

Legal Professional Privilege In Large Electronic Datasets

This guide for UK lawyers details how to manage legal professional privilege within large electronic datasets. It covers identifying, protecting, and claiming privilege at scale, addressing waiver risks and common mistakes in electronic discovery workflows.

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PRIVILEGE IN ELECTRONIC DATASETS · A GUIDE FOR UK LAWYERS Legal Professional Privilege in Large Electronic Datasets Finding, Protecting and Claiming Privilege at Scale Without Waiving It COMPUTER FORENSICS LAB

§ ABOUT THE AUTHOR PREPARED BY COMPUTER FORENSICS LAB E-DISCOVERY TEAM ESTABLISHED 2007 · LONDON ISO 17025-ALIGNED PROCEDURES PRIVILEGE WORKFLOW ENGINEERING PRE-PRODUCTION QC CPR PART 35 EXPERT REPORT S FULL CHAIN-OF-CUSTODY DOCUMENTATION

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§ 01 · ORIENTATION Executive summary THE HEADLINE POINT: PRIVILEGE AT SCALE IS DOCTRINE PLUS ENGINEERING: IDENTIFY CANDIDATES SYSTEMATICALLY, DECIDE CONSISTENTLY, CLAIM PRECISELY, AND QC BEFORE ANYTHING LEAVES

§ 02 · FIRST PRINCIPLES The problem in plain English: doctrine meets a million documents

§ 03 · THE LAW, WORKING The two privileges in electronic form: LAP, litigation privilege and their edges

§ 04 · THE HIDING PLACES Where privileged material hides: threads, forwards, chat and copies

§ 05 · THE WORKFLOW The workflow: identification, review streams and consistency

§ 06 · THE CLAIM, MADE WELL Claiming and protecting: schedules, redaction and preproduction QC

§ 07 · THE WAIVER MAP Waiver risks at scale: circulation, repetition and the modern estate

§ 08 · THEWIDERMAP Source architecture: where else the evidence lives QUESTION
COMMUNICATION THE ITSELF CIRCULATION PURPOSE RELATIONSHIP PLATFORM
REVIEW EVIDENCE EVIDENCE RECORD LAYER RECORD

§ 09 · IN THE WILD Worked examples EXAMPLE1 ·
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THEQCSWEEPTHATCAUGHTTHEHETHREAD

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

§ 11 · INTERROGATORIES & DRAFTING AIDS Questions to ask · Suggested wording Ask
your client Ask your opponent Ask your e Discovery / forensic provider

§ 12 · QUICK CONTROL Checklist and red flags · When to involve a digital forensic expert The
privilege-at-scale checklist Red flags When to involve a digital forensic expert 92 on standby
for the day prevention fails. Through e-discovery.uk, privilege workflows run with the
engineering

§ 13 · COMMON QUESTIONS Frequently asked questions Is everything involving our in-house
lawyer privileged? The advice was forwarded around the company. Is privilege lost? Our
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stop privileged material slipping into a big production? Can AI decide privilege for us? The
other side's privilege schedule is vague. What can we do?

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§ 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 everything involving our in-house lawyer privileged?

No: LAP covers the legal-adviser hat, not the commercial one, and mixed-role inboxes are decided message by message against that line: the wholesale claim is the classic over-reach that invites the challenge and endangers the genuine claims around it. The review guide's job is exactly this boundary, written down before coding starts.

The advice was forwarded around the company. Is privilege lost?

Not automatically: internal circulation raises the client-boundary and confidentiality questions rather than answering them: assessed per instance against who received it and on what terms, as Example 1's split shows. What is fatal is not the forward but the unexamined claim over it: map the circulation, assess it honestly, concede what the facts have already spent.

Our investigation report served several purposes. Can we claim litigation privilege?

Only if litigation's conduct was the dominant purpose when the work was done, and that is proved by the contemporaneous record: instructions, engagement terms, hold notices, minutes: Example 2's file, which either exists or does not. The practical rule: evidence purpose at commissioning; a claim built afterwards from recollection is a claim built for the challenge.

How do we stop privileged material slipping into a big production?

Layered identification at review (identities, vocabulary, threads, flags), propagation so one call covers every copy, and: non-negotiably: the pre-production sweep of §6 on every exchange: Example 3's ninety minutes against guide 92's alternative. Slips at scale are workflow failures, and the workflow is buildable.

Can AI decide privilege for us?

It can flag, prioritise and second-read: guide 90 Example 3's architecture: and the determination stays with a lawyer on a read document: the line every current authority draws, and the one economised at a claim's peril. Machine-accelerated privilege review is good practice; machine-adjudicated privilege is a waiver argument in waiting.

The other side's privilege schedule is vague. What can we do?

Press it with §11's requests: item-level dates, roles and bases sufficient to assess: and target categories where the estate's visible facts (lawyer traffic volumes, investigation chronologies) sit oddly with the claims: challenges built on specifics succeed where indignation does not. Courts police schedules that describe nothing: precision is demanded exactly because it is what a sound claim can always supply.

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