

E-Discovery “Best Practices”

crowell & Moring

SITUATION

Our clients were seeking production of electronic data in a complex class action from a government entity.

The data was dynamic, voluminous and highly sensitive.

CHALLENGES

The data comprised more than a hundred thousand individual records residing in five different databases

dating back some two decades and included highly confidential and privileged information. Each of the five databases included dozens of various fields and codes, including text fields that would have to be manually reviewed and redacted. Multiple database management software programs had been used to operate the databases. Most significantly, the databases were essential to the daily operations of the government entity and thus were being accessed by dozens of users throughout the day to input, alter or delete data.

APPROACH

The parties ultimately agreed to production from all five databases by taking the following steps and measures:

- Technical and statistical consultants, including IT personnel for the other side, participated in several meet and confers between counsel so that they could exchange information directly and informally and work together to resolve the challenges.
- The other side created data dictionaries for each of the databases. Using these data dictionaries, the parties exchanged proposed technology plans for production of electronic data, specifying the fields and codes to be produced from each database.
- The other side produced samples from each of the databases in both electronic and hard copy, and conducted an informal demonstration of some of the databases. The samples were produced in both redacted and unredacted form so we could

see what sort of information the other side intended to withhold. Because the parties secured a court order for production of the samples, there was no waiver of privilege by producing the unredacted samples.

- The parties agreed to a two-phased production. In Phase I, all records from each of the databases were to be produced with certain fields redacted, especially text fields. Based on the data produced in Phase I, we would identify specific records to be produced in Phase II with most of the redacted fields to be produced. Because the identities of personnel reflected in the records were highly confidential, identifying information was redacted in Phase I and each record was marked with a unique identifier for identification purposes in Phase II.
- Because certain fields contained highly sensitive data relevant only to the statistical analysis, those fields were to be produced only to our statisticians; and because the identities of personnel reflected in the records were irrelevant to the statistical analysis, Phase II records were to be produced only to counsel.
- Finally, we agreed to maintain the data on a stand-alone computer with access limited to specified counsel, consultants and support staff.



David D. Cross

dcross@crowell.com

202.624.2774

Mr. Cross is an associate in Crowell & Moring's Washington, DC office. He is a member of the Complex Litigation Group and the E-Discovery team. He advises clients and lectures on E-Discovery issues. Mr. Cross has effectively negotiated

complex, voluminous electronic data productions from dynamic databases and managed various E-Discovery matters, including the preservation and production of metadata, e-mail, legacy systems and disaster recovery tapes. He was one of the principal attorneys representing plaintiffs in the matter of *Hopson v. City of Baltimore*, which produced a groundbreaking E-Discovery decision affecting the proposed FRCP and FRE.