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Legal minefield lies in E-mail

If there is a smoking gun in the information age, it has to be electronic mail. Oliver North discovered this the hard way in the eighties, in what was probably the first case where E-mail messages came back to haunt someone.

The now retired Marine lieutenant-colonel's defence in the Iran Contra scandal was torpedoed by old E-mail that directly implicated him. Messages he thought had been deleted were kept by the White House on backup tapes.

As soon as investigators learned of their existence, the tapes were subpoenaed as evidence and found



E-BIZ

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to contain informal messages by Mr. North outlining his role.

Such an occurrence is no longer isolated. Many companies are finding that E-mail messages sent by staff members in the past can have implications in the future. In a greater number of situations, smart lawyers have discovered that E-mail archives can be a treasure trove of damning evidence.

And it's no wonder, given the informality of the tool. While E-mail is a wonderfully efficient means of communicating, it can also presents a real problem in terms of how it is used. Quite simply, people will say things in an E-mail message that they might not otherwise commit to paper, or that might contradict official company policy.

As a result, E-mail messages can easily be misconstrued in a legal situation, or provide evidence that the position taken within an organization on a certain issue belies what the company says publicly.

Some companies attempt to deal with this smoking gun by trying to ensure that E-mail messages are regularly deleted. But the Internet has undermined such efforts. Once an employee sends a message outside the organization, it may be shared with any number of people and kept in E-mail archives.

So what can a company do? First, senior managers in every enterprise, large or small, need to carefully assess their policy with respect to the storage of E-mail.

If the company is not faced with any particular legal reason to keep E-mail, it should consider deleting messages on a regular basis and ensure that employees don't keep them on their own systems. In addition, companies should educate staff that the informality and tremendous external reach of E-mail means that caution should be used when dealing with sensitive or contentious issues.

People in many organizations know how to formalize E-mail policies. Human resource professionals deal with the challenges that the Internet presents to corporate policies.

They have developed knowledge regarding E-mail archival and usage policies. Also, many lawyers across the country have accumulated expertise in guiding companies through the E-mail minefield.

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