EDisclosure Or Digital Forensics Choosing The Correct Approach

This guide clarifies the distinction between e-disclosure and digital forensics, outlining their definitions, overlaps, and critical differences. It provides a decision tree, forensic triggers, and practical workflows for UK litigators, in-house counsel, and investigators to choose the appropriate method for evidence collection and examination.

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EDISCLOSUREVSDIGITALFORENSICS · A GUIDE FOR UK LAWYERS e Disclosure or Digital Forensics? Choosing the Correct Approach COMPUTER FORENSICS LAB

§ ABOUT THE AUTHOR PREPARED BY COMPUTER FORENSICS LAB E-DISCOVERY TEAM FULL CHAIN-OF-CUSTODY DOCUMENTATION

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§ 08 · IN PRACTICE Practical workflow: triage at the outset, escalation mid-matter At the outset: the 48-hour triage Mid-matter: the escalation protocol FOR THE PRACTITIONER STEP ACTION 3 Forensically acquire everything marked volatile, suspect or trigger-positive, before broader planning, 4 Route the remainder into documented platform collection and standard processing. 5 Record the triage in the methodology memo: source, decision, trigger(s), date, decider. This memo is

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§ HOW A SPECIALIST LABORATORY CAN ASSIST Working with Computer Forensics Lab 35 / CrimPR Part 19, and independent-examiner appointments under privilege protocols; our e-discovery team Speak to a forensic examiner, not a salesperson. INSTRUCTTHELAB

NEWENQUIRIESEMAILE - DISCOVERY

Questions and answers

When does a disclosure matter actually require forensic exam in at i on?

When an issue turns on authenticity, deletion, alteration, backdating, attribution, exfiltration or device usage, questions about what happened rather than what exists, or when a source is volatile, locked, damaged or under suspicion, so that only forensic acquisition preserves its evidential value. Absent those features, a documented, metadata-preserving ordinary collection is the correct approach, and the decision to proceed without forensics should simply be recorded with reasons.

Can we start with ordinary collection and go forensic later if something emerges?

Only part i all y. The review population can always be re-examined, but the source devices keep living: artefacts are overwritten, logs rotate, handsets are replaced. That is why the hedge for uncertain sources is forensic preservation now, an image on a shelf, with exam in at i on deferred until (and unless) a question crystallises.

Is a forensic image always better, then?

No. Imaging every source is disproportionate, collides with data minimisation, and multiplies hosting and disposal obligations for no gain on untriggered sources. The image is better for trigger-positive and uncertain sources; the documented platform collection is better for the rest. Triage, per source, is the discipline.

Our IT team already looked at the laptop. Is it ruined?

Not necessarily ruined, but changed. Much artefact evidence survives casual access; what is lost is mainly last- access states and some volatile data, and what is created is post-incident noise an examiner must now explain around. Stop further access immediately, record exactly who did what and when, and let the examiner assess. The candid access log materially limits the damage in court.

Can we make the other side hand over their devices for imaging?

Sometimes, with cogent just if i c at i on: courts can order inspection or imaging where disclosure appears deficient or integrity is genuinely in issue, but the order is intrusive and exceptional, and almost always comes wrapped in protections, an independent examiner, a privilege and confidential it y protocol, defined search scope. Build that architecture into the application; a bare "hand over the laptops" request fails.

Who should give the evidence, the provider who processed our disclosure?

The processing team can give factual evidence about what was done. Opinion about authenticity, deletion or attribution needs an expert instructed under CPR Part 35 / CrimPR Part 19, with the overriding duty to the court and the declaration to match. Where one or g an is at i on does both, insist the roles and instruction letters are separated, it protects the expert's independence and your client's position. cflab. u k · e-disc ove r y. u k