

Electronic documents questionnaire

(Civil Procedure Rules Practice Direction 31B)

WARNING: Unless the court makes some other order, the answers given in this document may only be used for the purposes of the proceedings in which the document is produced unless it has been read to or by the court or referred to at a hearing which has been held in public or the Court gives permission or the party who has completed this questionnaire agrees.

Please read the notes at the end of this form before completing the questionnaire

Part 1 – Your disclosure

Extent of a reasonable search

Date range and custodians

1. What date range do you consider that your searches for Electronic Documents should cover ('the date range')?

2. Identify the custodians or creators of your Electronic Documents whose repositories of documents you consider should be searched.

Note - Include names of all those who may have or have had custody of disclosable documents, including secretaries, personal assistants, former employees and/or former participants. It may be helpful to identify different dates for particular custodians.

Communication

3. Which forms of electronic communication were in use during the date range (so far as is relevant to these proceedings)?

Note – Column D - State the geographical location (if known). Consider (at least) servers, desktop PCs, laptops, notebooks, handheld devices, PDA devices, off-site storage, removable storage media (for example, CD-ROMs, DVDs, USB drives, memory sticks) and databases.

Note – (i) email - Consider all types of e-mail system (for example, Outlook, Lotus Notes, web-based accounts), whether stored on personal computers, portable devices or in web-based accounts (for example, Yahoo, Hotmail, Gmail).

Note – (ii) Other - For example, instant messaging, voicemail, VOIP (Voice Over Internet Protocol), recorded telephone lines, text messaging, audio files, video files.

A	B	C	D	E
Communication	In use during the date range? (Yes/No)	Are you searching for relevant documents in this category? (Yes/No)	Where and on what type of software/ equipment/media is this communication stored?	(a) Are back-ups or archives of this communication available; and (b) if so, are you searching the back-ups or archives?
i) E-mail				
ii) Other (provide details for each type)				

Electronic Documents

4. Apart from attachments to e-mails, which forms of Electronic Documents were created or stored by you during the date range?

Note – Column D - State the geographical location (if known). Consider (at least) servers, desktops and laptops.

Note – Electronic images - For example, .pdf, .tif, .jpg.

Note – Other - For example, PowerPoint or equivalent, specialist documents (such as CAD Drawings).

A	B	C	D	E
Document Type	In use during the date range? (Yes/No)	Are you searching for relevant documents in this category? (Yes/No)	Where and on what type of software/ equipment/media are these documents?	(a) Are back-ups or archives of these documents available, and (b) if so, are you searching the back-ups or archives?
i) Word (or equivalent - state which)				

ii) Excel (or equivalent - state which)				
iii) Electronic Images				
iv) Other (state which)				

Databases of Electronic Documents

5. In the following table identify database systems, including document management systems, used by you during the date range and which may contain disclosable Electronic Documents.

A	B	C	D	E
Name	Brief description	Nature of data held	Are you disclosing documents held in this database? (Yes/No)	Proposals for provision of relevant documents to or access by other parties to this litigation
1.				
2.				

Method of search

Key words

Note - Where Keyword Searches are used in order to identify irrelevant documents which are to be excluded from disclosure (for example a confidential name of a client or customer), a general description of the type of search may be given

6. Do you consider that Keyword Searches should be used as part of the Yes No process of determining which Electronic Documents you should disclose?

If Yes, please provide details of –

- (1) the keywords used or to be used (by reference, if applicable, to individual custodians, creators, repositories, file types and/or date ranges); and

- (2) the extent to which the Keyword Searches have been or will be supplemented by a review of individual documents.

Other types of automated searches

- 7.** Do you consider that automated searches or automated techniques other than Keyword Searches (for example, concept searches or clustering) should be used as part of the process of determining which Electronic Documents you should disclose? Yes No

If Yes, please provide details of –

- (1) the process(es) used or to be used (by reference, if applicable, to individual custodians, creators, repositories, file types and/or date ranges);

- (2) the extent to which the processes have been or will be supplemented by a review of individual documents; and

- (3) how the methodology of automated searches will be made available for consideration by other parties.

- 8.** If the answer to Question 6 or 7 is 'Yes', state whether (a) attachments to e-mails (b) compressed files (c) embedded files and (d) imaged text will respond to your Keyword Searches or other automated search.

- 9.** Are you using or intending to use computer software for other purposes in relation to disclosure? Yes No

If Yes, please provide details of the software, processes and methods to be used.

Potential problems with the extent of search and accessibility of Electronic Documents

Note - See Practice Direction 31B, which refers to the following matters which may be relevant: (a) the number of documents involved; (b) the nature and complexity of the proceedings; (c) the ease and expense of retrieval of any particular document; (d) the availability of documents or contents of documents from other sources; and (e) the significance of any document which is likely to be located during the search.

- 10.** Do any of the sources and/or documents identified in this Electronic Documents Questionnaire raise questions about the reasonableness of the search which ought to be taken into account? Yes No

If Yes, please give details.

- 11.** Are any documents which may be disclosable encrypted, password-protected or for other reasons difficult to access, or do you have any reason to believe that they may be? Yes No

If Yes, please state which of the categories identified at Questions 3, 4 and 5 above are affected, and your proposals for making them accessible.

Note - For example, back-ups, archives, off-site or outsourced document storage, documents created by former employees, documents stored in other jurisdictions, documents in foreign languages.

- 12.** Are you aware of any other points in relation to disclosure of your Electronic Documents which require discussion between the parties? Yes No

If Yes, please give details.

Preservation of Electronic Documents

13. Do you have a document retention policy? Yes No

If Yes, please give details

14. Have you given an instruction to preserve Electronic Documents? Yes No

If Yes, when did you do so?

Inspection

15. Subject to re-consideration after receiving the responses of other parties to this Electronic Documents Questionnaire, (a) in what format and (b) on what media do you intend to provide to other parties copies of disclosed documents which are or will be available in electronic form?

16. Subject to re-consideration after receiving the responses of other parties to this Electronic Documents Questionnaire, do you intend to provide other parties with Disclosure Data electronically? Yes No

If Yes, in what format and on what media?

17. Insofar as you have available or will have available searchable OCR versions of Electronic Documents, do you intend to provide the searchable OCR version to other parties? Yes No

Note - There is no requirement that you should obtain OCR versions of documents, and this question is directed only to OCR versions which you have available or expect to have available to you. If you do provide OCR versions to another party, they will be provided by you on an 'as is' basis, with no assurance to the other party that the OCR versions are complete or accurate. You may wish to exclude provision of OCR versions of documents which have been redacted.

If No, why not?



Part 2 - The disclosure of other parties

The extent and content of their search

18. Do you at this stage have any proposals about the date ranges which should be searched by other parties to the proceedings? Yes No

If Yes, please provide details.

19. Do you at this stage have any proposals about the custodians or creators whose repositories of documents should be searched for disclosable documents by other parties to the proceedings? Yes No

If Yes, please provide details.

Note - Include names of all those who may have or have had custody of disclosable documents, including secretaries, personal assistants, former employees and/or former participants. It may be helpful to identify different dates for particular custodians.

20. Do you consider that the other party(ies) should disclose all available Metadata attaching to any documents? Yes No

If Yes, please provide details of the documents or categories of documents.

Note - 'Metadata' is information about the document or file which is recorded in the computer, such as the date and time of creation or modification of a word-processing file, or the author and the date and time of sending of an e-mail. The question is directed to the more extensive Metadata which may be relevant where for example authenticity is disputed.

Proposals for the method to be adopted for their searches

21. Do you at this stage have any proposals about the Keyword Searches, or other automated searches, which should be applied by other parties to their document sets? Yes No

If Yes, please provide details.

Inspection

- 22.** Subject to re-consideration after receiving the responses of other parties to this Electronic Documents Questionnaire, (a) in what format and (b) on what media do you wish to receive copies of disclosed documents which are or will be available in electronic form?

- 23.** Subject to re-consideration after receiving the responses of other parties Yes No to this Electronic Documents Questionnaire, do you wish to receive Disclosure Data electronically?

If Yes, in what format and on what media?

STATEMENT OF TRUTH

*[I believe] [The [claimant] [defendant] believes] that the facts stated in the answers to this Electronic Documents Questionnaire are true.

*I am duly authorised by the [claimant] [defendant] to sign this statement.

Full name

Name of legal representative's firm

Signed

Position or office held
(if signing on behalf of firm or company)

Date

**delete as appropriate*

Guidance Notes:

1. Technical expressions as defined in Civil Procedure Rules, Practice Direction 31B are:
 - (a) “**Data sampling**” means the process of checking data by identifying and checking representative individual documents;
 - (b) “**Disclosure Data**” means data relating to disclosed documents, including for example the type of document, the date of the document, the names of the author or sender and the recipient, and the party disclosing the document;
 - (c) “**Electronic Document**” means any document held in electronic form. It includes, for example, e-mail and other electronic communications such as text messages and voicemail, word-processed documents and databases, and documents stored on portable devices such as memory sticks and mobile phones. In addition to documents that are readily accessible from computer systems and other electronic devices and media, it includes documents that are stored on servers and back-up systems and documents that have been deleted. It also includes Metadata and other embedded data which is not typically visible on screen or a print out;
 - (d) “**Electronic Image**” means an electronic representation of a paper document;
 - (e) “**Electronic Documents Questionnaire**” means the questionnaire in the Schedule to this Practice Direction;
 - (f) “**Keyword Search**” means a software-aided search for words across the text of an Electronic Document;
 - (g) “**Metadata**” is data about data. In the case of an Electronic Document, Metadata is typically embedded information about the document which is not readily accessible once the Native Electronic Document has been converted into an Electronic Image or paper document. It may include (for example) the date and time of creation or modification of a word-processing file, or the author and the date and time of sending an e-mail. Metadata may be created automatically by a computer system or manually by a user;
 - (h) “**Native Electronic Document**” or “**Native Format**” means an Electronic Document stored in the original form in which it was created by a computer software program; and
 - (i) “**Optical Character Recognition (OCR)**” means the computer-facilitated recognition of printed or written text characters in an Electronic Image in which the text-based contents cannot be searched electronically.
2. The questions in the Electronic Documents Questionnaire are not intended to give rise to any implication about how disclosure should or should not be carried out. They are intended only to provide information to other parties and to the court.
3. Further facts and matters may come to parties’ attention over the course of the proceedings which affect the answers to the Electronic Documents Questionnaire. Where detailed information is not yet available at the time the Electronic Documents Questionnaire is first answered, parties should give such information as they can, and supplement or amend their answers when further information is available. Answers should be updated by notifying other parties and the court without undue delay, and in any event before each case management conference at which disclosure is likely to be considered.
4. Some of the questions in the Electronic Documents Questionnaire require only a brief answer which may need to be elaborated after Electronic Documents Questionnaires have been exchanged. The purpose of such questions is to assist the parties in identifying the points which may require elaboration in order for meaningful discussions to take place between them.

- 5.** Questions which refer to sources of Electronic Documents that are not considered to be relevant may be answered with a statement to that effect.
- 6.** Questions about 'your' documents and about software, hardware or systems used by 'you' are directed, in the case of solicitors, to the solicitor's lay client's documents or to documents prepared on the lay client's behalf.