A Privileged Document Has Been Disclosed What Happens Next

When a privileged document is inadvertently disclosed, speed and evidence are critical. This guide outlines the legal framework, including CPR 31.20, and provides playbooks for both the disclosing and receiving parties, covering immediate actions, evidence gathering, and the technical aspects of recovery.

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INADVERTENTDISCLOSURE · A GUIDE FOR UK LAWYERS A Privileged Document Has Been Disclosed: What Happens Next The First Hours, the Legal Framework and the Recovery Playbook for Both Sides COMPUTER FORENSICS LAB

§ ABOUT THE AUTHOR PREPARED BY COMPUTER FORENSICS LAB E-DISCOVERY TEAM ESTABLISHED 2007 · LONDON ISO 17025-ALIGNED PROCEDURES INCIDENT RECONSTRUCTION CONTAINMENT & CERTIFIED DELETION CPR PART 35 EXPERT REPORT S FULL CHAIN-OF-CUSTODY DOCUMENTATION

§ CONTENTS In this guide 01 Executive summary 02 The problem in plain English: the document that got out 03 The legal framework: CPR 31.20, mistake, obviousness and clawback 04 The disclosing party's playbook: the first hours and the evidence 05 The receiving party's position: duties, dilemmas and safe handling 06 The forensic layer: reconstruction, containment and certified deletion 07 Consequences beyond the document: waiver reach, restraint and representation 08 Source architecture: where else the evidence lives 09 Worked examples 10 Common mistakes and technical limitations 11 Questions to ask · Suggested wording 12 Checklist and red flags · When to involve a digital forensic expert 13 Frequently asked questions 14 Glossary · References · Disclaimer · How a specialist laboratory can assist

§ 01 · ORIENTATION Executive summary THE HEADLINE POINT: SPEEDANDEVIDENCEDECIDETHESEINCIDENTS: THE DISCLOSINGPARTYMOVESINHOURSWITHADOCUMENTEDACCOUNTOFTHEMISTAKE; THERECEIVINGPARTYSTOPSREADINGANDTAKESADVICE; AND THE PROTOCOL DRAFTEDLASTYEARDOESMOSTOFTHEWORK

§ 02 · FIRST PRINCIPLES The problem in plain English: the document that got out

§ 03 · THE FRAMEWORK The legal framework: CPR 31.20, mistake, obviousness and clawback

§ 04 · THEDISCLOSINGCHAIR The disclosing party's playbook: the first hours and the evidence

§ 05 · THERECEIVINGCHAIR The receiving party's position: duties, dilemmas and safe handling

§ 06 · THETECHNICALLAYER The forensic layer: reconstruction, containment and certified

deletion

§ 07 · THEBLASTRADIUS Consequences beyond the document: waiver reach, restraint and representation

§ 08 · THEWIDERMAP Source architecture: where else the evidence lives QUESTION PRODUCTION ESTATE REVIEW & RECEIVING- RECORDS TELEMETRY PRODUCTION CORRESPONDENCE SPREAD PROTOCOL ARTEFACTS RECORD MAP TERMS

§ 09 · IN THE WILD Worked examples EXAMPLE1 · THEFRIDAYDISCOVERY, RUNBYTHEBOOK EXAMPLE2 · THERECIPIENTWHOREADON EXAMPLE3 · THECONTESTEDCLAIM, RESOLVEDONTHERECORD

§ 10 · WHEREITGOESWRONG Common mistakes and technical limitations Common mistakes Technical limitations

§ 11 · INTERROGATORIES & DRAFTING AIDS Questions to ask · Suggested wording Ask your client (as discloser) Ask your opponent (as recipient, or of a recipient) Ask your e Discovery / forensic provider SUGGESTED WORDING · SAME - DAY NOTICEOFINA DV ERTENTDISCLOSURE

§ 12 · QUICK CONTROL Checklist and red flags · When to involve a digital forensic expert The incident checklist (both chairs) Red flags When to involve a digital forensic expert

§ 13 · COMMON QUESTIONS Frequently asked questions Is privilege automatically lost once the document has been produced? We are the recipient and the document looks privileged. Must we really stop reading? What if we genuinely think the document is not privileged, or the mistake was not obvious? How fast does the disclosing party need to move? Can deletion from the opponent's systems ever really be verified? Does one inadvertent disclosure waive privilege over the whole subject matter?

§ 14 · REFERENCE Glossary Sources and authoritative references DISCLAIMER

§ HOW A SPECIALIST LABORATORY CAN ASSIST Working with Computer Forensics Lab Speak to a forensic examiner, not a salesperson. INSTRUCTTHELAB NEWENQUIRIESEMAILE - DISCOVERY

Questions and answers

Is privilege automatically lost once the document has been produced?

No: inadvertent production does not of itself destroy privilege, and CPR 31.20 bars the recipient's use without permission: the analysis then turning on mistake, obviousness and conduct. What erodes protection is behaviour: delay, repeat escapes, resistance to the machinery: the framework protects the careful.

We are the recipient and the document looks privileged. Must we really stop reading?

Yes, at recognition: further reading deepens exposure that drives every remedy, up to representation consequences in serious cases: Example 2 is the standing illustration. Stopping costs nothing: if the claim fails (Example 3), the quarantined document returns to the review untouched by your restraint.

What if we genuinely think the document is not privileged, or the mistake was not obvious?

Quarantine and contest: the argument is made to the court with the document sequestered, not resolved by continuing to read: the recipient who does this loses nothing by the discipline and, where right, wins with clean hands: Example 3's path. Unilateral use on self-assessment is the one position that can convert a good argument into a bad outcome.

How fast does the disclosing party need to move?

Same day for the notice once the escape is confirmed, days not weeks for the application if the machinery stalls: delay reads as acquiescence and is the single most common self-inflicted wound. The speed is achievable precisely because the evidence is exportable: Example 1's four hours were mostly the sweep, not the drafting.

Can deletion from the opponent's systems ever really be verified?

To a credible, stated standard: instances found by hash-sweep, removed or sequestered, indexes purged, work product addressed, residual architecture (backups, caches) disclosed honestly: the certificate describing exactly that, signed by a named specialist. Perfect erasure is not the promise; documented, verified containment is: and courts accept the honest version over the cosmetic one.

Does one inadvertent disclosure waive privilege over the whole subject matter?

Not of itself: the clawback language and the case law both resist subject-matter waiver from genuine accidents promptly handled: the collateral-waiver risks live mainly in deliberate deployment (guide 91 §7) and in conduct that stops looking accidental: repeat escapes, knowing silence, selective assertion. Handle the incident by this guide and the document, not the privilege, is what needs recovering. cflab. u k · e-disc ove r y. u k