Redaction: What Do I Need to Know?

What is Redaction

While the term *redaction* is well known in the legal community and government agencies, the term itself is new to those not in the fields mentioned above. Because of improper redaction making its way into the headlines, more and more people are seeing the term. In the past you would print the file and then manually redact it with a thick black marker. Lay people may have been redacting without even knowing what is was called to redact a file.

Redacting a file, whether that file is in paper or electronic form, is intended to permanently obfuscate private, sensitive, privileged, classified, or other types of content. The reasons for redacting a file may be eDiscovery, or the need to make a file public. Even the prisons oftentimes redact inmate correspondence: Although there has been much argument as to the constitutionality of that.

The operative word here is 'permanent'. Any type of redaction method that can eventually lead to the discovery of the underlying text is not redaction at all. For that reason, and *in the event a document is required at a later date, always redact a <u>copy</u> of the document in question*.

Improper Redaction

Regrettably, too many users believe they are permanently redacting a file – and find out too late the content was discovered. This can lead to sanctions, malpractice, and embarrassing to devastating publicity.

Paper documents: Drag a black permanent marker across the content. If you hold it up to the light, can you still see the text? Surprisingly often you can. Be sure to make a copy of that redacted paper file to eliminate the chance of the content still being visible.

Electronically Stored Information (ESI): This usually involves applying direct formatting to the content or covering the data with a black Drawing box. Shading, highlighting, or drawing boxes over the text has lulled many people into a false sense of security - when in reality, all of the above mentioned techniques can be removed. Unless you are using a PDF redaction tool, this applies to your PDF files converted from Microsoft Word, Excel, or other file types.

If you are not sure, simply copy the redacted text and paste it into a text editor such as Microsoft Notepad. If the text is there and the formatting is not – don't release that file just yet.

What Format to Produce

Before you begin redacting you need to know what format the file needs to be produced in. As in FRCP Rule 26, both parties have a duty to discuss and agree at the onset what the format redacted documents need to be produced in. This includes text searchable formats.

At the recent LegalTech NY in February 2014 during the Judges Panel Session, part of the discussion was devoted to the need to have native application production instead of converting the file to a picture or

object. This was especially true for Excel spreadsheets that contain formulas and evidentiary information that could be used in discovery.

If the determination is that files need to be produced in their native format, you'll need to find a reliable tool that redacts in the native application.

A few of the pros for native redaction are: 1) documents appear just as they were created; 2) formulas remain visible; 3) native metadata remains intact; 4) native file review can reduce time and costs as opposed to the conversion of the files to another format.

As for the cons, those may be: 1) native files may need to be viewed in an application version that not all parties have available; 2) the metadata in a native file can be altered simply by opening, saving and closing the file; 3) virus corrupted files may lead to the need of a cleaning utility, thus removing metadata; 4) encrypted files will require that sensitive passwords be made available.

Conclusion

If you are not employing the services of a professional eDiscovery company, be sure to double and triple check your documents prior to release. Remember the old adage: 'Measure twice, cut once.' Depending on how you've been instructed to produce, or how you've agreed to produce - you may need to also remove metadata. The removal of metadata will alter the content of the file, particularly if Track Changes, Hidden Text, Author, Editing Time, Revision Count and more are present in the original document.

Understanding of the general considerations with respect to file production, current case law, as well as the particulars of the case at hand are vital to create an effective and reasonable approach to managing electronic and paper discovery.