DIGITAL One LEGAL SOLUTIONS

EVIDENCE COLLECTION PMK QUESTIONAIRE

THE PURPOSE OF THIS DOCUMENT IS TO ASSIST WITH INTERVIEWING PERSONS MOST KNOWLEDGEABLE (PMK) ABOUT THEIR INFORMATION THAT IS RELEVANT TO A POTENTIAL LITIGATION AND HOW IT IS STORED AND MANAGED

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EVIDENCE COLLECTION Q&A

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CASE PRELIMINARY ESI COLLECTION DISCOVERY QUESTIONS

FOR DISCUSSION PURPOSES ONLY

1. **KEY CUSTODIANS**

   a. A list of the most likely custodian(s),other than the party, of relevant electronic data, together with pertinent contact information, a brief description of each custodian's responsibilities, and a description of the electronically stored information in each custodian's possession, custody, or control.

2. **KEY INFORMATION TECHNOLOGY PERSONNEL**

   a. A list of the person(s) most knowledgeable about the relevant computer system(s) or network(s),the storage and retrieval of electronically-stored information, and the backup, archiving, retention, and routine destruction of electronically stored information, together with pertinent contact information and a brief description of each person's responsibilities.

3. **SYSTEMS AND NETWORK TOPOLOGY**

   a. A list of each electronic system that may contain relevant electronically stored information and each potentially relevant electronic system that was operating during the time periods relevant to the matters in dispute, together with a general description of each system.

   b. Is there a network topography diagram?

   c. How many servers are involved with the system and how do they interrelate?

      i. What is contained on each server?

      ii. Where are the servers physically located?

      iii. Are you running virtualization? What type of Virtual Server are you running? VMware, Hyper-V, etc.?

      iv. What is the operating system for each of the servers?

      v. What applications and/or databases are running on each server (e.g., Customer Relationship Management ("CRM"), Enterprise Resource Planning ("ERP"), Blackberry Enterprise Server, and or finance/accounting)?

      vi. Is there a document management system? If yes, please describe.

   d. How many workstations are there, and what is the standard OS?

i. Are all workstations similar (same software, permissions set by default), or does each user have administrative rights to configure, download etc.?

ii. How many users have laptops? Do they synchronize to the network? Do you map the home directories to a server? Do you map the My Documents to a server?

iii. Are local firewalls enabled on any of the workstations (e.g., Windows XP Firewall, Symantec, Zone Alarm, etc.)?

iv. Are the workstations encrypted? What type of encryption is used? Are you running Windows 7 Bitlocker?

e. Within the network to be searched, are there any access restrictions to/from certain nodes, DMZ, etc.?

4. **E-MAIL**

a. Is the email IMAP, POP3, Exchange, Lotus, GroupWise, or Eudora? Is it hosted locally or is it hosted by a third party vendor?

b. How many email servers are there?

i. What version and service pack are the mail servers?

ii. How many user accounts will be at issue?

c. What is the estimated volume (GB) of data?

d. What application is used by each key individual (Outlook, Outlook Express, Webmail, other?)

e. Is the Outlook auto-archive feature activated on individuals' workstations?

f. Can users create their own email archives? If yes, where would they most likely store the archives?

g. Is there an email archival system? (Mimosa, Symantec Enterprise Vault, etc)

h. Are there any cloud email accounts? (Gmail, Yahoo, Hotmail etc.)

5. **E-DOCUMENTS**

a. Where are native file documents stored that need to be searched?

i. Corporate file servers?

ii. Project file servers?

iii. Individual workstations and/or laptops?

iv. Cloud Computing- (Google Apps, Virtual Drop Box, etc)

b. What is the nature and content of relevant e-files (MS Office, PDF, Proprietary files, Databases)

c. Will there be a need to search non-traditional "text" documents such as Graphics/photos, audio or video files?

d. What is the estimated volume (GB) of data?

6. **OTHER MEDIA**

   a. Are there other types of media that will need to be searched?

      i. CD-ROMs,DVDs, Laptops, Smart Phone, Hard Drives, Thumb Drives, Tablets

   b. Backup media

      i. What software is used for backup (name and version)?

      ii. Are you backing up to disk, tape, or the Cloud?

      iii. If tape media, what type of tape(s) is being used (e.g.,4mm, DLT4, SuperDLT, Ultrium, LTO tapes,)?

      iv. What is the backup cycle, and please indicate whether incremental or differential backups are performed, and how frequently.

   c. A list of relevant electronically-stored information that has been stored offsite or off- system.

7. **SOCIAL MEDIA**

   Facebook

   i. How many accounts to be collected?
   ii. What type of collection e.g. Post, Messenger or capture videos/photos
   iii. Are all user accounts credentials available?
   iv. What about deleted messages? Do we restore?
   v. Are there Date restrictions?

   Twitter

   i. How many accounts to be collected?
   ii. What type of collection e.g. Tweet, tagged, others: (specify)
   iii. Are all user accounts credentials available?
   vi. What about deleted messages? Do we restore?
   vii. Are there Date restrictions?

   Instagram

   i. How many accounts to be collected?
   ii. Any particular albums to collect?
   iii. Are all user accounts credentials available?
   iv. What about deleted messages? Do we restore?
   v. Are there Date restrictions?

   YouTube

   i. How many accounts to be collected?
   ii. Is the video private or public?
   iii. Are all user accounts credentials available?
   iv. Are there Date restrictions

   Tumblr

   i. How many accounts to be collected?
   ii. Any particular albums to collect?
   iii. Are all user accounts credentials available?
   iv. What about deleted messages? Do we restore?
   v. Are there Date restrictions?

8. **FUNCTIONAL REQUIREMENTS**

a. What is the need for the application (compliance, special research projects, and specific litigation?)

b. What types of searching will be required: key word vs. conceptual?

c. Will periodic reporting be needed?

d. Will searching and identification of sources be sufficient or will there be a need to have collect data?

e. Who are the individuals who will be maintaining and running this system?

9. **PRESERVATION OR LITIGATION HOLDS**

a. A description of any efforts undertaken, to date, to preserve relevant electronically stored information, including any suspension of regular document destruction, removal of computer media with relevant information from its operational environment and placing it in secure storage for access during litigation, or the making of forensic image back-ups of such computer media.

10. **INITIAL DISCLOSURE OF SOURCES OF INFORMATION THAT ARE NOT DISCOVERABLE DUE TO UNDUE BURDEN OR COST**

a. An indication whether relevant electronically-stored information may be of limited accessibility or duration of existence (e.g., because they are stored on media, systems, or formats no longer in use, because it is subject to destruction in the routine course of business, or because retrieval may be very costly). Follow the Rule 26(b)2(B) guideline when answering this question.

Rule 26(b)(2)(B) provides that parties need not search or produce from sources that are not "reasonably accessible because of undue burden or cost." Typical examples are magnetic backup tapes used for disaster recovery purposes, and legacy data stored on obsolete and unused media. However, the rule requires that the parties identify such magnetic backup tapes used for disaster recovery purposes, and legacy data stored on obsolete and unused media. However, the rule requires that the parties identify such sources as part of the initial disclosures. Again, the identification should be by "category or type," and should," to the extent possible, provide enough detail to evaluate the burdens and costs of providing the discovery and the likelihood of finding responsive information on the identified sources."

You must know enough about all your sources of information to be able to justify whether or not any of them are truly "not reasonably accessible due to undue burden or cost. Ideally, you will have high level information that will allow you to establish (a) the cost of restoring the information from the sources and (b) whether there is any reasonable likelihood that they will contain responsive information.

11. **FORMAT FOR OPPOSING COUNSEL**

a. The form of production preferred by the party

I. Native, TIFF, or PDF with metadata

12. **MISCELLANEOUS**

a. Notice of any known problems reasonably anticipated to arise in connection with compliance with e-discovery requests, including any limitations on search efforts considered to be burdensome or oppressive or unreasonably expensive, the need for any shifting or allocation of costs, the identification of potentially relevant data that is likely to be destroyed or altered in the normal course of operations or pursuant to the party's document retention policy.

b. Does the client have an understanding of Safe Harbor? Note, that it is only applicable in Federal Court. (Routine, good faith business operations may provide protection from sanctions under the FRCP for destruction of electronically stored information. The key is to establish clear and auditable steps that execute your duty to preserve any data that may be required in a legal dispute. Confirm with your counsel before destroying data while litigation is pending.

c. Do you have a Privilege Term List (Attorney Names or Email address)? Are privilege documents segmented from the general population in any way? Where do most of the privilege documents reside?

d. Are you considering creating a claw back agreement for inadvertent privilege documents being produced?

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