

*The Sedona Conference  
Commentary on Defense of Process:  
Principles and Guidelines for Developing and  
Implementing a Sound E-Discovery Process  
(September 2016 Public Comment Version)*

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This *Commentary* represents the culmination of five years of spirited dialogue within The Sedona Conference's Working Group 1 on a number of sensitive topics that go to the heart of what it means to be a competent advocate and officer of the court in an age of increasing technological complexity. It addresses the tension between the principle of party-controlled discovery and the need for accountability in the discovery process by establishing a series of reasonable expectations, and by providing practical guidance to meet these competing interests. The overriding goal of the principles and guidelines set forth in this *Commentary* is to reduce the cost and burden typically associated with modern discovery by helping litigants prepare for—or better yet, avoid altogether—challenges to their chosen discovery processes, and by providing guidance to the courts in the (ideally) rare instances in which they are called upon to examine a party's discovery conduct. Public input on this *Commentary* is encouraged, and comments will be accepted at [comments@sedonaconference.org](mailto:comments@sedonaconference.org) through November 28, 2016.

The Commentary presents extensive analysis of the following 13 Sedona Principles for Defense of Process:

- Principle 1** An e-discovery process is not required to be perfect, or even the best available, but it should be reasonable under the circumstances. When evaluating the reasonableness of an e-discovery process, parties and the court should consider issues of proportionality, including the benefits and burdens of a particular process.
- Principle 2** An e-discovery process should be developed and implemented by a responding party after reasonable due diligence, including consultation with persons with subject-matter expertise, and technical knowledge and competence.
- Principle 3** Responding parties are best situated to evaluate and select the procedures, methodologies, and technologies for their e-discovery process.
- Principle 4** Parties may reduce or eliminate the likelihood of formal discovery or expensive and time-consuming motion practice about an e-discovery process by conferring and exchanging non-privileged information about that process.

- Principle 5** When developing and implementing an e-discovery process, a responding party should consider how it would demonstrate the reasonableness of its process if required to do so. Documentation of significant decisions made during e-discovery may be helpful in demonstrating that the process was reasonable.
- Principle 6** An e-discovery process should include reasonable validation.
- Principle 7** A reasonable e-discovery process may use search terms and other culling methods to remove ESI that is duplicative, cumulative, or not reasonably likely to contain information within the scope of discovery.
- Principle 8** A review process can be reasonable even if it does not include manual review of all potentially responsive ESI.
- Principle 9** Technology-assisted review should be held to the same standard of reasonableness as any other e-discovery process.
- Principle 10** A party may use any reasonable process, including a technology-assisted process, to identify and withhold privileged or otherwise protected information. A party should not be required to use any process that does not adequately protect its rights to withhold privileged or otherwise protected information from production.
- Principle 11** Whenever possible, a dispute about an e-discovery process should be timely resolved through informal mechanisms, such as mediation between the parties and conferences with the court, rather than through formal motion practice and hearings.
- Principle 12** A party should not be required to provide discovery about its e-discovery process without good cause.
- Principle 13** The court should not decide a motion regarding the adequacy of an e-discovery process without a sufficient factual record. In many instances, such a motion may not be ripe for de-termination before there has been substantial or complete production.

The full text of *The Sedona Conference Commentary on Defense of Process: Principles and Guidelines for Developing and Implementing a Sound E-Discovery Process*, September 2016 Public Comment Version, is available free for individual download from The Sedona Conference website at [https://thesedonaconference.org/publication/Commentary\\_on\\_Defense\\_of\\_Process](https://thesedonaconference.org/publication/Commentary_on_Defense_of_Process).

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