

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION**

In Re: Medical Informatics  
Engineering, Inc., Customer Data  
Security Breach Litigation  
(MDL 2667)

Cause No. 3:15-MD-2667

This Document Relates to All Cases

**STIPULATED ORDER RELATING TO DISCOVERY OF  
ELECTRONICALLY STORED INFORMATION, CLAIMS OF PRIVILEGE  
OR PROTECTION, AND DOCUMENT PRESERVATION**

Pursuant to the agreement of counsel, the Court ORDERS as follows:

**I. General Guidelines**

1. This Order (the “Protocol”) will govern discovery of documents and Electronically Stored Information (“ESI”) in this matter as a supplement to the Federal Rules of Civil Procedure and United States District Court for the Northern District of Indiana Local Rules. The Parties desire to control and focus the production of documents and ESI such that it is proportional to the needs of the case to promote a “just, speedy, and inexpensive determination” of this action, as required by Federal Rule of Civil Procedure 1 and as embodied in the Principles Relating to the Discovery of Electronically Stored Information set forth by the Seventh Circuit Electronic Discovery Committee.

2. This Protocol is not intended to expand any document preservation or production requirements under the Federal Rules of Civil Procedure or limit any protection available to a Party under the Federal Rules of Civil Procedure or the

Federal Rules of Evidence. The Parties will endeavor to comply with this Protocol, but if compliance with this agreement creates an undue burden or expense, the Parties shall attempt to resolve such issues in good faith.

3. Each Party shall bear its own costs for the production of documents and ESI, except where shifting of costs is warranted. In the event, however, that a Party requests documents or ESI that would result in the production of cumulative or repetitive information or information that otherwise imposes an undue burden or expense, the producing Party may object. The Parties shall work in good faith to resolve any such objections. In the event that the Parties are unable to resolve an objection, and upon substantiation of such an objection, the producing Party may move the Court for an Order shifting the cost of producing such cumulative or repetitive information or information that otherwise imposes an undue burden or expense to the requesting Party. Unless good cause is shown, in no event will the producing Party disclose information for the first time to the Court that it has not disclosed to the requesting Party in the meet and confer process (e.g., affidavits regarding related expenses, documentation regarding cumulative nature, etc.).

4. By agreeing to this Protocol, no Party waives any rights under Federal Rule of Civil Procedure 26. Further, the Parties agree that the standard enumerated in Federal Rule of Civil Procedure 37(e), will govern any issue regarding spoliation measures or sanctions in this case.

## **II. Liaison**

5. Parties will designate a liaison (the “Liaison”) knowledgeable about the Party’s ESI and who will be responsible for discussing it. Each ESI Liaison will be, or will have access to those who are, knowledgeable about the technical aspects of electronic discovery, including the location, nature, accessibility, format, collection, search methodologies, and production of ESI in this matter. The Parties will utilize the Liaisons, as needed, to confer about ESI and to help resolve disputes without Court intervention.

## **III. Preservation**

6. The Parties have discussed their preservation obligations and needs and agree to the reasonable and proportional preservation of potentially relevant documents and ESI. To reduce the costs and burdens of preservation while still ensuring the preservation of relevant information, the Parties agree to continue to meet and confer, as appropriate, regarding preservation parameters.

## **IV. General Search Guidelines**

7. The Parties agree that in responding to an initial Federal Rule of Civil Procedure 34 request, or earlier if appropriate, they will meet and confer regarding appropriate search methodologies for all relevant and reasonably accessible documents and ESI.

## **V. Disclosure**

8. Within 45 days of the Court’s entry of this Protocol, the Parties shall produce in writing:

- a. A list of the producing Party's most likely custodians of relevant electronic materials, including each person's title and a brief description of such person's responsibilities.
- b. A list of locations and/or ESI storage system(s) that the producing Party has identified as likely locations of relevant, non-duplicative, and reasonably accessible documents and ESI. This will include a general description of each location, which may include the dates of service, nature, scope, character, organization, and formats employed in each system.
- c. Whether a responding Party believes that they have or may have potentially responsive ESI that is inaccessible or only of limited accessibility and, hence, not producible by that Party. If a responding Party does so contend, it shall disclose:
  - i. The general nature of such information (e.g., correspondence, meeting minutes, etc.);
  - ii. The reason(s) why the information is considered inaccessible or of only limited accessibility; and
  - iii. A proposed capture and retrieval protocol necessary for identification and recovery of the information deemed inaccessible (and cost of such if available).

**VI. Production Formats**

9. Paper documents amenable to being imaged will be produced as images on optical disks (i.e., CDs or DVDs) or external hard drives accompanied by TIFF Image (DII) Load Files. Paper documents may be produced in black-and-white or color, but if a producing Party intends to rely in any brief or hearing on any aspect of a document that requires review in color, the Party shall produce that document in color. Each image will bear a unique production number and any applicable confidentiality language pursuant to the Protective Order entered in this litigation. Reasonable efforts shall be made to scan the pages at or near their original size. Physically oversized originals, however, may appear reduced. In addition, reducing an image may be necessary to display production numbers and confidentiality designations without obscuring the text. Paper documents produced in this manner will be accompanied by load files with searchable text (including OCR text). If a Party desires additional information about a particular paper document produced in this form, the Parties will meet and confer regarding the appropriate means to supply that information. Nothing in this paragraph shall be deemed to require a party to produce a paper duplicate of a document produced in electronic form.

10. Subject ESI amenable to being imaged will be produced as images on optical disks (i.e., CDs or DVDs) or external hard drives accompanied by TIFF Image (DII) Load Files, with a minimum resolution of 300 DPI with the exception of color documents, which shall be produced as JPG (or JPEG) image format. This

manner of production is referred to herein as the “static image format.” Each image will bear a unique production number and any applicable confidentiality language pursuant to the Protective Order entered in this litigation. Subject to either Party’s right to assert that such mode of production creates undue burden or expense, ESI produced in this manner will be accompanied by load files with searchable text (including electronically extracted text or, if electronically extracted text is unavailable, OCR text), and to the extent available:

- a. Unitization (including the production number of the first and last page of each file);
- b. Attachments (including information sufficient to identify the parent and child relationships of all documents and ESI that are or have attachments);
- c. Source information (including the identity of the custodian, or, if none, a generalized location); and
- d. Metadata (including author, file type, date created, date modified, title, FilePath, PathToNative, sender (“from”), primary recipient (“to”), courtesy or carbon copy (“cc”), blind courtesy or carbon copy (“bcc”), subject, sent time/date, and received time/date)

Defendant specifically reserves its rights to object to production under the requirements of all or part of this paragraph of the protocol as, depending on the scope of Plaintiffs’ discovery requests, Defendant believes that production of images and associated load files called for in this paragraph may prove an extreme and

unnecessary expense compared to other equally useful and responsive modes of production. In the event of such an objection, the parties will confer and attempt to identify a mutually-acceptable mode of production before seeking guidance from the court.

11. To the extent that spreadsheets, executable files, videos, animations, audio files, and presentations that include video, animation, or audio shall be produced, these items shall be produced where practical in native format. To the extent that documents produced in native format cannot be rendered or viewed without the use of propriety software, the Parties shall meet and confer regarding any objections to production and possible means to minimize any expense or burden associated with the review of such documents, including issues that may arise with respect to obtaining access to any such software or operating manuals. All documents produced as native files shall be produced with a production number and shall be identified as produced in response to the category(ies) of the request.

12. If production of a particular document as a native format file would result in the disclosure of information protected by the attorney-client privilege, the work-product doctrine or that is otherwise protected from discovery, the producing Party may object to its production as a native file and produce, with redactions, the document in native or static image format as specified above.

13. Certain types of databases are dynamic in nature and will often contain information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. These files are typically very large and would, if

rendered to static image format (e.g., to accommodate redaction of confidential or irrelevant information), produce thousands of pages that would have little utility to a reviewer. The producing Party, upon mutual agreement with the requesting Party, may opt to produce relevant and responsive information from databases in an alternative form, such as a report or data table. These reports or data tables will be produced in a static image format.

14. If a Party identifies responsive documents or information in a form that cannot reasonably be imaged and that does not fall within the categories to be produced in native format, that Party shall inform the requesting Party of the existence of such records. The Parties shall then meet and confer regarding the appropriate means for producing or permitting inspection of such documents or information.

15. All imaged documents shall be provided with an associated image load file. No document should span or break across multiple folders.

## **VII. Duplicates**

16. To the extent that duplicate documents or ESI reside within a Party's data set, each Party is only required to produce a single copy of the responsive information. If a document is de-duplicated across custodians, then the metadata field called "OTHERCUSTODIANS" must be provided listing the numbers of other custodians who were in possession of the document at the time of collection, but whose copy has been withheld as a duplicate.



### **VIII. Documents Protected From Discovery**

17. The Court's Case Management Order No. 1 (Doc. No. 36) entered the Parties' agreement regarding the clawback of inadvertently produced documents. In addition, nothing in this agreement shall be interpreted to require disclosure of irrelevant information or of relevant information protected by the attorney-client privilege, work-product doctrine, or any other applicable privilege or protection. The Parties do not waive any objections to the production or discoverability of any document or information, including, without limitation, objections regarding overbreadth, or relevance of documents requests.

18. Privilege logs shall comply with Federal Rule of Civil Procedure 26(b)(5), which requires a party to: Expressly identify the privilege asserted; and describe the nature of the documents, communications, or tangible things not produced or disclosed . . . in a manner that, without revealing information itself privileged or protected, will enable other parties to assess this claim. If a number of documents are of a type that can be described collectively in a manner that complies with the foregoing, then the parties will confer about possible acceptable means to avoid listing the documents individually on the privilege log.

19. Privilege logs provided in lieu of producing requested documents shall be produced no more than 30 days after the date upon which the documents were required to be produced or were partially produced. If documents are produced on a rolling basis, a corresponding privilege log for all redactions or withheld documents shall be produced within 30 days of the production of documents from each wave.

20. Any party asserting privilege shall provide a separate entry for each document as to which the party asserts a privilege except if a number of documents are of a type that can be described collectively in a manner that supplies the substance of the information sought below, then they need not be listed individually on the privilege log.

21. Unless the information itself is protected from disclosure or is privileged, the entry should list:

- a. The Bates number of the document;
- b. The nature of the privilege asserted (e.g., “attorney-client privilege” or “attorney work product”);
- c. The name(s) of the author(s) of the document, (if known);
- d. The name(s) of the recipient(s) of the document, including anyone who was sent the document as a “CC” or a “BCC,” (if known);
- e. The custodian of the document;
- f. The document type, including, for example, whether the document is an email, paper file, a meeting presentation, a spreadsheet, or other descriptive identifier of the document type;
- g. The date the document was created (if known), sent (if applicable); and last modified (if applicable); and
- h. Information sufficient to explain the assertion of privilege or protection in a manner that will enable the other party to assess the claim.

22. The privilege log should indicate which individuals listed on the log are attorneys.

23. To the extent that any individual identified on the privilege log as a sender or recipient of a privileged document is not an employee of the Party, the Party will indicate which individuals listed on the log are non-employees.

**IX. Privilege Dispute Procedure**

24. Any party seeking to challenge a claim of privilege shall meet and confer with the party asserting the privilege to attempt to resolve the issue(s) prior to submitting a challenge to the court.

25. If a meet-and-confer does not resolve all issues, any party seeking to challenge a claim of privilege shall submit a motion identifying the specific entries on the adverse party's privilege log that it believes to be inadequate or improper and providing the basis for the challenge. If the content of a party's privilege log is deemed inadequate, the party asserting the privilege shall within a reasonable time supplement the information in the privilege log with respect to the inadequate entries at issue. If a party challenges the assertion of privilege with regard to certain documents, the court may conduct an in camera review.

**X. Modification**

26. This Protocol may be modified by stipulated request, subject to Court approval, or by the Court for good cause shown.

SO ORDERED.

ENTERED: February 23, 2016

          /s/ Robert L. Miller, Jr.            
Judge  
United States District Court