



ELECTRONIC DISCOVERY CHECKLIST

Planning and scoping out the ESI collection project will dictate whether the rest of the processing, production and review will be smooth...or a mess! As such we put a considerable amount of time into the planning. The following are great mind joggers to ensure that all questions have been asked and answered.

Before litigation

- BE PREPARED
- eDiscovery Team in Place and Trained
- Legal
- IT
- Compliance
- Human Resources
- Records Manager
- Other potential stakeholders
- Litigation protocol drafted and key personnel trained

At reasonable anticipation of litigation

- Evaluate type of litigation involved.
- Serial?
- Class Action?
- MDL? Multi District Litigation
- Litigation protocol implemented and process documented?
- Preservation and litigation hold notices sent? Tracking initiated?
- Management of litigation hold implemented?
- Manager of litigation hold identified and fulfilling duties?
- Custodians aware of project manager?
- Other reporting required? Regulatory, etc.

WHO?

- ➡ Have all custodians been identified
- ➡ Who are the custodians?
- ➡ Interview of custodians for relevant information
- ➡ Where are the custodians, US, outside the US?
- ➡ Privacy issues may exist for personnel and data residing outside of U.S.
- ➡ Past Employees included
 - Identify and interview assistants and others with access to data of key custodians
 - Identify where data is stored in organization. Discuss redundant storage, backup plans and disaster recovery plans

WHAT?

What is the scope of the engagement or discovery request?

- Types of data, format, applications, operating systems, email platform for both client and for others from whom you expect discovery.
- Servers and workstations
- VPN
- Home computers?
- Cell Phones, PDA's
- Laptops
- Thumb Drives
- Copiers and Scanners and Fax machines
- Backup tapes
- Email, Lotus, GroupWise, Exchange
- Any third party vendors that need to be involved?
- Encryption, custom database?

Privilege and Protected data?

- ➡ Consider nature of data.
- ➡ Trade Secret or privacy protected?
- ➡ Attorney client protected? Other?
- ➡ Agreements in place re privileged or protected material?
- ➡ Clawback or quick peek agreements.

How does court prefer to handle eDiscovery?

- ➡ Who is paying for this discovery?
 - Insurance?
 - Cumis counsel issues been addressed?
 - ✓ Entity? Funding approved and available?

Identify “inaccessible” ESI. [undue burden or cost]

WHERE?

- ➡ Analyze data map of organization
- ➡ Identify and be prepared to discuss what and where data resides in your environment, particularly with regard to identified custodians
- ➡ Document retention policies. Identify and understand and be prepared to disclose and discuss ALL retention policies that may apply to the data.

WHEN?

- Time Constraints
- When does the planning need to be complete?
 - Collection?
 - Production?
 - Rolling basis or one time?
 - Meet and Confer?
 - What is the anticipated time frame of the action?

HOW?

Collection Protocols:

- Defensible, use properly trained personnel or vendors
- Proper documentation of methodology and chain of custody
- Document serial numbers of custodian’s workstations and photograph where appropriate
- Need to produce to outside counsel? Opposing counsel?
- How many copies of the data set are needed?
- Ensure no changes are made to metadata or content during collection
 - Preservation of digital evidence (ESI)
 - Keep in secure room, locked and climate controlled.
 - Maintain chain of custody with original media

Production – how is data to be produced?

- ➡ Native
- ➡ Tiff
- ➡ PDF
- ➡ Paper?
- ➡ Coding

- ➡ OCR

Review tool – choice

- ➡ Server/station based or net based
- ➡ Native review
- ➡ Clustering tool

Review tool requirements?

- ➡ Load file needs
- ➡ Access permissions management and control
- ➡ Pre-processing electronic data
- ➡ De-duplicating
- ➡ Filtering
- ➡ System file removal
- ➡ Tracking processes
- ➡ Clustering

NEXT

Archiving

- Compliance, by code or regulation, future litigation, etc.
- Re-use and ongoing use of data
- Testimony during deposition or trial?
- Who is going to be your testifying expert on how the data was collected?
30(b)(6) designee for Litigation Hold; for data collection; for infrastructure.
- Trial presentation needs

ALWAYS

Document processes employed; why chosen; how implemented; results; hash values and authentication; chain of custody; audit trail for all data.

David Townsend
Efor computer forensics