

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

Click or tap here to enter text.,

Plaintiff,

v.

Click or tap here to enter text.,

Defendant.

CASE NO. 3:Choose an item.-CV-Click or
tap here to enter text.-Choose an item.-MGG

APPENDIX

Protocol for Discovery of Electronically Stored Information

Disclosure or discovery of electronically stored information (“ESI”)¹ should be handled as follows:

I. Purpose.

This Protocol governs discovery of ESI in this case and supplements all other discovery rules and orders in order to promote a “just, speedy, and inexpensive determination” of this matter, as required by Fed. R. Civ. P 1 and the Local Rules of the Northern District of Indiana.

II. Cooperation.

The parties are aware the importance this Court places on cooperation and shall cooperate in good faith throughout the matter consistent with this Court’s standards of

¹ Fed. R. Civ. P. 34(a)(1)(A) provides for production, inspection, copying, testing or sampling of any designated documents or electronically stored information—including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations—stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form.

conduct. *See* N.D. Ind. L.R. 83-5(e). If an issue arises that is not governed by this Protocol, the parties shall work in good faith to resolve the issue before bringing it to the Court's attention.

III. E-Discovery Liaison.

The parties shall identify e-discovery liaisons to each other who are and will be knowledgeable about, and responsible for, discussing their respective ESI. Each e-discovery liaison will be, or have ready access to those who are, knowledgeable about the technical aspects of e-discovery, including the location, nature, accessibility, format, collection, search methodologies, and production of ESI in this matter

IV. ESI Preservation.

The parties shall make every effort to preserve all electronic data relevant to a party's claims or defenses. To reduce the cost and burden of preservation and to ensure the ESI that is preserved is reasonable and proportionate to the need, the parties are directed to limit the ESI as follows:

- a. Only ESI created between January 16, 2019, and July 5, 2022, need be preserved;
- b. The parties shall exchange a list of the types of ESI they believe should be preserved and the custodians (or general job titles or descriptions of custodians) for whom they believe ESI should be preserved.
- c. The parties shall agree on the number of custodians per party for whom ESI will be preserved; however, absent leave of this Court, the number of

custodians shall not exceed seven (7). The parties may add or remove custodians as reasonably necessary.

V. Search.

a. Identification of ESI. In responding to initial Fed. R. Civ. P. 34 requests, or earlier if appropriate, the parties shall meet and confer about methods to search ESI in order to identify ESI that is subject to necessary and proportional production and filter out ESI that is not subject to discovery.

b. Non-Accessible Sources. To that end, the parties shall identify data sources, if any, that are not reasonably accessible because of undue burden or cost pursuant to Fed. R. Civ. P. 26(b)(2)(B). ESI from these non-accessible sources shall be preserved but not searched, reviewed, or produced absent leave of court upon a showing of relevance and good cause. Such sources may include, without limitation, backup media created before January 16, 2019, digital voicemail, and instant messaging.

c. Metadata. General ESI production requests under Fed. R. Civ. P. 34 and 45 shall not include metadata absent a showing of good cause. However, fields showing the date and time the document was sent and/or received, as well as the complete distribution list, shall generally be included in the production.

VI. Production Parameters.

a. Commercially Reasonable Manner. Unless otherwise allowed by this Protocol or by court order, ESI discovery shall be produced to the requesting party in a commercially reasonable manner. If a requesting party requests the examination of any

hard drives, servers, computers, voice mail systems, or other electronic devices or components, such disclosure shall also be made in a commercially reasonable manner.

b. Production of Electronic Version. If a party requests documents that are stored in an electronic format, the disclosing party may choose to provide the requesting party with printed copies of the documents or electronic copies via external drives, including flash drives, CD or DVD, e-mail, or other electronic means. If the receiving party determines in good faith that a document produced in printed format does not adequately allow the party to review the document, the receiving party may request production of an electronic copy.

c. Requests for Production of Email Messages. To the extent practicable, requests for production of email messages shall identify the custodian, search terms, and time frame. The parties shall cooperate to identify the proper custodian(s), proper search terms, and proper timeframe.

d. Production Formats. For documents not produced in paper format, the parties shall produce the document in PDF file format. By agreement, the parties may allow for production in TIFF or JPEG file format for documents that contain photographs, diagrams, graphs, or other robust images. If a particular document warrants a different format, the parties shall cooperate to arrange for the mutually acceptable production of the document in an appropriate format. The parties shall not degrade the searchability of documents during the document production process.

e. Numbering. A disclosing party must produce responsive ESI formatted with a numbering system (e.g., Bates numbering) and clear identification of confidential

information consistent with any protective order entered by this Court. Additionally, the disclosing party shall produce responsive ESI in a permanent form that cannot be changed or revised.

VII. Cost and Burden of Producing Electronic Discovery.

a. Presumptions. Unless the disclosing party, with the burden of bearing the costs as specified below, demonstrates to the Court that the cost of production is overly burdensome because of an inordinate amount of responsive ESI or excessive effort to identify and produce the responsive ESI, the following presumptions apply:

(1) To the extent that the parties request files or copies of documents, the parties agree that such requests shall be provided to the other party as maintained in the normal and traditional course of business, with the producing party bearing the cost of assembling responses to the requests;

(2) To the extent that a party requests to examine a hard drive, server, computer, voice mail system, or other electronic device or component, the party making the request shall bear the cost of the examination and may examine the device or component at a mutually agreeable time and in a commercially reasonable manner.

b. Cost Shifting. Costs will be shifted for disproportionate ESI production requests pursuant to Fed. R. Civ. P. 26. Likewise, a party's nonresponsive or dilatory discovery tactics will be subject to cost-shifting considerations. However, a party's meaningful compliance with this Order and efforts to promote efficiency and reduce costs will also be factored into any consideration of cost-shifting.

VIII. Inadvertent Disclosure of Privileged Documents.

To the extent that counsel for a disclosing party receives electronic discovery from its client and the discovery does not contain any privileged communications, counsel for the disclosing party may forward such electronic discovery to opposing counsel by e-mail without waiving the attorney-client privilege. The parties may also agree that if counsel for either party inadvertently discloses information protected by the attorney-client privilege, such disclosure shall not constitute a waiver of the attorney-client privilege. When a party learns that privileged information, either received or produced has been inadvertently disclosed, the party shall notify the other party in writing and the document shall be returned so that the document may be withheld or redacted, as appropriate, and shall be identified in a privilege log. The parties acknowledge that either party may challenge the other party's claim of privilege pursuant to Fed. R. Civ. P. 37.

IX. Modification.

This Protocol may be modified for good cause. The parties shall jointly submit any proposed modifications for the Court's consideration. If the parties cannot resolve any disagreement regarding modifications, the parties may submit competing proposals including a summary of their dispute or disagreement.

SO ORDERED this Click or tap here to enter text. day of Click or tap here to enter text.

Michael G. Gotsch, Sr.
United States Magistrate Judge