easy or very easy.
- Second, a majority of participating departments report it to be easy or somewhat easy to produce website content records and internal messages, with 62 percent and 52 percent respectively.
- On the lower end, records of online meetings, social media content and, especially, text or instant
  messages are generally more difficult to track, preserve, and produce less than half of participating
  departments found this task easy.

Looking at how easy it is for departments to respond to a data record request by company size shows that large companies can produce records more easily. Most respondents in large companies found it easy to respond to requests related to all data sources, with the exception of text messages and social media.

#### RECORD PRODUCTION RESPONSE BY COMPANY SIZE



# RECORD PRODUCTION TOOLS



When faced with specific record production requests, we inquired about which methods legal departments use to respond to such requests. The following five methods were available, and respondents could select any that applied to each specific data source — multiple selection of methods was allowed, if applicable.

A darker shade in the cells indicates a higher percentage of respondents using each method for each data source. The five methods are sorted from left to right based on the average percentage of respondents that use each method when all seven data sources are combined — collect the request and turn it over to a third party is the most common, while building specific in-house tools is the least common.

#### Q7. What tools do you use to respond to requests for production?

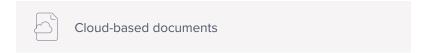
	Collect and turn it over to third party	Use built-in discovery capabilities	Third-party software	Search native app and take screenshots	Built our own tools
Online meeting	36.7%	29.3%	30.3%	16.5%	11.2%
Cloud-based documents	33.9%	39.5%	29.4%	12.4%	13.0%
Internal messaging	35.7%	32.2%	30.4%	15.2%	10.5%
Website content	33.9%	25.5%	23.6%	21.8%	14.5%
Cloud-based email clients	33.9%	41.7%	31.5%	9.5%	13.1%
Social media content	34.1%	22.5%	22.5%	28.3%	10.9%
Text/instant messaging apps	39.7%	12.8%	24.4%	29.5%	12.8%

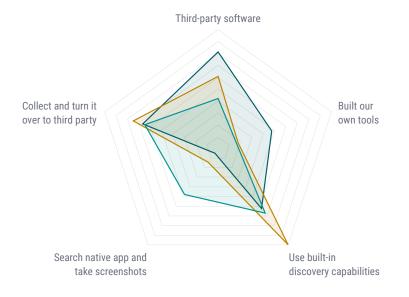
#### **RECORD PRODUCTION TOOLS**

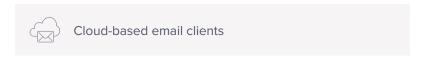
The following spider charts show the percentage of respondents that use each specific record production method by data source and across company size: small, medium, and large, represented by the colored lines. Each chart presents the results for a single data source as indicated by the chart heading. Multiple methods can be used for each data source. Lines that are spaced farther out closer to the periphery of the spider chart indicate a higher percentage (meaning more companies use this particular method) and lines that are closer to the center of the chart indicate a smaller percentage. The charts on the next four pages allow us to compare these percentages across company size as shown by the three overlaid lines.

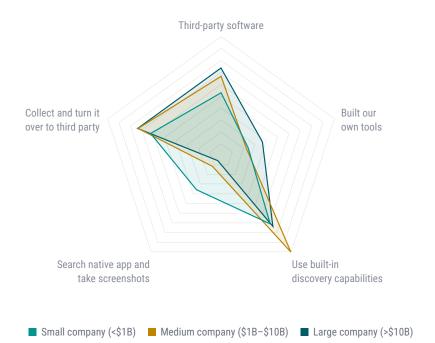
Generally, larger companies tend to use more custom tools and third-party software while smaller companies more often use built-in discovery capabilities, as well as screenshots. This is most clearly shown in the "online meetings" results, however there is some variation across data sources. Methods are more widespread in relation to data derived from web content and built-in discovery capabilities are very often used for cloud-based documents and cloud-based email clients, regardless of company size.

#### RECORD PRODUCTION METHODS BY COMPANY SIZE



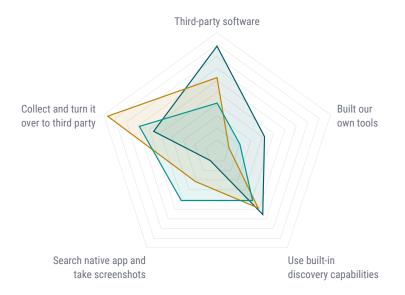


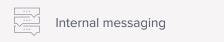


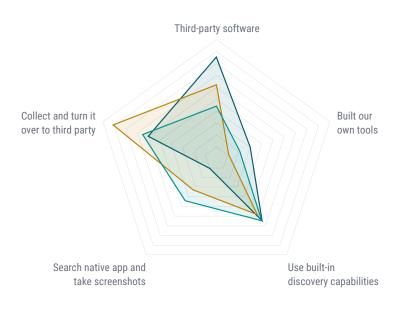


For Cloud-based documents, large companies are mainly relying on third-party software. All three groups use the built-in discovery capabilities, however it is clear that medium sized companies more heavily rely on them. The pattern is similar for cloud-based email clients.

#### Online meeting



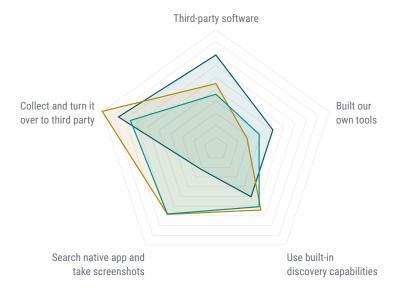




For online meetings and internal messaging, large companies are mainly using third-party software while medium sized companies are collecting and turning to third party.

■ Small company (<\$1B) ■ Medium company (\$1B-\$10B) ■ Large company (>\$10B)

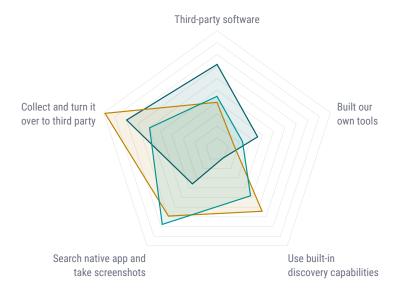
#### Website content



For website content, large companies employ third party software and collections that are turned over third parties. Small and medium organizations also rely heavily on third parties but also rely on internal screen captures.



#### Social media content

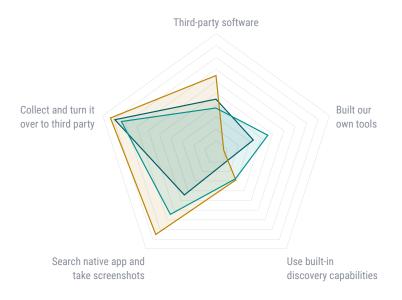


Both large and medium organizations rely on collections for third parties, however large organizations do have some internal capture capabilities. As with web content, small and medium organization rely on manual internal screen captures.

■ Small company (<\$1B) ■ Medium company (\$1B-\$10B) ■ Large company (>\$10B)



#### Text/instant messaging apps



For text or instant messaging, all three groups heavily rely on third party to handle their collections.

■ Small company (<\$1B) ■ Medium company (\$1B-\$10B) ■ Large company (>\$10B)

In an open-ended question, participants were asked about their top priority regarding IG improvements. Responses were analyzed and categorized based on topic. Forty-two percent of participants indicated priorities related to their company's record retention policy, whether to create it, revamp it, or effectively implement it. Twenty-four percent pointed to data management, mapping, and indexing priorities, and 15 percent emphasized the need for alignment across departments. Thirteen percent of respondents indicated a different priority and five percent said that IG improvements were not currently a priority. Select respondent quotes provide clear, first-hand examples of what legal departments are focusing on.



# Q8. What discovery readiness and information governance improvements are most important to you right now?

For example, implementing a records retention policy, installing an enterprise-wide data indexing tool, or ensuring alignment across departments.

#### INFORMATION GOVERNANCE IMPROVEMENTS



#### **RECORDS RETENTION POLICY**

"Ensuring relevant custodians are following document retention policies and not just saving everything."

"Implementing a comprehensive records retention policy and implementing a mature workflow for collecting data from key data source repositories."

"Implementing a consistent and adequate records retention policy and ensuring that it is communicated effectively throughout the business."



#### DATA MANAGEMENT, MAPPING, AND INDEXING

"Data mapping of all of our systems."

"Enterprise architecture needs to be updated to create a common data environment. We need to overcome some legacy siloed information sources."

"Installing an enterprise-wide data storage and management system with indexing. It would be great if it was automated."

#### **ALIGNMENT ACROSS DEPARTMENTS**



"Alignment across departments, auditing for practices currently done in each department."

"Ensuring alignment across departments about document storage repositories and reducing the number of options to make it more manageable."

"Ensuring consistency across multiple locations which use different tools and platforms."

#### **OTHER PRIORITIES**



"Anything that would limit the legal department's reliance on IT."

"Ensuring a proper configuration of an internal governance team (globally) with clear roles and responsibilities."

"Move the e-discovery process in-house to allow greater agility and response, and save costs."

#### **NOT A PRIORITY RIGHT NOW**

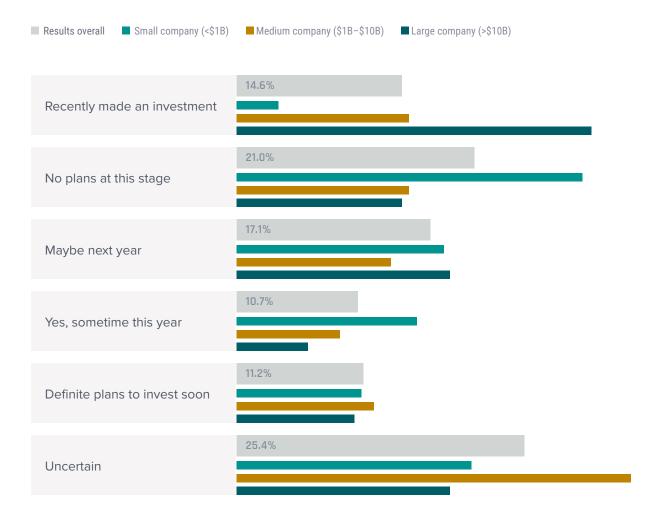


"Discovery readiness is not a priority at all. The information governance improvement priority is to implement a better records retention process, but this is presently a low priority."

"None at the moment."

As a follow-up, we asked participants whether their organization was planning on investing in the IG improvements to which they had referred. Twenty-one percent reported that unfortunately there were no plans to act on it just now, and a further 25 percent were uncertain whether action would be taken. Twenty-two percent were confident that investment would occur soon or sometime this year, and an additional 17 percent were hoping for investment to come next year. Fifteen percent reported that an investment on improving IG policies and practices had been made very recently.

### Q9. Does your organization plan on investing in those improvements soon?



Three in ten respondents in large companies said that an investment had already been made and 35 percent were confident it would happen within the year. Conversely, 50 percent of respondents in small and medium companies reported that there were no plans to invest in IG improvements or expressed uncertainty about whether investments to improve the company's IG would follow.

### MATURITY CHALLENGES

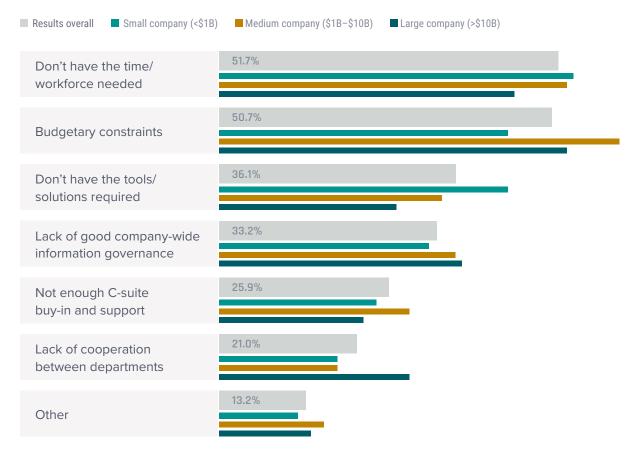


To wrap up the survey, respondents were asked what challenges they faced in implementing more mature data retention and preservation processes. Participants could select all the barriers that applied among the six provided or indicate another challenge if applicable. The top two challenges reported by a majority of respondents were the lack of time and human resources, as well as budgetary constraints.

Around one third pointed at lacking the required tools (36 percent) and a solid IG policy across the organization (33 percent). One quarter lamented the lack of C-suite buy-in and support and 21 percent named the lack of cooperation between departments as challenges to maturity. Thirteen percent indicated other challenges, including:

- Difficulties in establishing common policies across different country jurisdictions and global offices.
- The assumption that mature IG processes were not a priority because the company had not experienced any data-related issues in the past.

## Q10. What are your biggest barriers to more mature retention and preservation processes?



Challenges to a more mature IG strategy are consistent across different company sizes, with lack of time and resources and budgetary constraints being the most common. Small companies emphasize the lack of tools, whereas large companies report higher cooperation problems across departments.

## ADVICE FROM CORPORATE COUNSEL



What can legal departments do to overcome these challenges to more mature retention and preservation strategies? Participants were asked to provide advice to fellow in-house professionals on what to focus on to improve information governance policies and practices in the organization. Below is a summary of open-ended responses from participants, grouped in five concise tips to effectively work toward a more robust IG strategy.

# Q11. Based on your experience, what is one piece of advice you would give to other in-house legal professionals looking to streamline and improve their data preservation strategies?

#### GET BUY-IN AT THE TOP



This needs executive sponsorship to truly gain traction."

"Engage the C-level. Prove its importance through a case study."

"Implementing a consistent and adequate records retention policy and ensuring that it is communicated effectively throughout the business."

"Get C-suite support, and use examples (e.g., expensive, or complicated discovery issues and risk-avoidance issues)."

"Educate senior executives on importance and ramifications for not identifying and implementing effective measures."

"Communication and engagement within the company is key!"

### FIND RESOURCES



"Budget for the process."

"Build a one-stop shop in-house or outsource to a one-stop shop so that you can leverage pricing and efficiencies."

"Invest in tools and technology solutions."

"Implement a wide and robust trainings and awareness on data privacy; build a road map and design strategies."

"Over budget third party consultants because they are invaluable."

#### WORK WITH IT



"Collaboration with IT and among the functional areas is key to developing a comprehensive strategy."

"Develop a close relationship with IT and ensure that they understand e-Discovery needs."

"Find a trusted IT representative who is willing and able to spend the time to educate the legal team."

"Understand and be involved with IT regarding your data systems architecture."

"Work closely with IT and information security teams and have a data mapping of key data repositories."

### KEEP IT SIMPLE



"Don't make policies so complicated that they cannot be followed. Better to have a limited policy that is followed than a massive, ambitious policy that everybody ignores."

"Don't let multiple locations all choose different platforms."

"Get ahead of the curve. Centralize and look to cloud based solutions."

"Automate as much as possible."

"Simple is key!"

"Do it before you MUST do it."

### START NOW!



"Do it now. You don't know when that next discovery cycle is going to require your organization to be ready!"

"Don't wait until a disaster happens to organize data. It is very resource intensive to have to extract all relevant data from all sources in the organization when the time comes."

"Start early before you have a lot of data, and build consideration of searching and data retention into every new technological tool that is brought into the company."

"Start yesterday and have a good document retention policy in place that is followed by the company."

### CONCLUSIONS



The following conclusions provide a summary of the survey results and highlight the key takeaways from participating legal departments regarding data retention and preservation maturity:

## 1 MOST ORGANIZATIONS' IG PROGRAMS ARE IN THE EARLY OR INTERMEDIATE STAGE OF DEVELOPMENT AND ARE STILL EVOLVING.

Fifty-one percent of participants reported using decentralized enterprise content management strategies, a retention and preservation practice ranked at the lower end of the maturity scale. Nineteen percent have centralized IG practices with policies and procedures drafted but not yet fully implemented, and another 19 percent reported more mature, centralized and automated, enterprise-wide strategies. By data source type, cloud-based email clients record the highest level of maturity on average, while only 10 percent of respondents at most reported automated processes to handle text and instant messages, as well as social media content.

### 2 THERE IS HIGH RELIANCE ON INFORMATION TECHNOLOGY TO PRODUCE RECORDS.

A majority of legal departments rely on IT to collect and preserve emails (70 percent), cloud-based documents (69 percent), internal messaging data (61 percent), online meetings (56 percent), and website content (55 percent). Around one quarter of legal departments can manage these processes themselves, without IT assistance, when they relate to cloud-based documents and emails. Conversely, text messages and social media content are reported to be more difficult to track, with 39 percent and 28 percent of respondents, respectively, indicating that doing so would either be very difficult or impossible. The legal department's ability to produce records varies significantly by company size, with departments in larger organizations being between two and three times more likely to track the data themselves than departments in smaller organizations across the seven different data sources.

### 3 REQUESTS FOR PRODUCTION ARE MOST OFTEN HANDLED BY TURNING DATA OVER TO THIRD PARTIES.

Around one-third of participants respond to data requests by collecting the data and turning it over to a third party for any type of data source, and about 40 percent use built-in discovery capabilities to track and retrieve cloud-based documents and emails. Additionally, 30 percent of respondents use third-party software to produce records of online meetings, cloud-based documents and emails, and internal messaging. Other methods such as searching the native app and taking screenshots, or using custom-built tools are less common, but there is some variation depending on the size of the organization. Large companies tend to use third-party software and custom-built tools to respond to data requests, while smaller companies resort to taking screenshots of native apps more often.

### 4 MOST ORGANIZATIONS PLAN ON INVESTING IN IG IMPROVEMENTS IN THE NEXT YEAR OR HAVE RECENTLY MADE AN INVESTMENT.

Forty-two percent of participating departments identified the organization's records retention policy as the top area for IG maturity improvement; 24 percent emphasized the urgent need to improve data management, mapping, and indexing throughout the company; and 15 percent stressed the importance to work toward improved cooperation and alignment across departments. Most organizations plan on investing in these improvements this year (11 percent), next year (17 percent), or soon (11 percent). Another 15 percent of participating organizations recently made an investment to advance IG maturity. On the other hand, 25 percent indicate that plans for investment are uncertain at the moment, and an additional 21 percent reported that their organization had no plans to invest on IG improvements.

### 5 RECORD RETENTION IS A HIGH PRIORITY BUT THERE IS A LACK OF BUDGET AND RESOURCES.

Although data retention is a high priority, half of respondents pointed at the lack of time and necessary workforce (52 percent) and budgetary constraints (51 percent) as the biggest obstacles to more mature IG practices. Thirty-six percent said that they do not possess the necessary tools, 33 percent blamed the lack of a company-wide IG strategy, 26 percent lamented the lack of buy-in and support from C-suite executives, and 21 percent said one of the barriers was the lack of cooperation between departments in the organization. Smaller companies emphasize the lack of tools and solutions, whereas large companies report higher cooperation problems across departments. Participants recommend securing C-suite buy-in, finding the necessary resources, and starting as soon as possible as the top priorities to overcome these barriers and improve data retention and preservation strategies in the organization.

### SURVEY DEMOGRAPHICS



#### **INDUSTRY**

Manufacturing		15.2%
Information Technology		9.5%
Financial Services		8.1%
Insurance		7.6%
Healthcare and Social Assistance		6.2%
Professional, Scientific, and Technical Services		5.7%
Transportation and Warehousing		5.2%
Retail Trade		4.7%
Energy, Oil & Gas		3.8%
Telecommunications		3.8%
Construction		2.4%
Pharmaceuticals/Medical Devices		2.4%
Real Estate Rental and Leasing		2.4%
Accommodation and Food Services		1.9%
Arts, Entertainment, and Recreation		1.9%
Utilities		1.9%
Agriculture, Forestry, Fishing and Hunting		1.4%
Educational Services		1.4%
Management of Companies and Enterprises		1.4%
Mining		1.4%
Wholesale Trade		1.4%
Other Services (except Public Administration)		0.9%
Public Administration	•	0.5%
Other		9.0%

#### **COMPANY REVENUE**



#### LEGAL DEPARTMENT EMPLOYEES





#### **ABOUT ACC**

The Association of Corporate Counsel (ACC) is a global legal association that promotes the common professional and business interests of in-house counsel who work for corporations, associations and other organizations through information, education, networking opportunities, and advocacy initiatives. With more than 45,000 members employed by over 10,000 organization in 85 countries, ACC connects its members to the people and resources necessary for both personal and professional growth.

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