

# What is E-Discovery?

## **THE INFORMATION IN THIS ARTICLE APPLIES TO:**

- Mail Express version 3.x

## **DISCUSSION**

### **What is e-discovery?**

Electronic discovery (or e-discovery) refers to discovery in civil litigation of relevant information exchanged or stored in electronic format (often referred to as Electronically Stored Information or ESI). Data is identified as relevant by attorneys, placed on legal hold, and then extracted and analyzed. Electronic information is considered different from paper information because of its intangible form, volume, transience, and persistence. Electronic information is usually accompanied by metadata not found in paper documents, which can play an important part as evidence. (For example, the date and time a document was written could be useful in a copyright case.) The preservation of metadata from electronic documents creates special challenges to prevent spoliation (the intentional or negligent withholding, hiding, altering, or destroying of evidence). Many aspects of electronic discovery regulations were the subject of amendments to the [Federal Rules of Civil Procedure](#) (FRCP), effective December 1, 2006.

### **E-discovery and Federal v State v Local laws**

While the FRCP, specifically the latest amendments, governs much of the ESI process and procedures, some states have passed their own version of the FRCP. For example:

*Texas adopted Rule of Civil Procedure 196.4 in 1999, which states, in part, "to obtain discovery of data or information that exists in electronic or magnetic form, the requesting party must specifically request [it] and specify the form in which the requesting party wants it produced."*

Individual organizations should be aware of any local, state and federal regulations that pertain to their industry.

### **What do I need to be concerned about regarding E-discovery and Mail Express?**

## What is E-Discovery?

Most discovery requests will require that ESI be produced for requesters in either the same format as it is used within company's standard operations or a format specified by the requesting party. This means in most cases both the original email message as stored in the mail server with the Mail Express link and the attachment from the Mail Express file store will need to be produced. It is also possible that the database information mapping the attachments to the email messages may be requested to verify data integrity.

### **How does Mail Express fit in the E-discovery process?**

**Producing attachments**—Even though Mail Express replaces the attachments in emails prior to the message leaving the organization, most discovery request will require that the attachments, not just the links, be produced as part of discovery. All current versions of the Mail Express offer auditing and tracking of any managed attachments, allowing the administrator to initiate either message- or file-based searches and providing end-to-end correlation between links sent in messages and the files stored on the Mail Express Server. Simple SQL scripts can be provided by GlobalSCAPE [Professional Services](#) to assist in the matching of attachments to messages and the retrieval of the attachments.

**Data integrity**—All transactions tracked within the Mail Express database are recorded with creation and modification timestamps and unique identifiers that provide strict mapping between the email message with Mail Express links and the stored attachments. To prevent unauthorized access, both attachments and database information can be secured using industry-standard encryption methods.

**Purging data**—Various industry regulations and some local or federal statutes may require that ESI and auditing data be retained for a specific time. The Mail Express system offers separate purging parameters for the attachments and the audit data, so the administrator can configure the system to comply with any required standards. Also, since Mail Express takes advantage of the organization's own storage and network infrastructure instead of providing a custom solution, standard backup and archiving procedures can be used for the attachment store and the database. All data purging should be temporarily disabled whenever any litigation hold is in place.

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