

United States District Court
Western District of Missouri

CHECKLIST FOR RULE 26(f) MEET AND CONFER
REGARDING ELECTRONICALLY STORED INFORMATION

In cases involving the discovery of electronically stored information (ESI), the Court encourages the parties to engage in on-going meet and confer discussions and to use the following Checklist to facilitate ESI discussions. These discussions should be framed in the context of the specific claims and defenses involved.

I. Preservation

- The date ranges for any ESI to be preserved.
- The description of data from sources that are not reasonably accessible and that will not be reviewed for responsiveness or produced, but that will be preserved pursuant to Federal Rule of Civil Procedure 26(b)(2)(B).
- The description of data from sources that (a) the party believes could contain relevant information but (b) had determined, under the proportionality factors, is not discoverable and need not be preserved.
- Whether or not to continue any interdiction of any document destruction program, such as ongoing erasures of e-mails, voicemails, and other electronically-recorded material.
- The names and/or general job titles or descriptions of custodians for whom ESI will be preserved (e.g., “HR head,” “scientist,” “marketing manager,” etc.).
- The number of custodians for whom ESI will be preserved.
- The list of systems, if any, that contain ESI not associated with individual custodians and that will be preserved, such as enterprise databases.
- Any disputes related to scope or manner of preservation.

II. Liaison

- The identity of each party’s e-discovery liaison.

III. Informal Discovery About Location and Types of Systems

- Identification of systems from which discovery will be prioritized (e.g., email, finance, HR systems).
- Description of systems in which potentially discoverable information is stored.
- Location of systems in which potentially discoverable information is stored.
- How potentially discoverable information is stored.
- How discoverable information can be collected from systems and media in which it is stored.

IV. Proportionality and Potential Cost-Saving Measures

- The amount and nature of the claims being made by either party.
- The nature and scope of burdens associated with the proposed preservation and production of ESI, including but not limited to anticipated costs, practical burdens (if

any), and expectations concerning the recurrence of ESI production during the pendency of the litigation (if any).

- The likely benefit of the proposed discovery.
- Costs that the parties may agree to share to reduce overall discovery expenses, such as the use of a common electronic discovery vendor or a shared document repository, or other cost-saving measure.
- Other potential cost-saving measures or cost-shifting agreements (if any).

V. Prioritization

- Sources of ESI most likely to contain discoverable information.
- Other sources of ESI likely to contain discoverable information.
- Custodians (by name or role) most likely to have discoverable information.
- Other custodians (by name or role) likely to have discoverable information.
- Date ranges most likely to include discoverable information.
- Whether it is appropriate to prioritize certain ESI discovery over others.

VI. Identification of Discoverable ESI

- Whether the parties can agree on limits to the number of sources of ESI that will be collected.
- Whether the parties can agree on how to handle the de-duplication of data.
- Whether the parties can agree on the methodology(ies) to use for the identification of discoverable ESI.
- Whether the parties can agree on procedures to narrow the ESI at issue, such as filtering data based on file type, date ranges, sender, receiver, custodian, search terms, or other similar parameters.

VII. Production

- The formats in which structured ESI (database, collaboration sites, etc.) will be produced.
- The formats in which unstructured ESI (email, presentations, word processing, etc.) will be produced.
- The extent, if any, to which metadata will be produced and the fields of metadata to be produced.
- The production format(s) that ensure(s) that any inherent searchability of ESI is not degraded when produced.

VIII. Privilege

- How any production of privileged or work-product protected information will be handled.
- Whether the parties can agree on alternative ways to identify documents withheld on the grounds of privilege or work product to reduce the burdens of such identification.
- Whether the parties will enter into a Fed. R. Evid. 502(d) Stipulation and Order that addresses inadvertent or agreed production. (A Model 502(d) Order is available on the Court's website.)