THE INVESTIGATIONS LANDSCAPE:

FINDINGS FROM THE H5/ATL 2019 CORPORATE INVESTIGATIONS SURVEY

ABOVE THE LAW

H5

Given today's increasingly complex and evolving legal and regulatory environment, investigations are more crucial than ever. Usually time-sensitive, they can be especially difficult to manage given the nature of today's electronic data landscape and the fact that most investigations involve a certain degree of data probing.

We here at Above the Law partnered with our friends at H5 to take a deeper dive into the investigations space in order to better understand this intricate landscape. We wanted a more in-depth look at the principal actors and their perception of trends, differences among categories of investigations—such as due diligence, cybersecurity, employee/workplace, and regulatory/governmental—and how those might vary across companies of all sizes and within various industries.

READ ON FOR OUR FINDINGS >>

Methodology

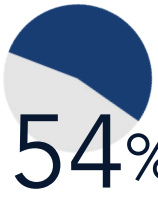
Between July and August 2019, Above the Law fielded a survey targeting those on the front lines of investigations. We wanted to hear from those who are involved with the management and strategy of investigations, those whose responsibility it is to select and manage vendors and resources, as well as those who respond to investigations. We asked them to share their experiences on everything from how tools are used to their top challenges regarding current practices. Over 300 respondents shared their insights, which we report upon here, segmented by various analyzing variables, such as respondent position, industry sector, and company revenue, to name a few.

Please note that percentages might not add up to 100% because of rounding and/or question format of allowing multiple selections.

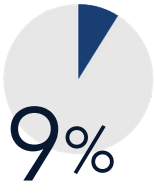
SURVEY RESPONDENT DEMOGRAPHICS

We received responses from 317 individuals who describe themselves as being directly involved in investigations. The largest group of individuals (54%) described their primary or principal role in relation to investigations as **management and strategy.**

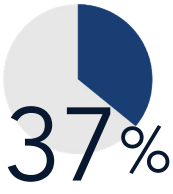
Primary investigatory role of respondents:



54%
Management and Strategy



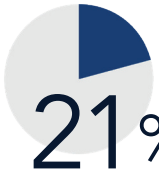
9%
Selecting and Managing Vendors/Resources



37%
Responding to an Investigation

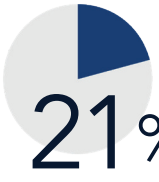
When asked about their position in their company, 47% of respondents identified themselves as **attorneys**. The next largest cohorts were compliance department professionals and non-lawyer/ administrator/other legal professionals, at 21% each.

Respondents by position:

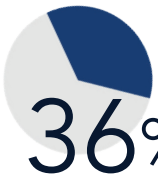


21%
Non-lawyers/ Administrator/Other Legal Professional

11%
Litigation Support Professional



21%
Compliance Department Professional

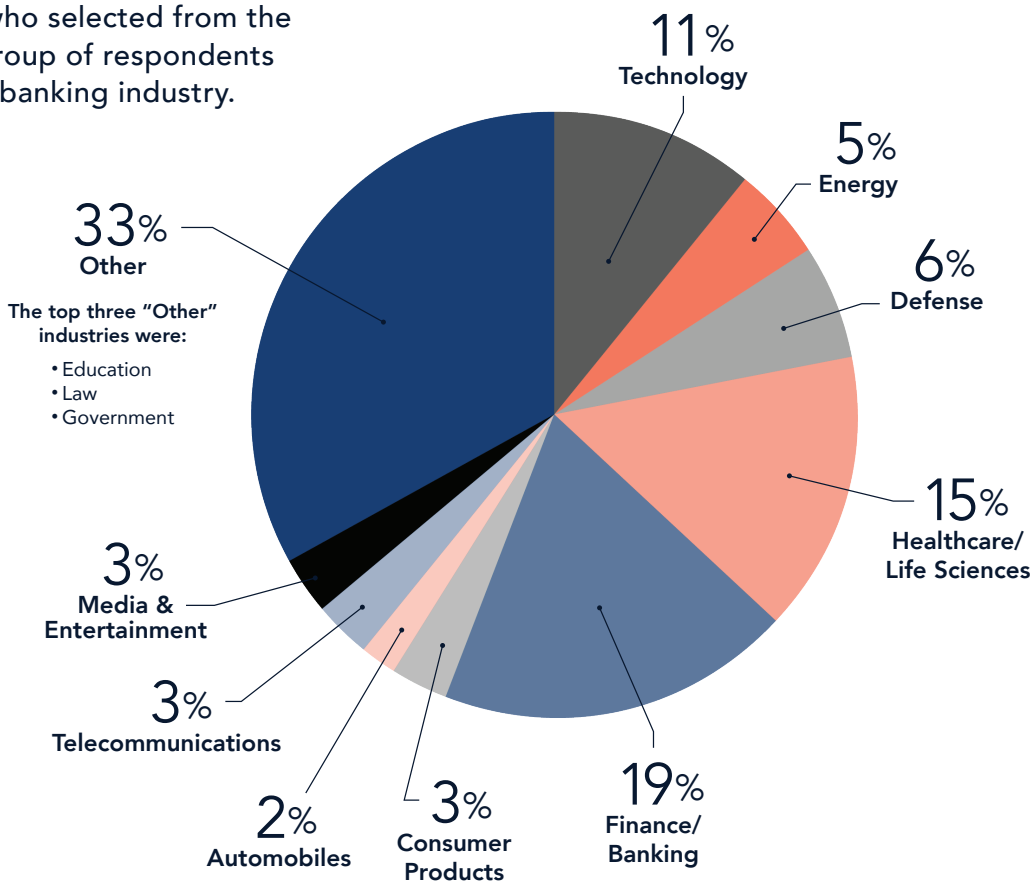


36%
Attorney - Legal Department

11%
Attorney - Investigations Department

As to industry, among those who selected from the fixed-choice list, the largest group of respondents reported being in the finance/banking industry.

Respondent Industry



Respondent company by revenue

Under $100M	$100M–$500M	$500M–$1B	$1B–$50B	$50B–$100B	$100B+
40%	15%	9%	23%	5%	8%

Respondent company by legal department size

1	2-5	6-10	11-25	26-50	51-100	100+
19%	25%	14%	11%	9%	7%	15%

Respondent location

U.S.	Non-U.S.
85%	15%

KEY FINDINGS

> **Respondents expect the number of investigations in their companies to increase over the next 3 years.** Investigations are an unfortunate fact of life for most companies and their numbers really add up. Nearly half of survey respondents said their companies face more than 50 potential investigations of various types per year—22% said more than 100—and they believe them to be increasing. Nearly two-thirds think they are on the rise, citing reasons such as company growth and increasing regulations, including GDPR and other privacy related initiatives.

> **Companies face investigations on many possible fronts, from employee misbehavior to massive regulatory investigations.** When queried about the types of investigations their companies face most often, respondents overwhelmingly chose employee/workplace investigations (43%), with regulatory/governmental investigations following up at 24%.

> **Costs and lack of resources are the most common obstacles to conducting an investigation.** The biggest challenges respondents said they face are a lack of resources and internal coordination to handle them, which could be worrisome given the anticipated increase in investigations. Rising costs are of concern as well, but that may be easier for many companies to address than finding ways to efficiently and effectively manage the investigations that arise.

> **Reputational damage, costs to pursue, potential fines, business disruption—different types of investigations pose different risks.** For workplace and white collar investigations, reputational damage was the biggest concern (43% and 44%, respectively), while regulatory investigations incur more concern about potential costs of damages or fines (42%), followed by reputational damage (31%).

> **Non-US companies may spend more overall on investigations.** Non-U.S. companies reported a higher spend: 21% reported their companies spending $10M or more (vs. 2% of U.S. respondents).

> **The majority of respondents (67%) indicated that their companies proactively monitor networks and electronic data for suspicious activity, but that's not the most common trigger for an investigation.** The most common trigger cited for an investigation was a private or public complaint by a consumer, employee, or competitor.

> **Analytics technology was chosen as the second largest area of spend for an investigation.** While outside counsel was the top area of spend, analytics technology was next, with 59% of respondents including it in their top three areas of spend.

> **Companies are not unprepared for investigations, even though respondents noted resource strain as one of their major challenges.** Sixty-four percent of respondents said their company has a department or team specifically dedicated to handling or directing corporate investigations, with most reporting to the legal department.

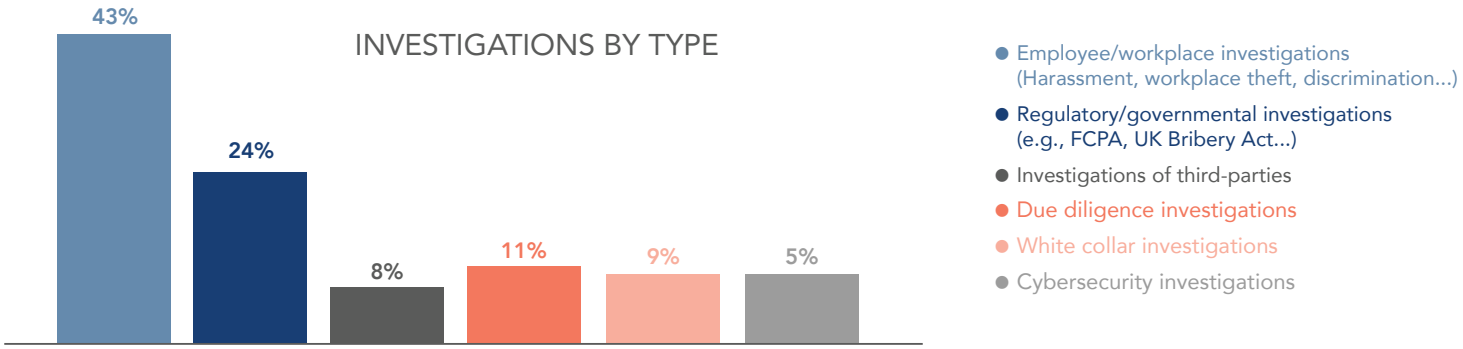
> **One of the things that adds to the costliness of today's investigations is the existence of so much electronically-stored information (ESI) that could constitute evidence.** A majority of respondents said that preservation and/or collection of data is involved for more than 25% of their investigations, with the healthcare and financial sectors apparently hit the hardest.

> **Although the majority of respondents were somewhat or very satisfied that their current approaches for identifying key documents for investigations were efficient (65%), cost-effective (62%) and speedy (56%), there is room for improvement.** More than a third were very or somewhat dissatisfied, especially regarding speed.

SUMMARY OF RESULTS

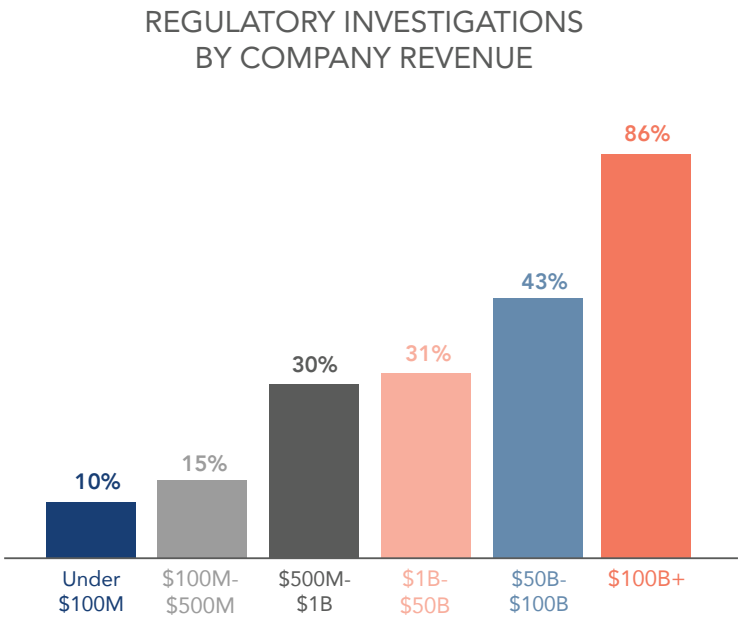
INVESTIGATION TYPES

Q. Considering the types of investigations that many companies face, which of the following types of investigations occur most often in your company? *(Ranked by frequency.)*



Companies may face investigations on many possible fronts, from employee misbehavior to massive regulatory investigations. When queried about the types of investigations their companies face most often, respondents, across all roles and functions, overwhelmingly chose **employee/workplace investigations** (43%), with **regulatory/governmental investigations** following up at 24%.

Notably, however, respondents from the **financial/banking sector,** a highly-regulated vertical, were more likely to cite **regulatory investigations** first (48%). And, despite the omnipresent headlines about data breaches, **cybersecurity investigations** were at the bottom of the list.

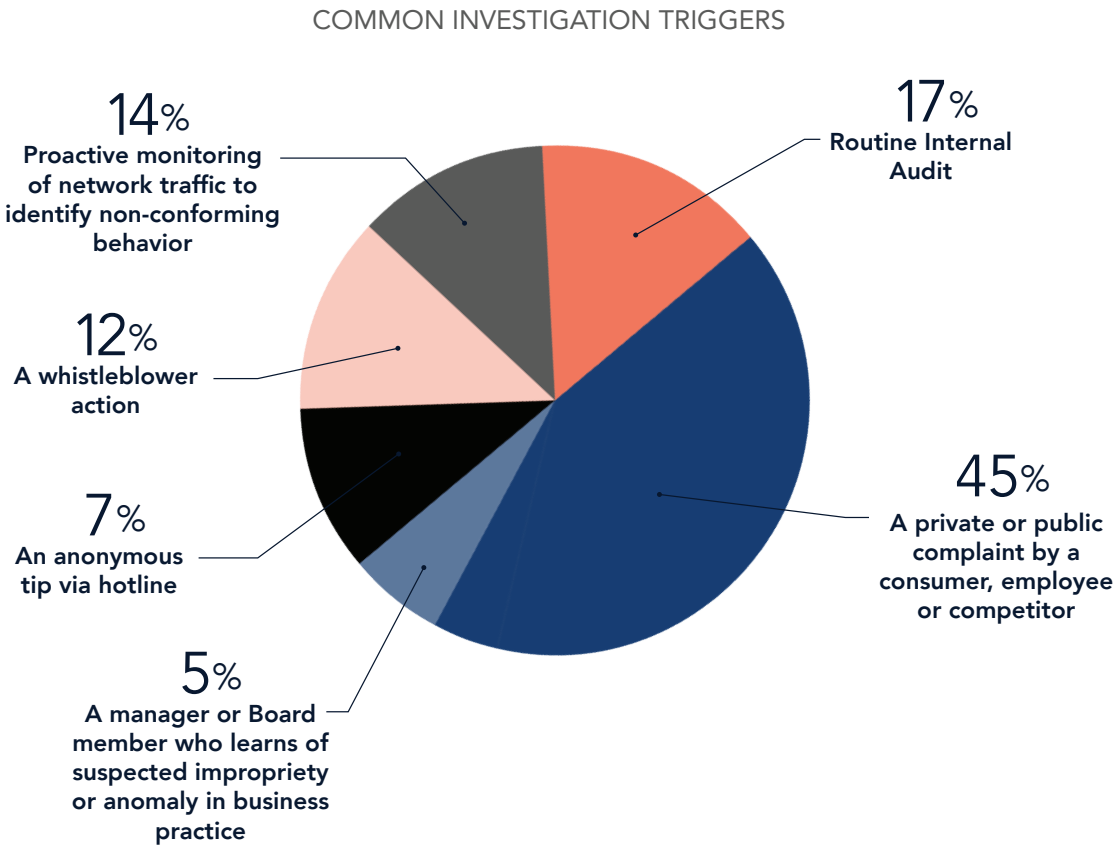


As company revenue size increases, the number of respondents who named **Regulatory** investigations as the most commonly occurring investigation type (as opposed to **employee/workplace**) increases also.

SUMMARY OF RESULTS

INVESTIGATION TRIGGERS

Q. What are the most common triggers for an investigation in your company?
(Ranked by frequency.)



Although an investigation trigger can come from anywhere, respondents indicated that a **private or public complaint by a consumer, employee or competitor** is the most common source (45%). Routine internal audits, fulfilling their raison d'etre, also bring suspicious activity to light (17%).

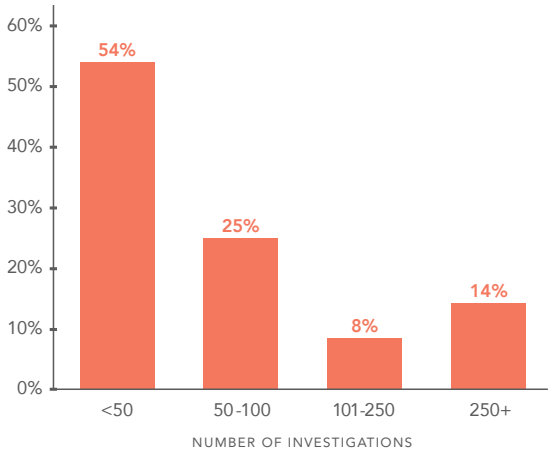
Of interest: although **67% of respondents said their companies proactively monitor networks and electronic data** for suspicious activity (heaviest in the financial and healthcare sectors), that activity was cited as common trigger by only 14% of respondents overall (but 32% by financial sector respondents.)

SUMMARY OF RESULTS

NUMBER OF INVESTIGATIONS AND ANTICIPATED CHANGE

Q. How many potential investigations of all types and sizes are actually triggered in your company in a year, whether or not they are ultimately pursued?

NUMBER OF INVESTIGATIONS TRIGGERED PER YEAR

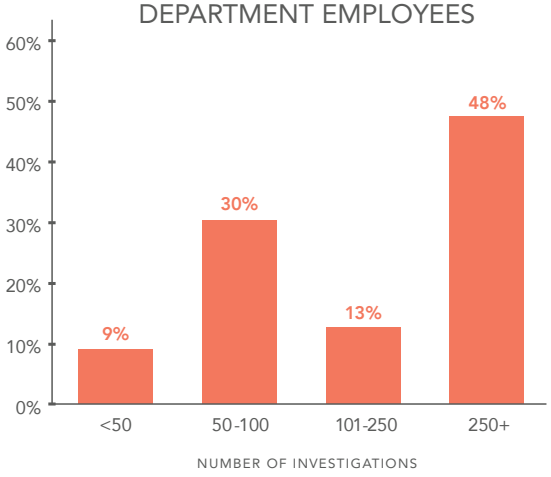


Nearly half of the respondents said their companies face **more than 50 potential investigations** of various types per year (22% said more than 100)—and they believe them to be on the rise. Citing reasons such as company growth and increasing regulations, including GDPR and other privacy-related initiatives.

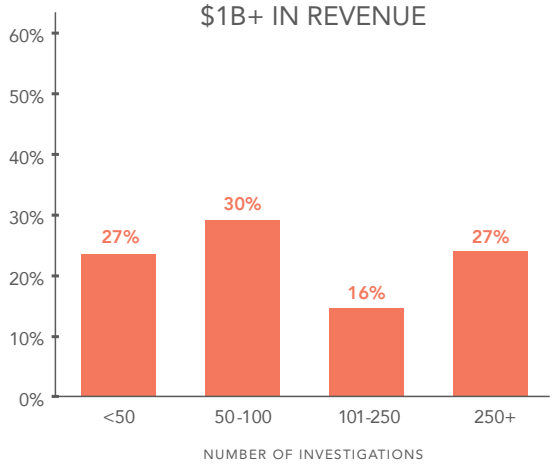
Not surprisingly, companies with higher revenues (presumably larger in size and number of employees) and larger legal departments report more investigations.

TRIGGERED INVESTIGATIONS

IN COMPANIES WITH 50+ LEGAL DEPARTMENT EMPLOYEES



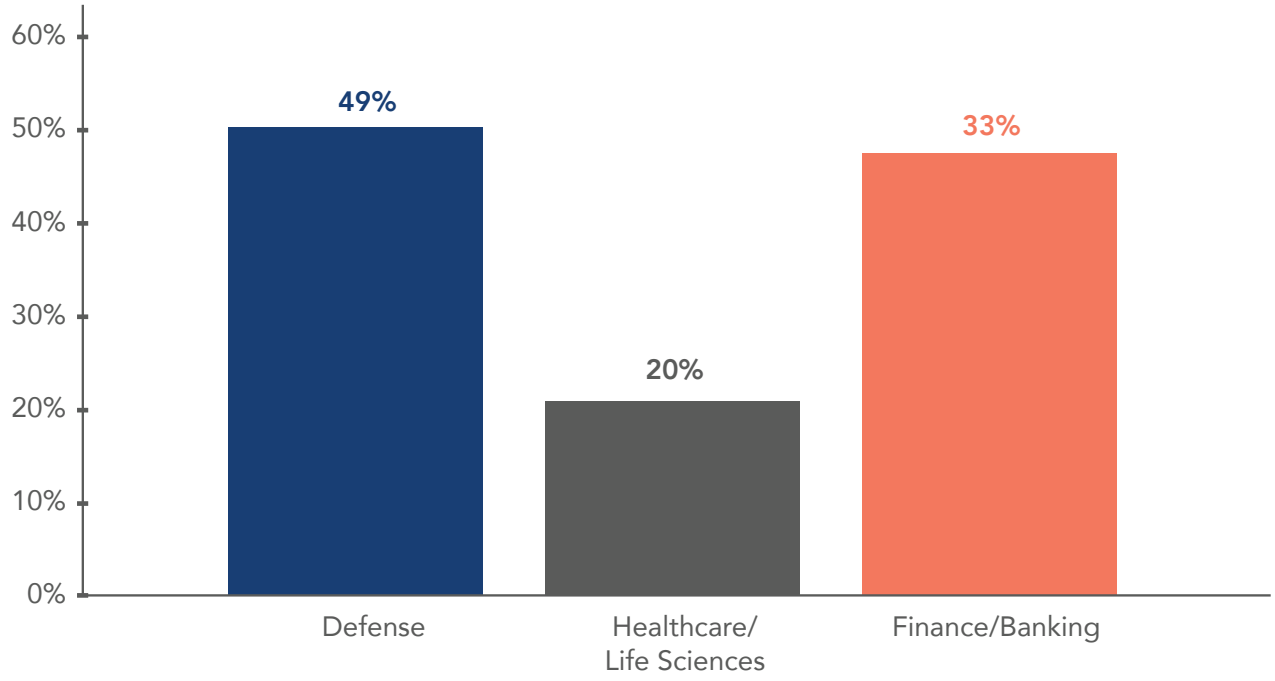
IN COMPANIES WITH $1B+ IN REVENUE



SUMMARY OF RESULTS

NUMBER OF INVESTIGATIONS AND ANTICIPATED CHANGE

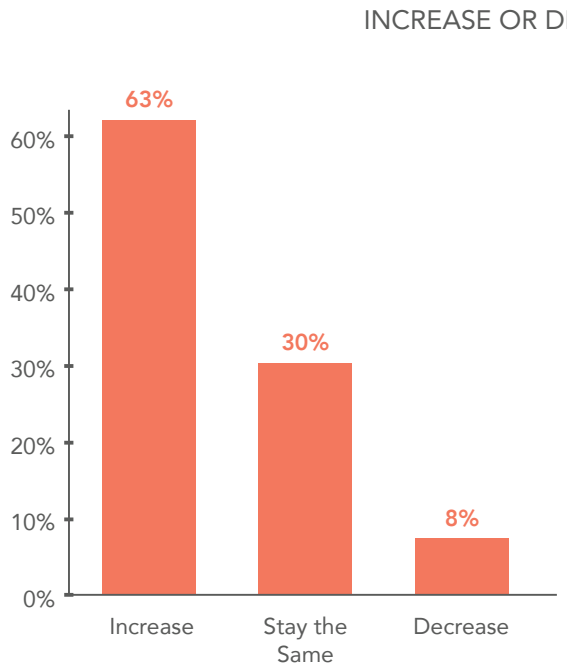
PROPORTION OF RESPONDENTS WITH 100+ INVESTIGATIONS, BY INDUSTRY



Overall, 22% said their companies faced 100+ investigations per year, with respondents in most verticals reporting fewer. However, the numbers were higher in the verticals shown above: Defense (49%), Healthcare (20%), and Finance (33%).

SUMMARY OF RESULTS

Q. Do you think the number of investigations your company conducts will increase, decrease, or stay the same over the next 3 years?



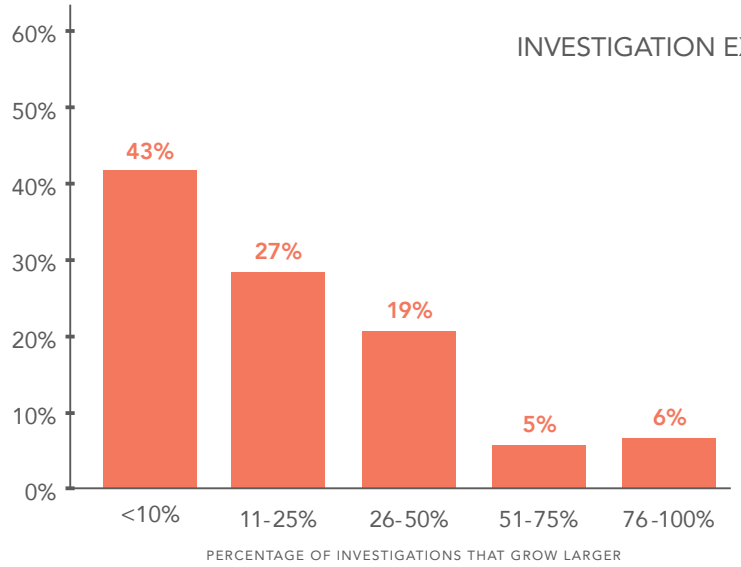
More than **60% of respondents** believe that the **number of investigations will increase over the next 3 years**. This was consistent across all dimensions: roles, positions, firm revenue, and location. The primary reasons cited for the anticipated growth were **increasing regulation, attention to compliance, and company growth/expansion.**

"Business is in a scaling stage and the scope is expected to increase."

"With added regulation and growing security concerns, cyber and data issues will cause more investigations."

"Increase in awareness programs and better detection methods"

Q. What percent of your company's investigations begin small but grow into larger investigations?

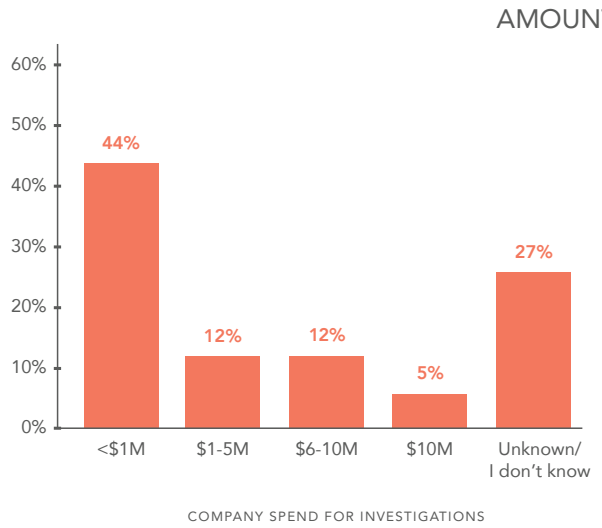


Investigations have a way of expanding as more and more information comes to light. A majority of respondents reported that **less than 10%** of their company's investigations begin small but grow into larger investigations. Respondents from **companies with $100 - 500M** in annual revenue reported most often that between **26-50%** of company investigations begin small but then grow into larger investigations.

SUMMARY OF RESULTS

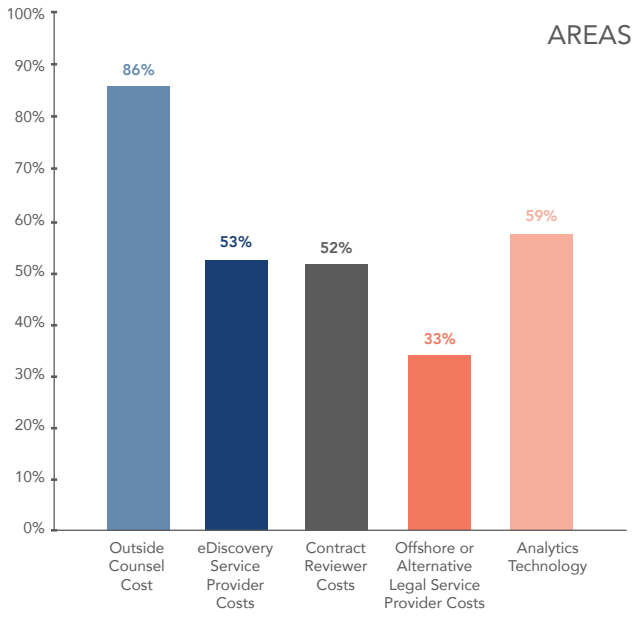
COSTS AND AREAS OF SPEND

Q. In the past 12 months, approximately how much has your company spent on corporate investigations, including the cost of all internal and external resources (e.g., law firms, investigators, forensics, discovery costs, etc.)



While 27% of respondents did not know the overall amount their company spent on corporate investigations, of those who did answer, nearly 30% put costs at over $1M, with 17% saying over $6M.) **Non-U.S. companies reported a higher spend:** 21% reported their companies spending $10M or more (vs. 2% of U.S. respondents.)

Q. Please select your company's top three areas of spend in a typical investigation:



When asked about the three top areas of spend when it comes to investigations, **outside counsel costs** (86%) and **analytics technology** (59%) were the top two areas of spend noted by respondents. **eDiscovery provider costs** and **contract reviewer costs** were nearly tied for the third area of spend. This highlights the increasing trend among in-house counsel of utilizing technology to manage legal services and initiatives.

SUMMARY OF RESULTS

PROACTIVE MONITORING

Q. Does your company do any proactive monitoring of electronic data (e.g., such as email review or network monitoring) to identify potential wrongdoing?

PROACTIVE MONITORING

SOFTWARE USE IN DATA MONITORING

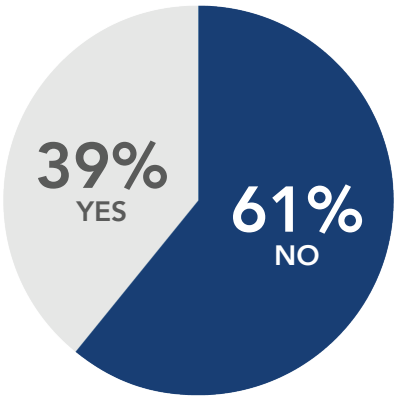
Overall, 67% respondents said their **companies do proactive data monitoring.** This was on par for U.S. and non-U.S.respondents.

By sector: 94% of finance/banking sector respondents, 60% of tech sector respondents, 57% of healthcare respondents said their companies do data monitoring.

Most respondents (85%) reported that software was used for any proactive monitoring of electronic data.

Q. (If not monitoring now) Does your company have plans to proactively monitor data in the future?

FUTURE PLANS TO MONITOR DATA



Of those who do not monitor data now, 39% say their companies plan to do so in the future. For those with no such plans, **cost and privacy concerns** were generally given as the reason:

"Privacy concerns and lack of time for staff to conduct such monitoring"

"Resources and funding"

"GDPR and other European laws around monitoring make this difficult or illegal"

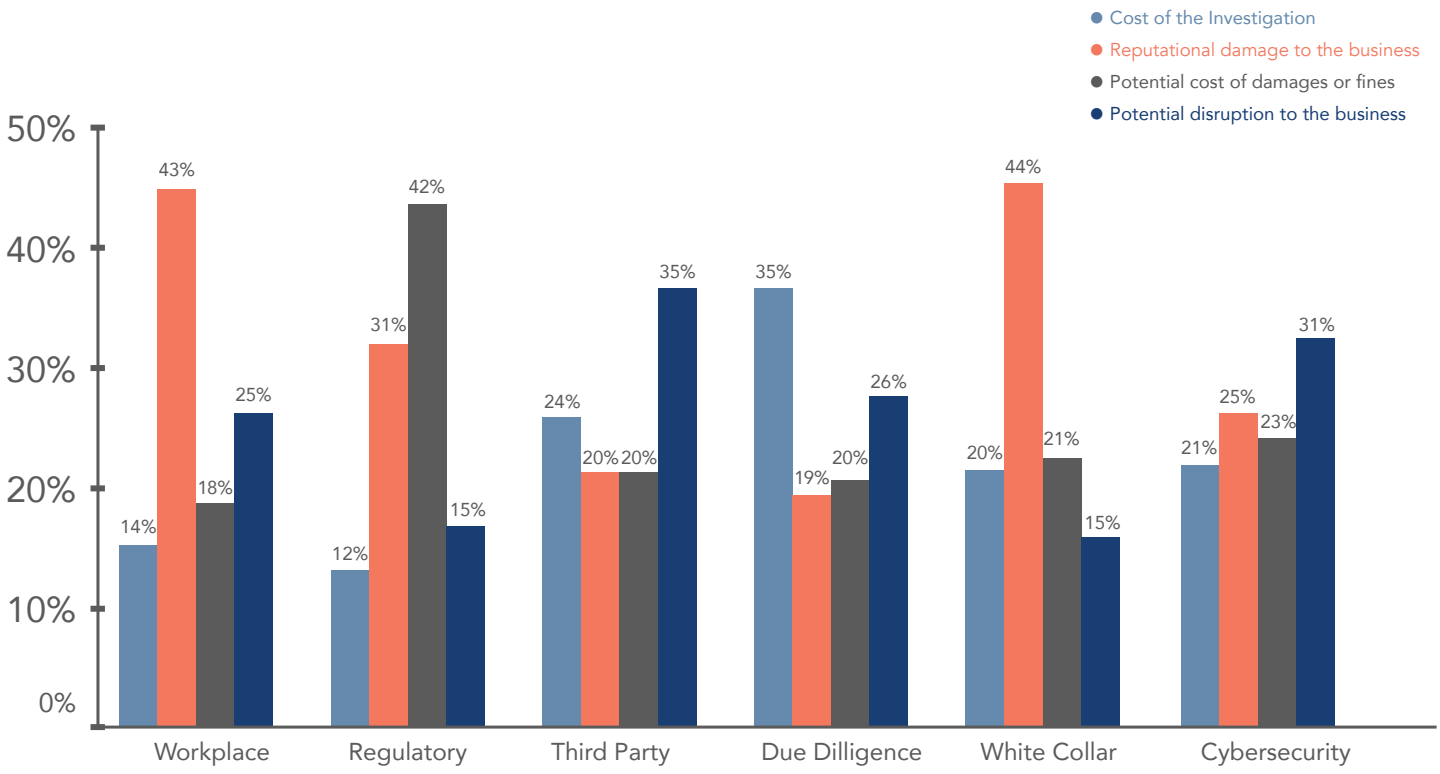
"Expensive"

"Cost"

SUMMARY OF RESULTS

KEY CONCERNS

Q. Among these categories of investigation, which is your top concern when conducting each?



Costs to pursue, reputational damage, potential fines, business disruption—different types of investigations pose different risks. Of note:

- For **workplace** and **white collar investigations, reputational damage** was the biggest concern (43% and 44%, respectively). **Regulatory investigations** incur the most concern about **potential costs of damages or fines** (42%), followed by reputational damage (31%). For **due diligence investigations, costs** are the greatest concern (35%).

- **Cybersecurity** and **investigations of third parties** incur more concern about **potential disruption**.

- **Legal department attorneys** agreed with the concerns of overall respondents, except for ranking **potential cost of damages or fines** as the highest concern for **cybersecurity investigations** (32%), rather than potential disruption.

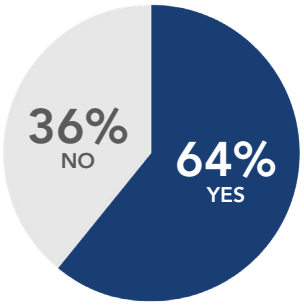
- There was no significant distinction between non-U.S. and U.S. respondents or by size of companies; they rated proportionately similarly.

SUMMARY OF RESULTS

INVESTIGATION MANAGEMENT

Q. Does your company have a department or team specifically dedicated to handling or directing corporate investigations? If yes, to whom does that team report?

DEDICATED INVESTIGATION MANAGEMENT



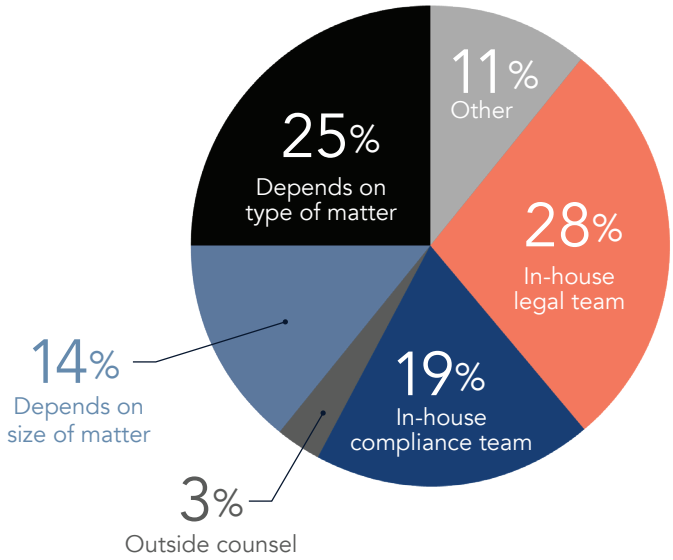
REPORTING STRUCTURE

Companies are not unprepared to manage investigations. Overall, nearly **two-thirds of respondents** said their **company has a department or team** specifically dedicated to handling or directing corporate investigations—with 90% in the **Finance/Banking industry** saying so.

While most respondents reported that their dedicated investigations department or team **report to the company's legal department** (44%), more **investigations department attorneys** reported that their team reports to the **C-suite.**

However, in the **finance/banking** sector, 40% said the team reports to **compliance,** and 27% said the team reports to the **C-suite;** only 20% said the team reports to **legal.**

Q. Who usually manages the process for investigations?

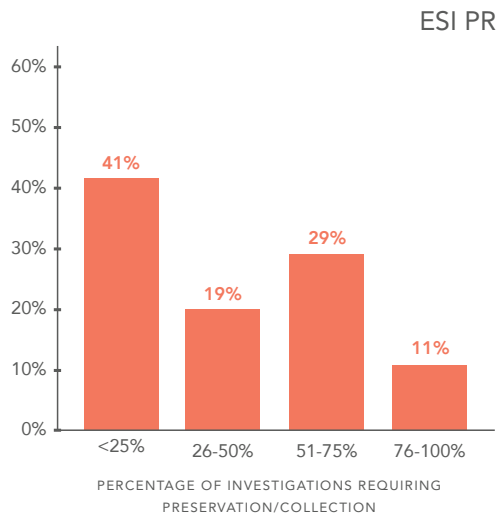


Overall, investigations management is distributed throughout in-house teams, with **in-house legal** being most likely to manage investigations (28%), and outside counsel least likely (3%).

SUMMARY OF RESULTS

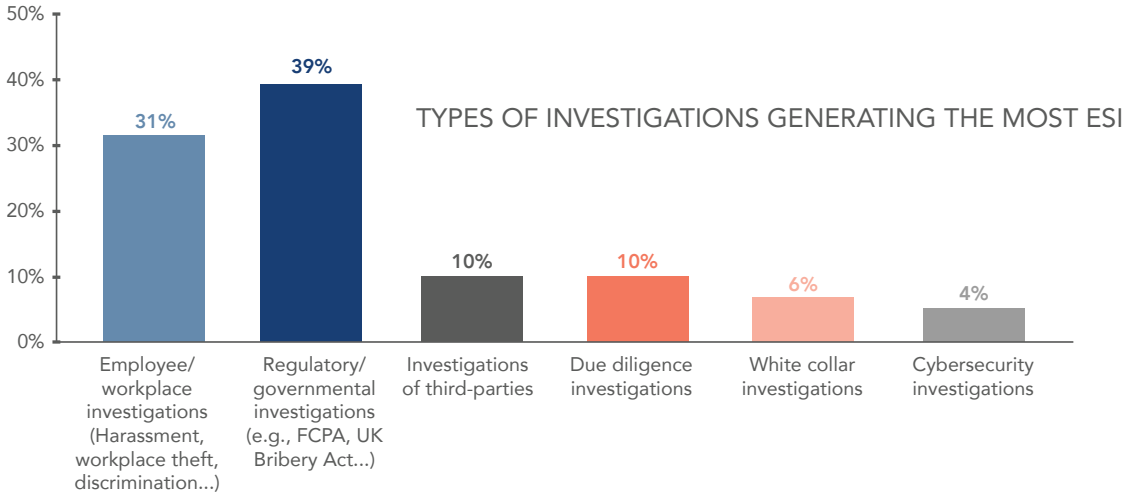
ESI HANDLING/VOLUME BY INVESTIGATION TYPES

Q. In thinking about the electronically-stored information (ESI) that could be implicated in an investigation, what percentage of your company's investigations would you say involve the preservation and/or collection of employee data?



Nearly 60% of respondents indicated that **more than a quarter** of investigations involve preservation and/or collection of employee data. Those in **healthcare** and **finance** are more likely than any other sector to say that **more than half** of all investigations involve preservation and/or collection of employee data (39% and 46% respectively).

Q. In terms of ESI, which types of investigations typically generate the most ESI for collection/review?



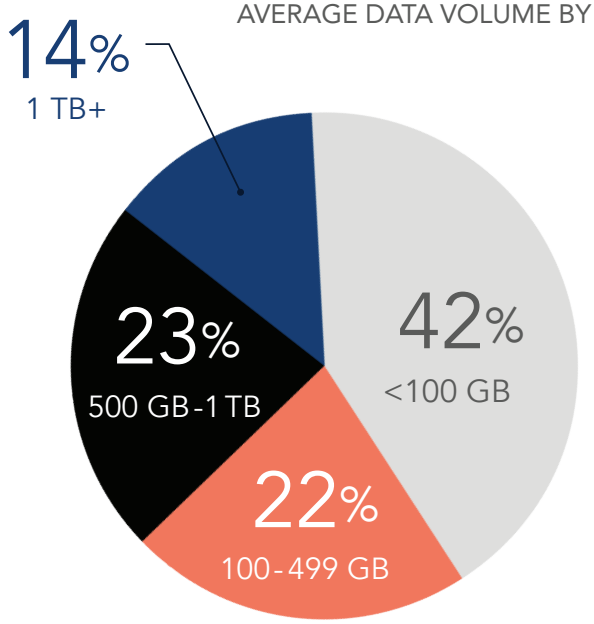
Even though employee/workplace investigations are the most frequent, respondents ranked **regulatory/government investigations** as the type of investigation that generates the most ESI for collection and review. And it's no small matter: for each respondent's number one ranked investigation type, average data volumes were estimated at **more than 100GB** for nearly 60% of them, with 14% saying more than 1TB.

SUMMARY OF RESULTS

ESI HANDLING/VOLUME BY INVESTIGATION TYPES

Q. What is the average data volume collected for your number one ranked investigation type?

AVERAGE DATA VOLUME BY SELECT INVESTIGATION TYPE

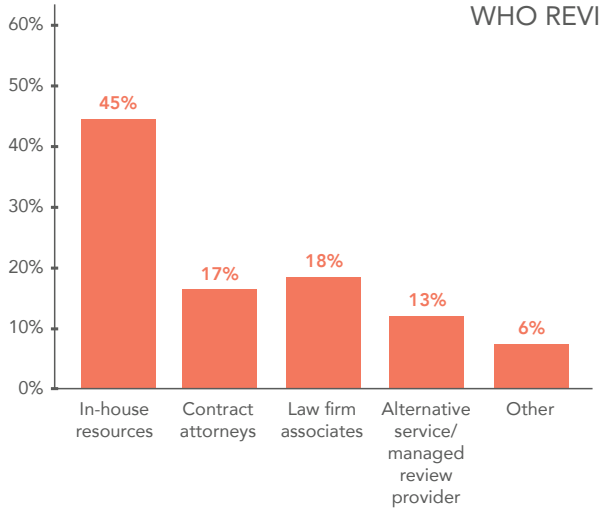


Of note, overall, respondents said the average data volume collected for their number one ranked investigation type is **less than 100GB.** However, 70% of non-U.S. company respondents say they collect more than 100GB, as opposed to 56% of U.S. companies.

IDENTIFYING KEY DOCUMENTS

Q. Who is typically responsible for the process of performing a review to identify key documents in electronic information to support an investigation?

WHO REVIEWS FOR KEY DOCUMENTS



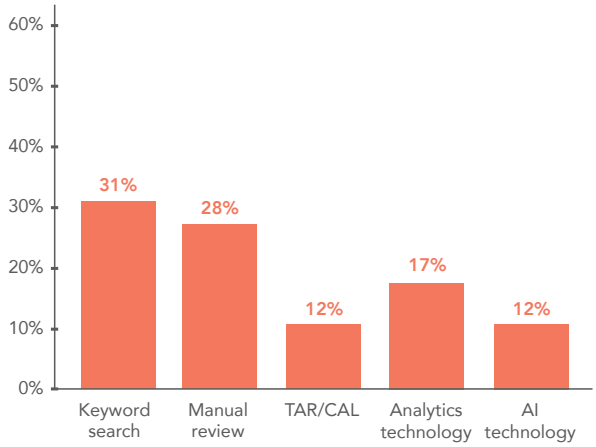
Overall, more say that **in-house resources** are used for review, with non-U.S. company respondents a bit less likely to use in-house for review of key documents (36% non-U.S. v 48% U.S.), leaning more towards contract attorneys (22% non-U.S. v 14% U.S.).

SUMMARY OF RESULTS

FINDING KEY DOCUMENTS

Q. Which methods does your company typically use to identify key documents in an investigation? (Select all that apply.)

METHODS USED TO IDENTIFY KEY DOCUMENTS

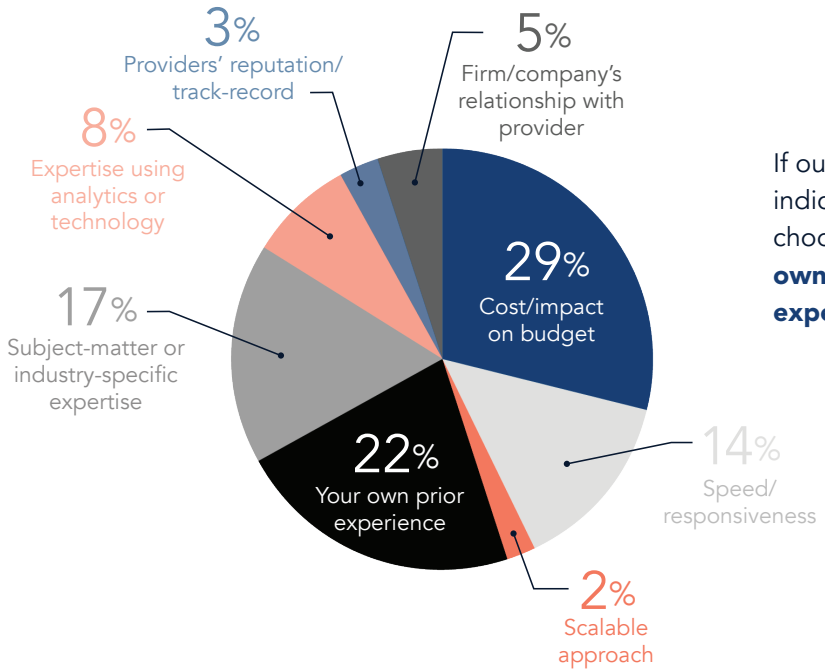


Keyword search was identified as the most commonly used method by companies to identify key documents in an investigation (31%), followed closely by manual review (28%)

When it comes to technology use, overall, more say they use analytics technology (17%) than TAR/CAL (11%) or AI technology (12%). Respondents at companies with $50B+ in revenue were more likely than others to cite **Analytics technology** as a typical approach.

Q. What are the most important considerations when choosing a provider to identify key documents in electronic information for an investigation?

CONSIDERATIONS WHEN CHOOSING A PROVIDER

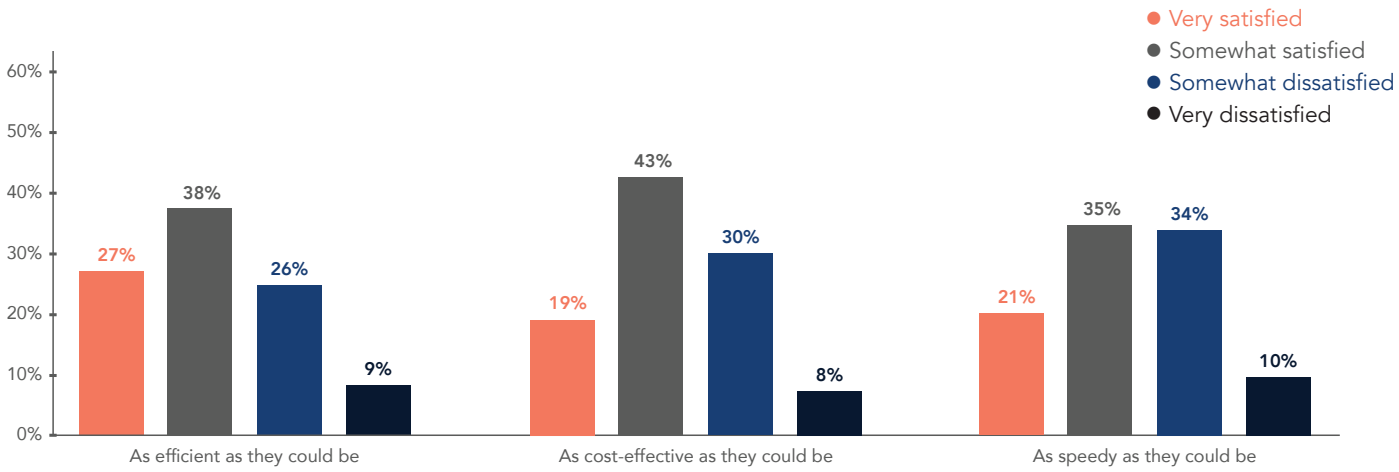


If outside providers are used in this effort, respondents indicated that the most important considerations in choosing them relate to **costs** (29%) and, notably, their **own prior experience** (22%). **Subject matter/industry expertise** came in third (18%.)

SUMMARY OF RESULTS

Q. How satisfied are you that the approaches currently taken by the company to identify key documents in an investigation are 1) As efficient as they could be 2) As cost-effective as they could be 3) As speedy as they could be?

SATISFACTION WITH KEY DOCUMENT IDENTIFICATION APPROACHES



A majority of respondents were either **"very satisfied"** or **"somewhat satisfied"** that their approaches for identifying key documents are as **efficient** as they could be (65%), as **cost-effective** as they could be (62%), and as **speedy** as they could be (56%). But that leaves a lot of room for improvement: about one-third of those surveyed report being "somewhat" or "very dissatisfied" with their company's current approach, increasing to nearly half when it comes to speed.

There are differences based on function as well. Those responsible for **selecting and managing vendors/resources** were **"somewhat satisfied"** that approaches were as efficient as they could be, but **"somewhat dissatisfied"** that they were as **cost-effective** and **speedy** as they could be.

SUMMARY OF RESULTS

CHALLENGES

Q. What is the biggest challenge you currently face when managing or responding to an investigation?

Respondents reported that they face many different kinds of challenges when managing or responding to investigations. However, there were four common obstacles that respondents referred to most frequently:

- Cost, expenses, and fines, which seemed to be the top challenge
  - "Cost considerations and lack of appropriate technology or application to support investigations"
  - "Cost"
  - "Avoid fines"
- Lack of resources
  - "Someone who knows what they are doing, and knows the technology"
  - "Availability of internal resources"
  - "Lack of efficient resources"
- Coordination and cooperation between departments and teams
  - "Efficiency and concurrence among different units/departments"
  - "Coordinating with all the internal teams"
  - "Trouble coordinating cross functional teams"
- Third-party (both internal and external) responsiveness
  - "Third party responsiveness"
  - "Getting all in-house participants to adhere to the timetable"
  - "Employee pushback"

CONCLUSION

Investigations are a time-consuming and resource-intensive effort for any company. The ability to both pre-empt and effectively manage them, especially given today's complex regulatory climate and concerns about privacy, are critical elements in mitigating the costs and risks that investigations may incur.

Respondents to this survey anticipate an increase in the number of investigations their companies will face in the future, suggesting a need for heightened attention to corporate planning and preparedness going forward. Although most companies, especially the larger ones, have in-house professionals whose role it is to manage investigations, such efforts still require significant internal resources and can be very disruptive to the enterprise. Exploding electronic data volumes just add to the challenge, especially when it comes to finding the key evidence that ESI may have buried within it. Respondents indicated that there is significant room for improvement regarding the approaches their companies currently take for this effort.

Forward-thinking companies are deploying various technologies to both proactively identify suspicious behavior and find key evidence, likely an increasing trend—among those surveyed, the use of analytics technology for investigations was chosen as an area of spend second only to cost of outside counsel. The anticipated increase in the number of investigations coupled with ever-growing volumes of electronic information may further drive interest and investment in technological solutions.

One thing is for sure: the rapidly evolving landscape of investigations—and the expertise and tools to address them—remains a very fertile area of exploration. We hope the results of this survey have added to the conversation.

ABOUT H5

H5 helps corporations and law firms find and manage the documents that matter in litigation and investigations by providing expert-driven, technological solutions to address the complex challenges created by electronic data. With expertise in eDiscovery, technology-assisted review and search, H5 is committed to helping clients find and manage the information they need to win cases, meet regulatory requirements and address risks by providing creative products and solutions that ensure fast, accurate, cost-effective results.

For more information about this survey, contact us at info@h5.com.

HOW QUICKLY CAN YOUR REVIEW TEAM FIND THE FACTS THAT MATTER?

Quickly assess the facts of your investigation, build your case strategy and prepare for depositions without breaking the bank. **H5 Key Document Identification℠** provides key documents you need quickly, accurately and within your budget.

Ready to learn more?

Contact us at info@h5.com or visit us at h5.com

H5