

# Protecting Privilege in ESI

*Preventing the inadvertent disclosure of privileged information in litigation is increasingly challenging. Technological advancements have ushered in varying mediums of information storage and exchange that thoroughly document privileged communications. This requires additional review resources to protect confidentiality and privilege.*

## Good Faith Negotiations and Agreements



**Communicate with Opposing Counsel Early and Document Efforts**--*Early communication sets the tone for a productive Rule 26 Meet & Confer conference and feeds future ESI protocols and agreements.*



**Negotiate specific provisions in ESI agreements/orders if possible** -- *It can be very helpful to negotiate specific expectations such as privilege log delivery and production procedures in an ESI agreement or order.*



**Negotiate a FRE 502/Rule 26 Clawback Agreement** ---- *Negotiating a Rule 26 clawback agreement provides a crucial safeguard against inadvertent waiver.*



**Determine log delivery timing and build in review procedure** -- *This can be contemporaneous with production, before depositions, or at another specified time. If the timing of the privilege log is not agreed to in ESI orders it must still be done within a defensible timeframe.*



**Determine with opposing counsel whether categorical logging is expected, include agreement in 502 order** --  
[Negotiate categories and descriptions for the log.](#)  
[Additionally, determine whether any categories can be excluded due to privilege or the likelihood that they are irrelevant discovery.](#)

### ***Request a Free Consultation***

Request a free project consultation from one of our eDiscovery Sales Consultants.

***Call us today at 800.401.7809 x22, or email us at sales@Lexbe.com***

# Protecting Privilege in ESI

## Utilize Technology



**Make Use of a Modern eDiscovery Review Tool** --Manual review is no longer a reasonable practice for document intensive cases. Your eDiscovery review software should offer quality search tools in order to find privilege and speed review. Key features should include:

- A comprehensive index (one that includes both OCR and Metadata in a single, concatenated index)
- Auto-privilege logging
- Redaction capabilities
- Privilege logic
- Near Dupe technology



**Consider redaction of email strings and attachments rather than wholesale withholding** -- [By keeping intact the author, recipients and date the parent-child relationships are maintained.](#) Retain a separate 'Redacted for Privilege' record to supplement privilege log.



**Allow extra time for Production QC** --Particularly check redactions, natives, privilege logs and the production.



**Consider using NearDupe technology as a safeguard**-- This tool double checks that privileged information hasn't been inadvertently included in a privilege log.

### The Lexbe Advantage Feature-Rich, Fast and Affordable

With over 120% growth in 2016, Lexbe is one of the fastest growing eDiscovery companies. For more than 11 years, boutique law firms and more than 4000 e-discovery professionals have come to rely on Lexbe for affordable, self-service and full-service cloud-based e-discovery solutions. The Lexbe eDiscovery platform delivers the performance required for the processing, review, and production of ESI, in support of complex litigation; including the industry's fastest processing, most comprehensive indexing and 99.999% up-time.