

Changing Platforms and Migrating Data: Important Considerations for Defensibility

Speakers



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Today's Webinar

- Change drivers
- Legal's advisory role
- Legal risks
- Mitigation strategies
- Parting thoughts



Change Drivers

- Cost
- Functional enhancements
- System obsolescence
- Consolidation of technology and process
- Mergers, acquisitions, and divestitures
- Security and compliance



Legal's Advisory Role

- 1 Identify potential legal risks
- 2 Advocate for a discovery and information governance perspective
- 3 Articulate requirements
- 4 Develop the needed factual record
- 5 Evaluate risk mitigation solutions
- 6 Educate decision makers about identified risks

Identify Potential Legal Risks

- ❖ Disruption of current preservation and discovery practices
- ❖ Outdated approaches, agreements, standard orders
- ❖ Inadvertent misrepresentations to the court, investigating agency, or parties
- ❖ Spoliation and sanctions
- ❖ Increased litigation costs



Advocate for the Discovery and Information Governance Perspective

Discovery

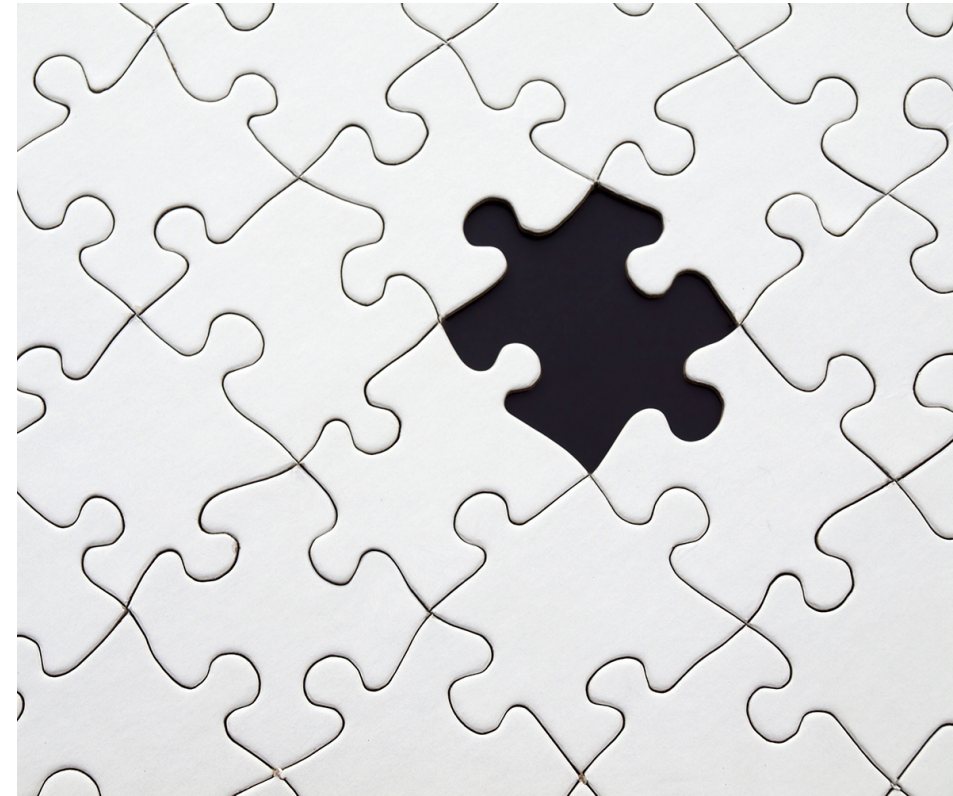
- Preservation
- Disclosure requirements
- Collection
- Prior orders and agreements
- Production

Information Governance

- Liaise with RIM and InfoSec
- Regulatory and statutory requirements
- Cross-border issues

Articulate Requirements

- ✓ Translate legal issues into requirements
- ✓ Dialogue with IT
- ✓ Understand the migration's limitations
- ✓ Balance costs and benefits
- ✓ Find practical and pragmatic solutions



Develop the Factual Record

What

- Scope of migration
- Data transformation
- Source-specific preservation obligations
- Timeline and transition plan
- Communications to users
- Defining and measuring success

Why

- Create documentation
- Defense against future attacks
- Identify and prioritize risks
- Update processes and standard communications

Legal Risks: Case Notes

*World Trade Centers Ass'n, Inc. v.
Port Auth. of New York & New Jersey*

*Acoustic Artistry LLC v. Peavey Elecs.
Corp.*

*Friedman v. Philadelphia Parking
Authority*

*Consol. Edison Co. of New York v.
United States*

Risk Mitigation Strategies

- Prioritize legal risks
- Create accurate and contemporaneous documentation
- Evaluate and modify discovery processes
 - Preservation
 - Collection
 - Production
- Test and validate proposed migration approach
- Review standard disclosures, agreements, and stipulated orders
- Educate counsel (in-house and outside)

Educate Decision Makers on Identified Risks

The standard is reasonableness, not perfection.

“‘[R]easonable steps’ to preserve suffice; it does not call for perfection.”

~Fed. R. Civ. P. 37(e) Advisory Committee Note (2015)

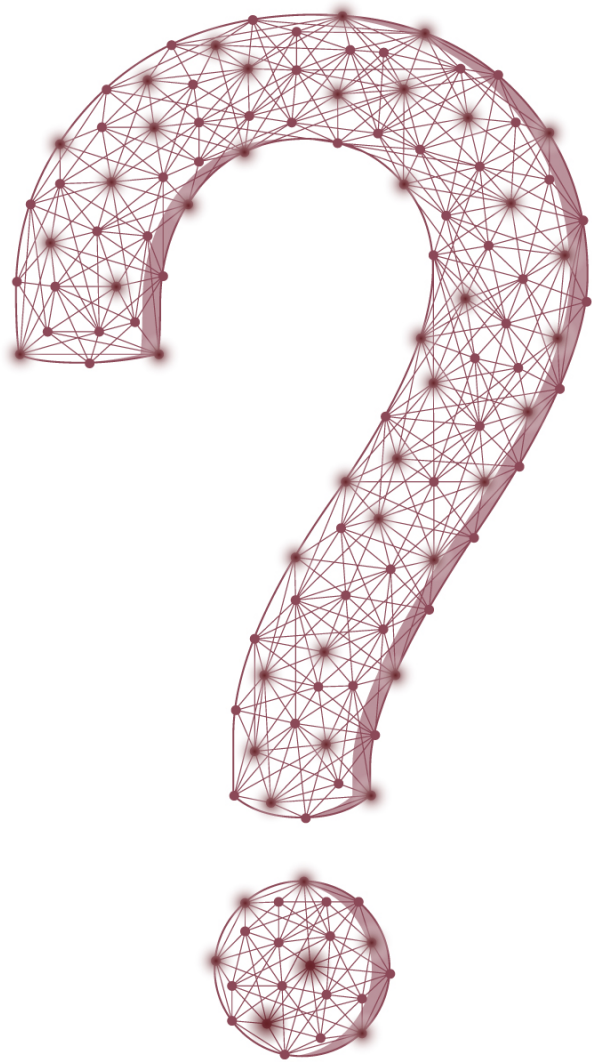
“‘[N]o one could or should expect perfection’”

~Federal Housing Finance Agency v. HSBC North America Holdings Inc., No. 11 Civ., 2014 WL 584300, at *2 (S.D.N.Y. Feb. 14, 2014)

Final Thoughts for Legal's Role in Migration

- Timing
- Support your questions
- Defensible (not perfect)
- Messaging
- Stay in the know
- Enable, don't "naysay"
- Educate *and* listen
- Prepare for the next migration





QUESTIONS?

Thank you!



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