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WHY INFORMATION GOVERNANCE FOR LAW FIRMS IS BECOMING MORE COMPLEX

LEADING EXPERT | PATRICK TISDALE | HAS SOME ANSWERS...

"Recently, I had an in-depth conversation with Patrick Tisdale on the topic of information governance (IG) at law firms today. Tisdale's expertise is impressive. Prior to founding Tees River Consulting, he enjoyed a long career as the CIO of Dentons and CKO of McKenna, Long and Orrick.

Here's a transcript of our conversation, which delves deep into how and why information governance is more complex than ever. He also has some answers about how to fix your IG processes and procedures if they're broken."

DARRELL:
For starters, let's talk a little bit about what Tees River Consulting firm does.

PATRICK:
Tees River assists law firms and legal operations modernize their services from the inside out. By doing so, we ensure that their time- and resource-constrained teams perform more efficiently, and that their work improves both in consistency and quality.

Right now, we're really focused on helping law firms objectively assess their business practices to ensure that they comply with their clients' increasingly complex information governance protocols. This includes outside counsel guidelines, as well as government regulations associated with sensitive information industries (such as healthcare, banking and finance, insurance and government contracts). And don't forget the European Union Data Protection Regulation becomes effective in May of 2018—so we're also helping law firms prepare for that.

DARRELL:
What progress are law firms making toward complete compliance?

PATRICK:
Progress is definitely being made. Law firms are really starting to appreciate the importance of information governance. And they're starting to implement a wide range of audit verifications of compliance stipulated chains of custody, access controls, file handling and usage policies, and file retention and destruction procedures.

In today's environment, having this all in place is crucial. Being proficient with IG can help law firms win new business. Conversely, being lax with IG can mean the loss of existing business if an IG compliance audit results in unfavorable findings.

I think it's interesting to note that every day we see that there's a wide variation in the maturity of law firms' information governance capabilities. Really, there's no particular profile to the law firms that are doing it right. The most or least IG-capable firms are not distinguished how many lawyers are on staff, their annual revenues or their size.

DARRELL:
Are there any trends that you're noticing in your daily work? What about law firms that specialize in sensitive industry sectors? Do they tend to have more sophisticated information governance?

PATRICK:
Generally, "yes." However, there are significant differences depending on their industry sector. For example, government contracts that involve work with confidential, secret and higher classifications of information are subject to intrusive third party audits. Not surprisingly, law firms involved with these clients are much more likely to adopt compliant business processes – at least within those practice areas. Compare this to sectors where compliance with regulations is self-administered, such as healthcare HIPAA governance guidelines. In these cases, the actual governance maturity of law firms varies considerably.

DARRELL:
So, it sounds like the level of a firm's IG compliance depends on the degree of outside auditing. Sectors that use the 'honor system' of self-auditing tend to have inconsistent governance compliance.

PATRICK:
Correct. Generally, firms that consistently align information governance with client expectations tend to have partner leadership, general counsel and senior business leaders at the helm who view information governance and information security as tightly joined risk mitigation concepts. The laggards tend to be firms with an old school perspective, which equate governance with simply the filing and storing of paper records.

DARRELL:
Earlier, you hinted to the increasing complexity of regulatory and client directed information governance compliance. Can you elaborate?

PATRICK:

I'll be glad to.

In the past, law firms defined their own information governance policies, chain of custody tracking, access controls, retention guidelines and the like. As time progressed, we started seeing the emergence of industry regulations. Just think about all the regulations today surrounding healthcare data, financial credit information, and personally identifiable information. Then think about all the regional regulations and global regulations around that data (such as EU Data Protection). Today, information governance compliance is highly complex.

If a law firm is working in a highly regulated sector, then it has likely been forced to evolve its information governance in order to comply. However, there are many firms outside such highly regulated sectors that have continued to employ more general firm-defined information governance across all their book of business.

Today, clients in sectors such as banking and finance are rapidly advancing the risk mitigation expectations for their vendors, which include law firms. In order to ensure compliance, they're issuing increasingly detailed information governance protocols. Notably, these information security and governance stipulations are not consistently applied across all data in a legal matter.

As a result of these developments, different management controls and retention are being issued for "client data" versus other information involved in a legal matter. For example, some clients are requiring law firms to confirm the return or destruction of client provided data within 120 days of work on a matter, while other legal matter records may be retained for 7 years.

Moreover, many clients are now defining "key data" (i.e., very sensitive client information, such as service account details, employee information or business trade secrets). And, they're assigning very exacting limitations on it. These limitations may include who's authorized to access it, the data's geographic location, and requirements for IT system controls (such as data encryption). They're also stipulating the technology methods used to delete the data from a firm's IT system and confirmation methods for that deletion.

Increasingly, clients are adopting a Ronald Reagan-esque approach to arms reduction agreements with the then Soviet Union. In other words: "trust, but verify." Essentially, information governance and compliance doesn't run on the honor system anymore. Rather, it is based on detailed audits of every vendor that has custody of their sensitive information.

DARRELL:
We hear in the media that law firms are the 'soft underbelly' extension of organizations of interest to state-sponsored organized crime and one-off hackers. Is this behind the increased importance associated with risk management and audits?

PATRICK:
Yes, it is indeed.

DARRELL:
Recently, I read an article on your Tees River Consulting website about how the financial services industry is forming cooperatives to assess vendor risks, define risk-mitigating protocols and perform audits. This seems to be a trend that's spreading to other industries. Can you tell us more about that?

PATRICK:
Sure. As you noted, the financial services industry--as well as US government agencies and the insurance industry--are collaborating to identify risks and define risk mitigation.

This enables industries with common risk profiles and somewhat similar sensitive information to pool their experience in terms of methods used to successfully avoid inappropriate access to their information. It also helps them share their learned lessons from breaches. As you mentioned earlier, law firms are a 'soft underbelly,' meaning that they have access to sensitive client information and they're often less sophisticated in terms of their IT security controls. This makes them easy targets. When the bad guys want to access an organization's information, it's much easier to attack a soft target than one that's highly fortified.

So the cooperatives are collaborating to develop vendor information governance controls (i.e., outside counsel guidelines for law firms). They're also collaborating in their contracting of auditors to assess compliance. This move toward industry cooperatives creates a significant business exposure for law firms.

DARRELL:
And what is that?

PATRICK: If your firm fails an information governance review for a client, this can have far reaching consequences. The audit mechanism employed by the cooperative may end up sharing that failure with other firm clients or prospective clients who are members of the cooperative. As a result, your firm could be flagged as an unsatisfactory service provider for all member organizations.

DARRELL:
What advice do you have for laws firms that are trying to comply with rapidly evolving information governance directives?

PATRICK:

Assess your firm's limitations. Historically, if dealing with information governance has been challenging, the problem is only going to get worse. That's the bad news.

However, the good news is that a lot of smart people have been working on solving these challenges for quite some time. There is some amazing information governance software—like the records management and IG software

offered by FileTrail—that automates everything.

FileTrail's modern records management software features a built-in information governance tool that applys firm policies or outside counsel guidelines that relate to retention protocols as part of a matter. This applies to content in your DM system, Share Drives or other repositories. This information is then accessible to matter team lawyers and staff. And the tool has built in workflows that automate reviews and dispositions related to the matter content.

DARRELL: Any last thoughts?

PATRICK: For firms with European client business, remember that the new European Union General Data Protection Regulation is effective May 25th, 2018!

DARRELL: Thanks for your time, Patrick.

If you're interested in accurately assessing your firm's information governance maturity, visit the Tees River website to do an IG Self Audit.

TO FIND OUT MORE ABOUT HOW FILE TRAIL CAN HELP YOU WITH INFORMATION GOVERNANCE PLEASE CONTACT US ON

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