

Cooperating On Electronic Disclosure Without Giving Away Your Case

Electronic disclosure cooperation is a duty with legal teeth, yet practitioners fear giving away their case. This guide outlines how to share process machinery while safeguarding strategy, covering custodians, search terms, date ranges, and technology-assisted review.

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COOPERATION/INDISCLOSURE · A GUIDE FOR UK LAWYERS Cooperating on Electronic Disclosure Without Giving Away Your Case Process Transparency, Strategic Silence
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§ ABOUT THE AUTHOR PREPARED BY COMPUTER FORENSICS LAB E-DISCOVERY TEAM
ACPO / NPCC DIGITAL EVIDENCE PRINCIPLES SEARCH-TERM NEGOTIATION
SUPPORT PD 57AD / DRD EXPERIENCE FULL CHAIN-OF-CUSTODY DOCUMENTATION

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checks, Speak to a forensic examiner, not a salesperson. INSTRUCT THE LAB
NEW ENQUIRIES EMAIL - DISCOVERY

Questions and answers

Does sharing our search terms reveal our case theory?

Not if the negotiated terms are built as they should be: from the issues and the estate's vocabulary, which any competent opponent already derives from the pleadings. Theory-driven searches (the ones chasing your private hypotheses) are a different artefact: run them internally across your own review population as work product, and never put them in the negotiated set. The negotiated list culls; your private searches find; only the first is exchanged.

Must we exchange hit reports?

No rule compels it in terms, but the regime's logic does: the DRD asks for search proposals the court can assess, PD 31B directs discussion of keyword strategy, and a term proposal without numbers is an assertion the court will discount against a counter-proposal with them. Practically, the party with hit reports wins term disputes; exchanging them is both the cooperative act and the winning move, which is why they are prepared exchange- clean from the start.

Can the other side see our TAR training set or document scores?

The established line: methodology and validation statistics are exchangeable process (workflow, sample designs, richness and elusion rates); the model's contents (training documents, per-document scores, ranking order) map onto your team's reading and prioritisation and are work product. State the distinction early and hold it; offer statistics generously, and the demand for the model's insides usually evaporates, because the statistics were the legitimate part of the ask.

What if the other side simply will not reciprocate?

Perform your half visibly and completely, request theirs in writing with deadlines, and let the file work: at the CMC or a Disclosure Guidance Hearing, a party with an evidenced package facing a party with adjectives obtains its scheme and usually its costs. Do not descend to symmetry ("they withheld, so we will"): the conduct ledger only protects the party whose side of it is clean.

How much privilege-log detail does cooperation require?

A proportionate description that lets the other side and the court understand the claim's basis: commonly category-level for routine classes (advice correspondence with named firms in a period) and item-level only where a claim is genuinely contestable. The log's structure is negotiable process; the content it protects is not, and no cooperation duty requires descriptions so granular that they erode the privilege they exist to record.

Is agreeing a clawback arrangement a sign of weakness or sloppiness?

Neither: it is standard engineering for volume productions, protects both sides identically, and supplements rather than replaces careful privilege QC. In TAR-scale exercises the realistic error rate is never zero; the agreement converts the inevitable rare mistake from a waiver battle into an administrative step, which is exactly the proportionality the regime exists to promote. Proposing it early is read by courts as competence, not concern. cflab. u k · e-discovery. u k ©2026 Computer Forensics Lab Ltd ·cflab.uk ·e-discovery.uk ·info@cflab.uk ·+44

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