



ONTARIO  
SECURITIES  
COMMISSION

**OSC Staff Notice 15-708**

# **Enforcement Branch**

# **Document Production Guidance**

**July 22, 2021**



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## About this guidance

This guidance is for persons and companies that will produce books, records, correspondence, documents and other things to Staff of the Ontario Securities Commission (**Staff** or **we**) in connection with its initial assessments, investigations or surveillance activities, whether

- a. in response to a summons under section 13 of the *Securities Act* (Ontario) or section 9 of the *Commodity Futures Act* (Ontario),
- b. in response to a direction under section 19 of the *Securities Act* (Ontario) or section 14 of the *Commodity Futures Act* (Ontario), or
- c. voluntarily.

This guidance sets out Staff's preferred production methods for original books, records, correspondence, documents and other things and copies of books, records, correspondence, documents and other things in hard copy and electronic form<sup>1</sup>. Any party producing records to Staff may retain a lawyer to provide legal advice related to the production request.

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<sup>1</sup> This guidance was informed by, and in some instances incorporates the standards or concepts from, the following sources: (i) Alberta Securities Commission: *ASC Rule 15-503 Production of Records and its Companion Policy* (October 31, 2014); (ii) U.S. Securities and Exchange Commission: *Data Delivery Standards* (Revised June 2019); (iii) U.S. Commodity Futures Trading Commission: *CFTC Data Delivery Standards* (June 14, 2018); (iv) Australian Securities & Investments Commission: *Document Production Guidelines* (March 2, 2020); (v) Competition Bureau (Canada) Guidance: *Enforcement Guidelines – Production of Electronically Stored Information* (April 28, 2015); and (vi) United States District Court - Eastern District of California: *CM/ECF E-Filing – Redaction Requirements - How to Redact* (online version, March 17, 2021)

## A. Overview

### Key points

Staff may give you a written notice that requires you to produce specified records. "Records" or "documents" includes books, records, correspondence, documents and any other things, including:

- records stored in electronic form (**electronic records**); and
- records stored in hard copy (**hard copy records**).

We may also ask you to produce records voluntarily.

These guidelines explain how we prefer you to produce records. It covers the production of original records, copies of records, hard copy records and electronic records.

### Purpose of this guidance

- 1 We may give you a written notice that requires you to produce records (**Record Request**). "Records" or "documents" includes books, records, correspondence, documents and any other things, including electronic records and hard copy records. Staff's powers to issue a Record Request are set out in:
  - (a) the *Securities Act* (Ontario) (**Securities Act**) — see ss.13 and 19; and
  - (b) the *Commodity Futures Act* (Ontario) (**Commodity Futures Act**) — see ss. 9 and 14.

*Note:* In this guidance the terms "records" and "documents" are used interchangeably. You should assume therefore, that both terms carry the same meaning. These terms have been used interchangeably, where necessary, in accordance with standard industry usage of both terms, in records and information management and e-Discovery practice.

- 2 We may also ask you to provide records voluntarily—that is, not in response to a Record Request.

### Benefits of producing records in accordance with this guidance

- 3 These guidelines set out our preferred production methods for records we require or request in the course of carrying out our regulatory functions. Please produce records to Staff using these methods. This may reduce time, costs and resources for Staff and parties producing records to Staff.

- 4 If you do not produce records in accordance with these guidelines, and if we consider it necessary or efficient to do so, we may:
  - (a) ask you to produce the records again in a way that accords with this guidance; or
  - (b) ask you to produce the device on which the records are stored.

## **Working with Staff**

### Contacting Staff to discuss the Record Request

- 5 If you have questions about any aspect of the Record Request, you may speak to your lawyer or you may contact the Staff named in that request. Discussing the scope of the request, including the meaning of certain terms, can often result in significant time and cost savings.
- 6 You may also contact the Staff named in the Record Request to discuss the electronic format of production. We may agree to an alternative format of production in those discussions. These guidelines set out our preferred approach to various formats of production to help you in those discussions.
- 7 We may also be able to:
  - (a) clarify the scope of the request or the meaning of terms used in the request; and
  - (b) provide some technical guidance on Staff's preferred formats of production, including the meaning of terms used in this guidance (see Appendix A – Key Terms).

### Document Exchange / Production Plan Agreement

- 8 In circumstances where there are complex production issues, Staff may, at their sole discretion, enter into a document exchange or production plan agreement with you to clarify the scope and timelines for production of the records we are requesting.

## Our preferred production methods for records

- 9 Staff have powers to compel the production of documents and other things (see s. 13(1) of the *Securities Act* and s. 9(1) of the *Commodity Futures Act*), such as:
- (a) electronic records, including the metadata associated with those records; and
  - (b) original hard copy records.

## Electronic records

- 10 When producing electronic records, it is critical that these records are reproduced in a format that our systems can access, process, read and analyse for the enforcement purposes of the Ontario Securities Commission (the **Commission** or **OSC**). The exception to this is if the Record Request directs you to produce the device on which the records are stored.
- 11 We prefer that you produce electronic records, including their metadata, in their original native file format. This can be either:
- (a) the format in which the records are stored — for example, a Microsoft Word document from a file server; or
  - (b) the native format in which the system that stores the records exports them — for example, an MSG file(s) or PST container exported from Microsoft Outlook.
- 12 You may also produce records using an E-Discovery or litigation support system. If you use an E-Discovery or litigation support system to review and produce the records, please follow the production protocol in the sections and appendices referenced in paragraph 14.
- 13 There will be occasions when our systems are unable to access, process, read and analyse records in their original native file format. In these cases, we ask that you reproduce the records in an electronic format that our systems are able to access, process, read and analyse. For guidance on working with Staff to produce records in an alternative format, see paragraphs 5 – 7.
- 14 For further guidance on producing electronic records, see
- (a) Section C. Providing records to the OSC in electronic format,
  - (b) Section D. Guidance on file formats and producing electronic records,
  - (c) Section E. Additional Guidance for e-Discovery or Litigation Support Systems,
  - (d) Appendix B – Export Fields, and
  - (e) Appendix C – Image and Extracted Text Files.

### Original hard copy records

- 15 In rare situations, we may require you to produce your original hard copy records. This will be set out in the Record Request.
- 16 In most cases, if we do not require original hard copy records, you may still produce hard copies of the original hard copy records. However, we ask that you scan the original hard copy records in accordance with the guidance in Section G. How to Produce Scanned Copies of Hard Copy Records and produce these as electronic copies.
- 17 For further guidance on producing hard copy records, see Section D. Guidance on file formats and producing electronic records.

### Use of different review methods

- 18 It is your responsibility to provide full and comprehensive production in response to a Record Request, regardless of the approach you take in respect of reviewing records and identifying the records that fall under the Record Request. For example, you may undertake:
  - (a) a manual review;
  - (b) in applicable circumstances, keyword or concept searches; or
  - (c) in applicable circumstances, a technology-assisted review (**TAR**), such as continuous active learning (**CAL**).

In respect of (b) and (c) above, please discuss with Staff prior to conducting the review and producing records. The aim of this discussion is to avoid parties incurring unnecessary costs; to make efficient use of parties' resources; and to canvass the ability of Staff to use, and Staff's systems to access, process, read and analyse, the records produced.

- 19 We encourage you to carefully document your review, including:
  - (a) your approach to the review;
  - (b) how you conducted the review;
  - (c) the decisions you made about the review; and
  - (d) the outcome of the review.
- 20 We may ask you to explain any matter relating to the compilation of any of the records or to which any of the records relate.



## Redactions

- 21 You may need to redact records to remove content over which you are asserting privilege when responding to a Record Request or voluntarily producing records.
- 22 To be effective, redactions need to be properly applied to ensure that Staff cannot see, access, or search the redacted text or other information in the underlying document. See Appendix D – Redactions, for guidance to help you avoid some common redaction-related pitfalls. You may contact Staff if you have any questions about redacting documents.

## Inadvertent production of records

- 23 If you inadvertently produce records to Staff, please advise us as soon as possible. In circumstances where an inadvertent disclosure of records is made, Staff will discuss next steps with you or your lawyer. In respect of documents produced over which you subsequently assert privilege, see paragraph 30 below.

## Records produced to regulators outside of the OSC

- 24 If you have received a Record Request for records that you have produced to another regulator, or that you are producing to Staff as well as another regulator, a discussion with Staff can provide an opportunity to canvas whether you can produce these records to Staff in the same format as produced to the other regulator, and if not, how to deal with any conflicting production guidelines.
- 25 Staff will generally accept records that are responsive and in an electronic format our systems can access, process, read and analyse as described in paragraphs 10 to 14 above.
- 26 If the Record Request from Staff includes records that have not been produced to the other regulator, those additional records must be produced to Staff. This guidance will assist you with the production of those additional records.

## B. Privilege

### Key points

This section sets out Staff's views and expectations on how best to address technical and legal issues related to potentially privileged material in requests for production.

- 27 The powers of compulsion in securities and commodity futures legislation do not empower Staff to compel the production of records that are privileged.
- 28 If you intend to assert privilege over records otherwise responsive to a Record Request, we encourage you to write to Staff and assert privilege with enough specificity to support the assertion. We ask that you remove and do not produce the records, but keep them in a secure location, and produce an index to Staff. In the index of removed records, we ask that you specify the nature of the record, date, to/from/cc/bcc, reference line, the specific grounds for asserting privilege for each record, and the type of privilege being asserted (such as solicitor and client, litigation, or settlement privilege). If challenges arise in respect of producing the index, we encourage you to contact Staff to discuss the issue and potential next steps.
- 29 Where portions of records contain information over which you assert privilege, we request that copies of the records be produced with the privilege-related portions covered or redacted (see paragraphs 21 - 22 and Appendix D – Redactions for additional guidance). We ask that redacted records be included in the index with the specific grounds for asserting privilege for each redaction, and the unredacted originals be separated along with the index and kept safely by you or your lawyer.
- 30 It is your responsibility to ensure that any records over which you assert privilege, including correspondence between you and your lawyer, are completely removed from the material you provide in response to a Record Request. In the event that records are produced that you subsequently assert privilege over, please contact Staff to discuss the steps to be taken. In these circumstances, the Enforcement Branch's E-Discovery Team has the capability to secure electronic records in a container where investigative Staff would not have access to them.
- 31 The additional production protocols outlined in paragraphs 87 - 91 provide further guidance about production of records over which you are asserting privilege.

## C. Providing records to the OSC in electronic format

### Key points

This section sets out how we ask you to produce records in electronic format.

We ask you to produce electronic records in their original native file format, including the metadata associated with the records.

You may also produce records using an E-Discovery or litigation support system. If you do produce records this way, please produce them in accordance with these guidelines.

Note: For technical details of how we prefer you to produce records using an E-Discovery or litigation support system, see Section E. Additional Guidance for e-Discovery or Litigation Support Systems.

### Cover Letter

- 32 To ensure we correctly record productions in response to Record Requests, please provide a cover letter with each production. The cover letter should:
- (a) be addressed to the Staff who sent the Record Request;
  - (b) set out the date of the Record Request and the name of the recipient (individual and, if applicable, company) of the Record Request; and
  - (c) identify the method used to produce the records, and list each piece of external media, if applicable, included in the production.

### Delivering records to the OSC

- 33 Staff's preferred method for receiving records is in electronic format via email or by secure file transfer link.
- 34 If production of records in electronic format by email or by secure file transfer link is not possible, please contact Staff to discuss how to produce these records.
- 35 If production of records can only be done by external media, please password protect the media on which the records are produced to secure the information in transit to Staff.
- 36 Passwords for electronic documents, files, compressed archives and encrypted media are expected to be provided separately either via email or in a cover letter apart from the media.
- 37 Before producing forensically collected images, parties are expected to reach out to the requesting Staff in order to discuss appropriate handling.

- 38 If you are responding to more than one Record Request, please repeat the above processes for each separate production.

### **Virus free**

- 39 Please ensure the records you produce to Staff in electronic format are virus free.

### **Original native file format and e-discovery / litigation support system production**

- 40 We request that you produce electronic records in their original native file format. If you are producing electronic records using an e-discovery or litigation support system, please follow the production protocol in Section E. Additional Guidance for e-Discovery or Litigation Support Systems.
- 41 If you use an e-discovery or litigation support system, the provider of the system may be able to give you guidance on the mechanics of responding to a Record Request.
- 42 If you have questions arising from these guidelines, we may be able to provide some technical guidance: see paragraphs 5 – 7.

### **Parent and attachment documents (document groups)**

- 43 If a hard copy or electronic record is part of a document group (e.g. an email, its embedded files and attachments), you will need to produce the entire document group unless the Record Request clearly states otherwise.
- Note: A 'document group' may also be called a 'document family' in a Record Request.
- 44 If you are producing electronic records in their original native file format without using an e-discovery or litigation support system, please ensure that the embedded files remain embedded and the attachments remain attached to their parent document.
- 45 If you are producing hard copy or electronic records using an e-discovery or litigation support system, please provide the embedded or attached files as separate documents, with a parent and attachment relationship. The native file of the parent document should retain the embedded or attached file: see paragraphs 76 – 77 and 81 – 85.
- 46 For more information about parent and attachment documents generally, see paragraphs 81 – 85.

## Duplicates and De-duplication

- 47 It is our preference that all records be produced with duplicates. Accordingly, the Record Request will typically require you to produce duplicates.
- 48 If the Record Request does not require you to produce duplicates, we strongly encourage you to preserve the duplicate document(s) and metadata, as a subsequent Record Request may require you to produce these duplicates.
- 49 For the reasons set out in paragraph 18, please discuss with Staff prior to using file de-duplication methodologies such as keywords, concept searches or *technology-assisted review* (**TAR**) during the processing of documents.
- 50 If your production will be de-duplicated it is vital that you:
- (a) preserve any unique metadata associated with the duplicate files, for example, custodian name and file location,
  - (b) make that unique metadata part of your production to Staff, and
  - (c) carry out the process of identifying duplicate documents using an industry-approved hashing algorithm at the document-group level. This means that you should only treat all documents within a group (e.g. a parent document and its attachments) as duplicates if the entire group of documents is duplicated elsewhere. A standalone document should only be de-duplicated against other standalone documents.
- 51 If producing electronic records using an e-discovery or litigation support system, please:
- (a) provide metadata that records the Path Name of the removed duplicate documents. This should be provided in the Duplicate Path field against the produced document; and
  - (b) where applicable, provide other unique metadata associated with the duplicate documents (e.g., custodian).

## Metadata

- 52 Where you produce electronic records to Staff in accordance with these guidelines, including when using an e-discovery or litigation support system:
- (a) Caution should be taken during data collection to avoid inadvertently changing metadata. For example, copying a file results in the alteration of the "Created Date" of the new copy which will reflect the time that the file was copied, rather than the original time when the file was created or amended thereafter. For this reason, Staff recommend that you "containerize" files prior to collection. This is done by putting data into a container, such as a ZIP file or a PST, which prevents alterations of any kind to the metadata. Please contact Staff if you have any questions related to file containerization.

- (b) We acknowledge that metadata will change in certain circumstances, for example, where documents are converted into different formats or redactions are applied to a document.
- (c) Staff will typically request reproduction of documents for which metadata (i) has been or appears to have been altered, or (ii) is or appears to be missing.

53 For additional guidance on production of metadata please refer to:

- (a) Section D. Guidance on file formats and producing electronic records;
- (b) Section E. Additional Guidance for e-Discovery or Litigation Support Systems.

### **Time Zones**

54 Staff prefer to receive electronic records in Eastern Standard Time (EST). If you are providing records from a different time zone, please identify the time zone. If you are producing records by way of a load file, Staff ask that you produce the load file with an additional field named "Time Zone", identifying the time zone in which the document is being prepared for production to Staff. Please refer to Appendix B – Export Fields for further guidance.

### **Password Protected and Encrypted files**

55 We ask that you produce electronic records to Staff in a format our systems can access, process, read and analyse: see paragraph 10. This includes password protected and encrypted files.

56 If you are producing records in their original native file format, please provide the password for each password protected or encrypted record as part of your production.

57 Please provide passwords for protected media separately either via email or in a cover letter apart from the media.

58 If you are producing records using an e-discovery or litigation support system, please remove document level protection before producing them to Staff. If you are unable to remove this protection, you will be asked to provide Staff with all necessary passwords to decrypt the data.

## D. Guidance on file formats and producing electronic records

### Key points

This section sets out how we ask you to produce records stored in various formats.

If these records are kept in proprietary or tailored software format, or if the records are not stored in a format set out below, we ask you to discuss with us alternative production methods and formats for those records.

### File formats

- 59 Our systems may not be able to access some electronic records in their original native file format. Electronic records kept in an industry-specific system or rendered in a proprietary or tailored software format present a particular risk of this. If the Record Request requires you to produce records stored or rendered in one of these systems or formats, we encourage you to contact us (prior to producing these records) to discuss alternative production methods and formats for those records.

Note: As set out in paragraph 10, we request that electronic records be produced in a format our systems can access, process, read and analyse.

### Email and Chat Formats

- 60 Please produce Outlook emails:
- (a) in MSG format if the email is being produced as a single record at an individual custodian level; and
  - (b) in PST containers if the emails are being produced as a collection of multiple records belonging to either a single custodian or multiple custodians.

If other formats are produced, for example MHT, Staff ask that the associated metadata be provided. If Staff believe that metadata may be missing or altered, Staff may ask you to reproduce the record in question as set out in paragraph 52.

- 61 Please produce Lotus Notes emails:
- (a) in EML format if the email is being produced as a single record at an individual custodian level; and
  - (b) in NSF containers if the emails are being produced as a collection of multiple records belonging to either a single custodian or multiple custodians.

- 62 Before producing email formats other than PST or NSF, or before producing chat formats, parties should reach out to Staff to discuss a production format that is appropriate for our systems to access, process, read and analyse.

### **Text Messages**

- 63 If you are required by the Record Request to produce text messages, you will usually need to produce the metadata associated with those text messages. The Record Request will set this out. Please produce this metadata in a structured format. You should discuss preferred structured formats with Staff before producing the text messages.
- 64 For text messages, you will usually need to provide the following metadata (assuming it exists):
- (a) the date and time the message was sent;
  - (b) the time zone the message was sent from;
  - (c) the telephone number from which the message was sent;
  - (d) the telephone number or numbers to which the message was sent; and
  - (e) the filename of the message.

### **Audio Files and Recordings of Conversations**

- 65 The Record Request may require you to produce audio files. These files should be in a format playable using Microsoft Windows Media Player or VLC Media Player. If not, please contact the Staff named in the Record Request to discuss how to produce them in a format capable of being accessed by our systems.

Note: As set out in paragraph 10 we request that electronic records be produced in a format our systems can access, process, read and analyse.

- 66 If recordings of conversations are stored as electronic records with associated metadata, you will usually need to produce the metadata associated with the recordings. This will be set out in the Record Request. Please produce the metadata for the recordings:
- (a) in their original native file format; or
  - (b) in a structured format agreed to in advance with Staff, along with the recordings.



- 67 For recordings of conversations, you will usually need to provide the following metadata (assuming it exists):
- (a) the time and date the conversation was conducted. If the conversation starts on one day and finishes on another, the date is the date the conversation started;
  - (b) the time zone the conversation was conducted from;
  - (c) the length of the conversation;
  - (d) the name and telephone number of the person who made the call;
  - (e) the name and telephone number of the person who received the call;
  - (f) if the call was made using a teleconferencing service, the names and numbers of the teleconference service and all telephone numbers that were involved in the teleconference; and
  - (g) the filename of the recording of the conversation.

## Video files

- 68 The Record Request may require you to produce video files. These files should be in a format playable using Microsoft Windows Media Player or VLC Media Player. If not, you should contact Staff to discuss how to produce them in a format capable of being accessed by the OSC's systems.

Note: As set out in paragraph 10 we request that electronic records be produced in a format our systems can access, process, read and analyse.

## Electronic Trade and Bank Records

- 69 When producing electronic trade records, bank records, or financial statements, please provide the file in one of the following formats:
- (a) MS Excel spreadsheet with header information detailing the field structure. If any special codes exist in the dataset, we ask that you provide a separate document that details all such codes. If details of the field structure do not fit in the header, we ask that you provide a separate document that includes such details.
  - (b) Delimited text file with header information detailing the field structure. The preferred delimiter is a vertical bar "|". If any special codes exist in the dataset, we ask that you provide a separate document that details all such codes. If details of the field structure do not fit in the header, we ask that you provide a separate document that includes these details.

Note: As set out in paragraph 10 we request that electronic records be produced in a format our systems can access, process, read and analyse .

## Audit Working Papers

- 70 When producing audit working papers, please produce using one of the following formats:
- (a) native format; or
  - (b) if proprietary software was used to prepare a database(s) containing the audit working papers, please provide the database(s) either in whole or in part via virtual image e.g. VMDK, VHD, ISO, IMG.

Note: As set out in paragraph 10 we request that electronic records be provided in a format our systems can access, process, read and analyse .

## Databases

- 71 The Record Request may require you to produce records containing information that is stored in a database. To comply with the Record Request strictly, you may need to produce the entire database. However, we may accept an extract from the database, rather than the whole database.
- 72 The OSC's preferred method for receiving a database either in whole or in part is via a virtual image of the database e.g., VMDK, VHD, ISO, IMG.
- 73 If production of databases as specified above is not possible, please contact the Staff named in the Record Request to discuss how to produce these databases.

## Document or content management systems

- 74 When electronic records are extracted from a document management system or content management system, or any other type of electronic system (other than e-discovery or litigation support systems mentioned in Section E. Additional Guidance for e-Discovery or Litigation Support Systems, we expect you to also produce all metadata relevant to the records.

## CSV and XLSX File Formats

- 75 The Record Request may require you to produce CSV files in XLSX format. If this is Staff's preference, the Record Request will say so. If production in XLSX format is not possible, please contact the Staff named in the Record Request to discuss how to produce these records.

## E. Additional Guidance for e-Discovery or Litigation Support Systems

### Key points

In addition to the sections above dealing with production of electronic records, this section sets out further guidance on how we ask you to produce records from an e-discovery or litigation support system.

This section is drafted for people who work with e-discovery or litigation support systems and is, necessarily, technical in nature.

### Electronic records

- 76 When producing electronic records using an e-discovery or litigation support system, please produce each record:
- (a) in the original native file format for example: .msg, .docx, .xlsx, etc. Records subject to the assertion of privilege are an exception (see paragraphs 87 – 91); or
  - (b) where a native file format cannot be produced, Staff’s preference is to receive either a PDF or a single page TIF rendering of the native file. Please refer to Appendix C – Image and Extracted Text Files for further guidance.
- 77 When producing records using an e-discovery or litigation support system, please:
- (a) account for custodians in the custodian field;
  - (b) process electronic files to extract attachments to emails and embedded files. Produce the extracted file as an individual document and treat it as an attachment;
  - (c) fully extract the contents of container files (such as ZIP files) and produce them as separate documents. Do not produce the container file itself. If you are not able to extract the contents due to a technical issue, produce the container file with its contents in place;
  - (d) remove any password protection or encryption on the records before producing them to Staff. If you are unable to remove the password protection or encryption, Staff will ask you to provide them with all necessary passwords to decrypt the data;
  - (e) do not produce logos and email footers as individual attachments;
  - (f) where practicable, directly render all electronic files to PDF files that comply with the requirements set out in paragraphs 97 – 99.

- 78 If the electronic format in which a record is stored is in colour, please produce the record in colour.

### **Native file specifications**

- 79 Please produce one file for each document in its original native file format.
- 80 If you cannot provide the file in its original native format, provide it:
- (a) in a near-native format, as agreed with Staff; and
  - (b) with the metadata of the original document.

### **Parent and attachment documents (document groups)**

- 81 A document is a 'parent' where it has one or more documents attached to it.
- Note: A container file (e.g., a ZIP file) is not a 'parent' for the purposes of this protocol.
- 82 A document is an 'attachment' where it is embedded within or attached to another document. Insert the document ID of the parent in the Parent Document ID reference field of the attachment.
- 83 A group of two or more documents that bear parent and/or attachment relationships to other documents in the group (e.g., email and attachments, embedded files) are a 'document group'.
- Note: A 'document group' may also be called a 'document family' in the Record Request.
- 84 The Record Request will typically set out that if a document that must be produced is part of a document group, you must produce the entire document group. If this is not required, the Record Request will say so.
- 85 We ask that you produce document groups together, with the attachment(s) following the parent. Insert the document ID of the parent in the Group Identifier field for both the parent and attachment documents.

### **Providing document metadata**

- 86 Provide document metadata in a .dat file named 'export.dat' in accordance with the guidance provided in Appendix B – Export Fields and Appendix C – Image and Extracted Text Files. Also see the guidance on metadata in paragraphs 52 - 53.

## Records subject to the assertion of privilege

- 87 If part of a record is subject to an assertion of privilege, convert the record to PDF in accordance with paragraphs 97 – 99 and apply redactions over the content over which privilege is being asserted (see paragraphs 21 - 22 and Appendix D – Redactions). Do not provide the original native file. The filename of the placeholder PDF should be the document ID only.
- 88 You do not need to produce records that you are asserting are wholly privileged and that are *not part* of a document group containing documents captured by the Record Request (see Section B. Privilege for additional guidance).
- 89 If you are asserting that a record is wholly privileged and *is part* of a document group containing records that are captured by the Record Request, you are expected to produce a placeholder for this record as part of the document group. Specifically, replace the record with a placeholder indicating that you are asserting that the record is wholly privileged. Do not provide the original native file. The filename of the placeholder PDF should be the document ID only. (Also see Section B. Privilege for additional guidance.)
- 90 If a parent document contains attachment(s) that you are asserting are partly or wholly privileged, you do not need to produce the original native file of the parent document. Provide a PDF following the protocol in paragraphs 97 – 99 in its place.
- 91 We ask that you provide sufficient details to support your privilege assertion(s). The production guidance outlined at paragraphs 87 – 90 does not affect this obligation.

## F. How to Produce Hard Copy Records

### Key points

This section sets out how we ask you to produce hard copy records.

We usually prefer hard copy records to be scanned and produced in electronic format (see Section G. How to Produce Scanned Copies of Hard Copy Records). However, in rare circumstances, a Record Request may require the production of original hard copy records.

- 92 The Record Request may, in rare circumstances, require you to produce your original hard copy records. If you are required to produce original hard copy records, the Record Request will say so.
- 93 Original hard copy records must be produced as they are and without any modification. (Note: Organization of hard copy records is not considered modification and is encouraged if it assists our review of the records e.g., putting documents in folders, labelling documents, bundling loose papers with a staple or paperclip if those documents belong together, etc.).
- 94 When you produce hard copy records please:
- (a) ensure we are able to determine how these originals are stapled or clipped;
  - (b) ensure that any note or flag on a page remains in its original location;
  - (c) maintain the order of the pages; and
  - (d) describe where these records were kept or stored prior to production to Staff (e.g., location of the records), and who is the custodian of the record (e.g., who controlled or had access to this record).

## G. How to Produce Scanned Copies of Hard Copy Records

### Key points

This section sets out how we ask you to produce electronically scanned copies of hard copy records which we typically prefer over producing original hard copies in paper format.

- 95 If we do not require the production of original hard copy records, we ask you to scan all hard copy records as PDF files. We ask that you follow the guidance set out in paragraphs 97 – 99 when producing these PDF files.
- 96 When you produce scanned copies, please:
- (a) ensure we are able to determine the way the originals are stapled or clipped in the copies;
  - (b) provide a copy of any page that has a note or flag and, where that note or flag obscures information recorded on the page, another copy of the page with the note or flag removed;
  - (c) maintain the order of the pages as in the original; and
  - (d) describe where these records were kept or stored prior to production to Staff (e.g., location of the records), and who is the custodian of the record (e.g., who controlled or had access to this record).

### PDF file specifications

- 97 When you create a PDF file—either by scanning a hard copy record or rendering an electronic record—we ask that the file is:
- (a) a multi-page PDF file (i.e., not one PDF file per page in the document); and
  - (b) text searchable.
- 98 When you scan hard copy records, we ask that the file:
- (a) is in colour only if colour is necessary to understand the content, if colour is required in the Record Request, or if colour is otherwise important to ensure we receive a “true copy” of the records; and
  - (b) has a minimum 300 dpi resolution.
- 99 Please only render electronic records in colour if the electronic format in which they are stored is in colour.

## Appendix A – Key Terms

Term	Meaning in this document
attachment	A document that is embedded within or attached to another document
Commodity Futures Act	<i>Commodity Futures Act</i> (Ontario)
copies	True, accurate and complete copies
correspondence	“Correspondence” includes letters, emails, text messages, instant messages, social media messages, mass marketing materials, or other similar items
custodian	Someone who has administrative control over, or has access to, a document or electronic file. For example, the custodian of an email is the owner of the mailbox that contains the message
document group	A group of documents that includes at least one parent and one child document.  Examples include: <ul style="list-style-type: none"> <li>• an email or other document type (the parent) and its attachments (the children); and</li> <li>• a document (the parent) that has an embedded document (the child)</li> </ul>
electronic records	Records stored in electronic format
hard copy records	Records stored in hard copy
metadata	Data that provides information about other data, including records
OSC	Ontario Securities Commission
parent	A document that has one or more documents attached to or embedded in it
Record Request	Examples include: <ul style="list-style-type: none"> <li>• a summons issued by the OSC under section 13 of the <i>Securities Act</i> (Ontario) or section 9 of the <i>Commodity Futures Act</i> (Ontario) exercising our</li> </ul>



Term	Meaning in this document
	<p>statutory power to compel the production of records;</p> <ul style="list-style-type: none"> <li>• a direction issued by the OSC under section 19 of the <i>Securities Act</i> (Ontario) or section 14 of the <i>Commodity Futures Act</i> (Ontario) exercising our authority to require market participants to provide books, records and other documents; or</li> <li>• a request for voluntary production of records.</li> </ul>
records or documents	<p>“records” or “documents” includes books, records, correspondence, documents and any other things, including electronic records and hard copy records.</p> <p>Note: In this guidance the terms "records" and "documents" are used interchangeably. You should assume therefore, that both terms carry the same meaning. These terms have been used interchangeably, where necessary, in accordance with standard industry usage of both terms, in records and information management and e-Discovery practice.</p>
Securities Act	<i>Securities Act</i> (Ontario)

## Appendix B – Export Fields

Field name	Description
Document ID	The unique identifier of the document.
Parent Document ID	Document ID of the immediate parent document. This field is only available on child items. This field has a minimum length of 50 alpha-numeric characters.
Attachment Document IDs	Attachment document IDs of all child items in a family group, delimited by semicolon, only present on parent items.
Group Identifier	Group the file belongs to (used to identify the group). (e.x. OSC0000001)
Docdate	<p>Dates in the format 'MM/DD/YYYY', where:</p> <ul style="list-style-type: none"> <li>• 'MM' equals the month;</li> <li>• 'DD' equals the day; and</li> <li>• 'YYYY' equals the year.</li> </ul> <p>For example, 26 March 2017 would be represented as '03/26/2017'. If the document is undated, leave this field blank.</p> <p><i>Hard copy records</i> Manually record the document date from the face of the document.</p> <p><i>Electronic records</i> The document date for:</p> <ul style="list-style-type: none"> <li>• sent emails is the sent date;</li> <li>• unsent emails is the last saved date;</li> <li>• email attachments and other electronic files is the last modified date of the file</li> </ul>
Doctype	<p><i>Hard copy records:</i> Manually record the document type from the face of the document.</p> <p><i>Electronic records:</i> Record the document type or generically describe it (e.g., 'email', 'attachment' or 'electronic file').</p>

Field name	Description
Title	<p>The title, Re: or subject line.</p> <p><i>Hard copy records</i> Manually record the document title from the face of the document. Where there is no legible title on the face of the document, leave the title field blank.</p> <p><i>Emails and other electronic files</i> The document title for:</p> <ul style="list-style-type: none"> <li>• emails is the text in the subject metadata field; and</li> <li>• other electronic files is the filename of the original file.</li> </ul> <p><i>Reuters and Bloomberg chat systems:</i> For each chat, use the subject line of the chat.</p>
Privileged	<p>This field identifies whether an assertion of privilege is made over all or part of the record.</p> <p>The values are 'Yes', 'No' or 'Partially Privileged'</p>
Redacted	<p>This field identifies whether a document has been redacted. Where applicable, the value is 'Yes'.</p>
Custodian	<p><i>Emails and other electronic files:</i></p> <ul style="list-style-type: none"> <li>• For emails and other electronic files, the parties' information should be in the format as extracted from the document metadata.</li> <li>• Mailbox(es) where the email, including any duplicates, resided.</li> </ul> <p><i>Native file (non-email)</i> Names of the individuals or departments from whose files the document, including any duplicates, originated (where available).</p> <p><i>Scanned copies of hard copy records</i> You should code the parties' information from the face of the document in the format 'Last Name, First Name' or 'Last Name, Initial'.</p>

Field name	Description
	<i>Bloomberg and Reuters chat systems</i> The name of every person who either created or received the chat. Please contact Staff if you require clarification or further guidance.
Client Name	Identifies the name of the client (where financial advisers are producing client files).  Please code the information in the format 'Last Name, First Name'. For example, 'Smith, John'.
Placeholder	If an electronic file is provided with a placeholder PDF, this value is 'Yes'.
Record Request section	The section(s) or subsection(s) of the Record Request that the document is responding to.
Type	The values are 'Hardcopy' or 'Electronic'.
Path Name	Either the original file path of the native file (including filename and extension) or the file path prior to processing.
Duplicate Path	The Path Name of all duplicates removed from the collection in accordance with paragraphs 50 - 51 of this guidance.
File Name	For all electronic files, the original filename (including extension).
MD5 Hash	Identifying value of an electronic record that can be used for deduplication and authentication generated using the MD5 hash algorithm. (e.g., 21A74B494A1BFC2FE217CC274980E915)
Time Zone	Please specify the time zone for each record produced (EST is the preferred time zone).
Sent Date	The date on which an email message was sent. (e.g., 12/24/2015)
Sent Time	The time at which an email message was sent. (e.g., 11:59 PM)

<b>Field name</b>	<b>Description</b>
Created Date	The date on which a file was created. (e.g., 12/24/2015)
Created Time	The time at which a file was created. (e.g., 11:59 PM)
Last Modified Date	The date on which changes to a file were last saved. (e.g., '12/24/2015')
Last Modified Time	The time at which changes to a file were last saved. (e.g., 11:59 PM)
From	Email From
To	Email To delimited with a ; (Semi-colon) separating email addresses
CC	Email CC delimited with a ; (Semi-colon) separating email addresses
BCC	Email BCC delimited with a ; (Semi-colon) separating email addresses
Subject	Subject line of the email
Native File	The path to the native file
Extracted Text	The path to the text file containing extracted text

## Appendix C – Image and Extracted Text Files

The following guidance is provided to help you produce electronic records that are in a format that our e-Discovery tool can access, process, read and analyse. Our current e-Discovery tool is Relativity.

For image imports, our e-Discovery tool requires Opticon load files with ANSI/Western European encoding. This .opt text file references the Control ID on a page level. The first page should match up to any data you intend to load. You can use this same process for importing page-level extracted text.

Our e-Discovery tool does not support Unicode .opt files for image imports. When you have a Unicode .opt file, we ask you to resave this file in ANSI/Western European encoding.

We also ask you to convert images in unsupported formats using a third-party conversion tool so that our e-Discovery tool can successfully upload these images.

### Image file formats

Our e-Discovery tool accepts the following file types for image loads:

- Single page, Group IV TIFs (1 bit, B&W)
- Single page JPGs
- Multi page TIFs and PDFs can be imported into the system, but they need to be loaded as native files.

### Load file format

The Opticon load file is a page level load file, with each line representing one image.

Below is a sample:

```
REL00001,REL01,D:\IMAGES\001\REL00001.TIF,Y,,,3
REL00002,REL01,D:\IMAGES\001\REL00002.TIF,,,,
REL00003,REL01,D:\IMAGES\001\REL00003.TIF,,,,
REL00004,REL01,D:\IMAGES\001\REL00004.TIF,Y,,,3
REL00005,REL01,D:\IMAGES\001\REL00005.TIF,,,,
```

The fields are, from left to right:

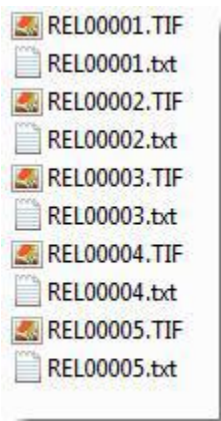
- Field One – (REL00001) – the page identifier
- Field Two – (REL01) – the volume identifier. The volume identifier is not required. However, if the volume identifier is not used, the software requires you to include a space in each line of the load file for this field as illustrated below:
  - REL00001, ,D:\IMAGES\001\REL00001.TIF,Y,,,3
  - REL00002, ,D:\IMAGES\001\REL00002.TIF,,,,

- Field Three – (D:\IMAGES\001\REL00001.TIF) – a path to the image to be loaded
- Field Four – (Y) – Document marker – a “Y” indicates the start of a unique document.
- Field Five – (blank) – can be used to indicate box
- Field Six – (blank) – can be used to indicate folder
- Field Seven – (3) – often used to store page count, but not used in Relativity

### Importing extracted text during an image load

You can also import extracted text during the image import process by setting an option in the Relativity Desktop Client. For more information about importing extracted text during an image load, please refer to the Relativity Administrator Guide or contact Staff.

No changes are needed in the Opticon load file. If the aforementioned setting is active, our e-Discovery tool looks for page level txt files named identical to their corresponding TIFs. For example:



### Processed data

Some data originates from client files and needs processing to extract the metadata. The following table shows the delimiters that your internal processing software will need to use to present data as fields.





## Appendix D – Redactions

This appendix deals with documents that contain redactions. Redactions that are properly applied ensure that Staff cannot see, access, or search the redacted text or other information in the underlying document. Since properly applying redactions can be difficult, the guidance in this appendix is intended to help you avoid some common redaction-related pitfalls. You may contact Staff if you have any questions about redacting documents.

### Common Errors Made When Redacting Documents

A common error in redacting text or other information is to use an out-of-date or otherwise ineffective redaction method. Below is a non-exhaustive list of examples that do **NOT** result in redacted text or information, accordingly, **DO NOT** use any of the following methods:

1. **Blacking out with comment tools**

*Rationale:* Edits made by graphic and "commenting" tools which can black-out, cover over or remove sections of text, can still be highlighted to reveal the underlying text.

2. **Deleting**

*Rationale:* Word-processing programs (e.g., Microsoft Word) retain embedded and hidden code called "metadata" containing revision history and other information. Metadata can reveal anything that was contained in a file at any time including text that was previously deleted or changed. Metadata can also reveal anything contained in a file that has been re-saved under a new name. Metadata is useful for tracking revisions, but if it is not purged from the document, anyone can view deleted information, even after the document has been converted to a PDF. (Recall that responses to Record Requests usually require the production of metadata, however, when producing redacted documents, we acknowledge that the metadata may be altered.)

3. **Covering text with black marker, tape, or paper**

*Rationale:* A scanned document redacted in this manner may still provide enough image detail to enable Staff to see what was assumed to be hidden. This method should be avoided, especially if that same data repeats itself several times across a document.

4. **Changing the font to white**

Turning the text font to white appears to make the words that you wish to redact disappear, but this is not the case. Specifically, the white font text can be made visible if the sentence is highlighted.



## Contact Information

If you have questions or comments about this Guidance, please contact:

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