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Directive No: CIO 2159.2

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*Issued by the EPA Chief Information Officer,  
Pursuant to Delegation 1-19*

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## Discovery Services Policy

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### 1. PURPOSE

This policy establishes a standard approach for the Environmental Protection Agency's (EPA) centralized Discovery Services Program (Discovery Services) operated by the eDiscovery Division (EDD) in the Office of Records, Administrative Systems and eDiscovery (ORASE), within the Office of Mission Support (OMS). The primary purpose of this policy is to establish principles for the use of EPA's Discovery Services. This will help ensure that Discovery Services is accessible and consistently used across the EPA.

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### 2. SCOPE

This policy applies to the use and operation of EPA's Discovery Services, including the searching, collecting, processing and producing of electronically stored information (ESI) from EPA computer systems. Discovery Services supports the Agency's Program and Regional Offices in responding to litigation, Freedom of Information Act (FOIA) requests, congressional inquiries and other formal requests for Agency electronic information.

Discovery Services was established to meet the Agency's increasing legal, technical and organizational demands for eDiscovery. eDiscovery is not a single action; rather, it is a process of identifying, collecting, processing, searching, reviewing and producing ESI that may be relevant in litigation. At EPA, eDiscovery is used for more than litigation; eDiscovery, performed by the Agency's Discovery Services, also assists the Agency in responding to FOIA requests, congressional inquiries and other formal requests for electronic information.

The process of discovery in legal matters is not new; similarly, the process of responding to FOIA requests or congressional inquiries is not new. However, these processes are no longer based on the delivery of only paper documents. The use of information technology, including email, and the attendant explosive growth in the volume, diversity, and breadth of ESI held by the Agency, has fundamentally transformed the manner in which EPA must respond to these requests.

It is against this background that EPA's Discovery Services was established to address the challenges associated with identifying, collecting, processing, reviewing and producing ESI. Discovery Services provides a centralized service to support the Agency's Program and Regional Offices in responding to litigation, FOIA requests, congressional inquiries

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and other formal requests for Agency electronic information in an efficient, standardized and defensible manner.

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### 3. AUDIENCE

This policy applies to all EPA organizations, employees, contractors and grantees with user and email accounts on EPA networks.

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### 4. AUTHORITY

#### *Statutes*

- 40 U.S.C. Chapter 25 - Information Technology Management (Clinger-Cohen Act of 1996, also known as the Information Technology Management Reform Act of 1996)
- 44 U.S.C.
  - Chapter 31 - Records Management by Federal Agencies (Federal Records Act)
  - Chapter 33 - Disposal of Records
  - Chapter 35 - Coordination of Federal Information Policy (Paperwork Reduction Act of 1980, as amended, Paperwork Reduction Reauthorization Act of 1995, and Government Paperwork Elimination Act)
- 5 U.S.C. § 552 – Freedom of Information Act (as amended)
- 5a U.S.C. Inspector General Act of 1978 (as amended)

#### *Rules*

- [Federal Rules of Civil Procedure](#)
- [Federal Rules of Criminal Procedure](#)
- [Federal Rules of Appellate Procedure](#)

#### *Guidance*

- [OMB Circular A-123 - "Management's Responsibility for Enterprise Risk Management and Internal Control" \(2016\).](#)
  - [OMB Circular A-130- "Managing Information as a Strategic Resource" \(2016\).](#)
  - [EPA Records Schedules.](#)
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## **5. POLICY**

Whenever possible and appropriate, it is EPA policy that a centralized search and collection be performed by Discovery Services to support the Agency's response to litigation, FOIA requests, congressional inquiries and other formal requests for Agency electronic information.

Search Points of Contact (SPOCs) in EPA's Program and Regional Offices are responsible for initiating requests for Discovery Services. Requests should appropriately identify the scope of the intended collection which will be determined, in part, by the type of request (e.g., litigation, FOIA, congressional inquiries or other types of formal requests for Agency electronic information). All requests for Discovery Services should identify custodians, search parameters and locations of ESI to be collected.

Discovery Services is authorized to search and/or collect any ESI from any EPA-owned or controlled information technology system or repository for ESI. Discovery Services will perform the collecting, processing and producing of ESI using specialized tools and expertise in eDiscovery practices.

Discovery Services will deliver data in Relativity, the Agency's standard review platform, or will send collected and/or processed ESI to other Federal Agencies as required, such as the Department of Justice. Workspace Owners in EPA's Program and Regional Offices are responsible for the review of the ESI in their Relativity workspace.

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## **6. ROLES AND RESPONSIBILITIES**

The roles and responsibilities outlined in this section are limited to those directly related to this policy.

### **A. Chief Information Officer (CIO):**

- i. Responsible for EPA information management and information technology services

### **B. Director, OMS-ORASE:**

- i. Authorize strategic direction and scope of EPA's Discovery Services
- ii. Serve as champion for Discovery Services across EPA, advocating on behalf of Discovery Services to foster Agency support



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**C. Information Management Officers (IMOs) and Information Resources Management Branch Chiefs (IRM BCs):**

- i. Support staff and Senior Information Officials in their respective Program and Regional Offices in effectively implementing this policy

**D. OMS-ORASE-EDD:**

- i. Perform the collection, processing, and production of ESI to respond to search requests and support Agency information responses
- ii. Develop and deliver procedures, guidance and training related to Discovery Services, as well as provide technical assistance to Program and Regional Offices in implementing the requirements of this policy
- iii. Identify, implement, operate and maintain the eDiscovery software and hardware needed to support Discovery Services at EPA
- iv. Serve as a strategic advisor to Program and Regional Offices consulting on elements of the eDiscovery process
- v. eDiscovery Assistance Team (eDAT) – provide eDiscovery expertise to SPOCs regarding how they can use Discovery Services to optimize the efficiency and quality of their search requests; help SPOCs craft search terms and answer their initial questions regarding the eDiscovery lifecycle; and provide case management support from search request intake through workspace delivery
- vi. Relativity Support – deliver data to review teams in Relativity; provide support and training to Workspace Owners and other Relativity users regarding how they can use the Relativity review platform to effectively and efficiently meet their review needs

**E. Search Points of Contact (SPOCs):**

- i. Submit tailored search requests to Discovery Services on behalf of their respective offices for potentially responsive information related to litigation, FOIA requests, congressional inquiries or other formal requests for Agency electronic information
- ii. Work with the eDAT to craft tailored search parameters for search requests
- iii. Respond in a timely manner to PCAs, either granting approval for collection or amending search parameters
- iv. Attend relevant Discovery Services-led meetings and participate in training
- v. Serve as the eDiscovery champion for their respective offices and share applicable Discovery Services updates with their offices



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## **F. Senior Information Officials (SIOs):**

- i. Provide effective oversight, coordination and management of this policy and accompanying procedures, standards and guidance within their respective organizations

## **G. Workspace Owners:**

- i. Work with EDD to set up and manage workspace(s)
- ii. Select reviewers for the workspace and the associated permissions for each reviewer
- iii. Notify EDD when a workspace and associated ESI, that has been collected, processed, hosted or produced by EDD, may be deleted

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## **7. RELATED INFORMATION**

### *Policy*

- CIO Policy 2135.2, "Enterprise Data Management Policy (EDMP)"
- "Freedom of Information Act Policy"
- CIO Policy 2171.0, "Information Access Policy"
- CIO Policy 2155.5, "Records Management Policy"

### *Procedures, Standards and Guidance*

- CIO 2135-P-01.1 "Enterprise Information Management Policy (EIMP) Cataloging Information Procedure"
- CIO 2135-S-01.1 "Enterprise Information Management (EIM) Minimum Metadata Standards"
- CIO 2171-P-01, "Information Access Procedures"
- CIO 2122-P-03.1, "IT Infrastructure Standard Procedures"
- CIO 2155-P-07.1, "Preserving Agency Information of Separating Personnel"
- "Freedom of Information Act Procedures"

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## **8. DEFINITIONS**

**Collection:** The act of collecting copies of electronic documents (e.g., email and other ESI) without altering metadata in response to parameters using e-Discovery software, or the set of documents collected in response to those search parameters and search expressions. The collection process involves the extraction of potentially relevant ESI from its native source.



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**Custodians:** Personnel who have administrative control of a document or electronic file. In the eDiscovery process, a custodian is assigned to each ESI source that is collected. At EPA, custodians are considered EPA personnel, including contractors and/or grantees, who may currently have possession, control or custody of potentially responsive ESI within the EPA IT environment. In some instances, a custodian may be an entity, such as an organization.

**Discovery Services:** The centralized service to support the Agency's Program and Regional Offices in responding to litigation, FOIA requests, congressional inquiries and other formal requests for Agency electronic information.

**Electronic Discovery (eDiscovery):** The process of identifying, preserving, collecting, processing, searching, reviewing and producing Electronically Stored Information that may be relevant to a civil, criminal, or regulatory matter. At EPA, eDiscovery is used for more than litigation; eDiscovery assists the Agency in responding to FOIA requests, congressional inquiries and other formal requests for information or analysis.

**Electronically Stored Information (ESI):** Information created, manipulated, communicated, stored, or utilized in digital form, requiring the use of computer hardware and software (per Federal Rules of Civil Procedure, Rule 34). For purposes of this policy, "ESI" refers to data that have been collected, processed or loaded (hosted) into a review platform, or otherwise provided for review to the Agency employee who requested the collection.

**Metadata:** "Data about data." Information that identifies a document or file, such as creation date, last modified date, creator, file path and location, etc.

**Pre-Case Assessment (PCA):** An assessment provided by EDD to a SPOC outlining the search parameters that will be applied to his/her search and a pre-collection estimated number of items that will be collected. PCAs may not be issued in every collection scenario.

**Processing:** The act of preparing and extracting metadata from collected ESI. This usually involves the creation of a load file to transfer processed data to a document review platform for further analysis.

**Production:** The act of delivering ESI to others in appropriate forms and using appropriate delivery mechanisms.

**Relativity:** The standard EPA Discovery Services review platform.



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**Review:** The act of evaluating processed ESI in a document review platform for relevance, responsiveness, disposition and privilege. This could involve advanced analytics including email threading and/or textual near duplicate identification. At EPA, Discovery Services can facilitate review activities, but does not perform the reviews.

**Search:** The act of using eDiscovery tools to identify ESI that is potentially responsive to an information request. This activity is distinguished from collection, defined above.

**Search Parameters:** Criteria used to narrow search results. Examples include date ranges, keyword searches, Boolean searches, which use search operators (e.g., AND, OR and NOT) to connect keywords, domain name searches, and other search techniques and methodologies.

**Search Points of Contact (SPOCs):** EPA personnel who are authorized to submit requests to Discovery Services on behalf of their respective organizations. SPOCs are required to have management approval before assuming the role.

**Search Requests:** Requests for use of Discovery Services' collection, processing, and/or delivery of ESI.

**Workspace:** In Relativity, a secure data repository for documents related to a matter (e.g., litigation, FOIA, congressional, etc.). A Relativity workspace provides an isolated environment where users can review documents, make responsiveness determinations, apply redactions and perform other functions.

**Workspace Owner:** EPA personnel who are designated to oversee parts of the setup and management of Relativity workspaces, as well as notify Discovery Services when the Relativity workspace and associated intermediary or transitory records may be deleted.

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## 9. WAIVERS

Waivers may be requested from the CIO by submitting a justification through the Director of the eDiscovery Division. All such departures from this policy must be documented with justification based on substantive business case need(s) and a demonstration of adequate controls that provide a suitable alternative to the mandated process. The CIO may grant a waiver for sufficient reasons, exercising judgment in the best interests of the Agency. The Director of the eDiscovery Division shall coordinate all waiver requests and maintain a central repository of all waivers.

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## **10. DIRECTIVE(S) SUPERSEDED**

This policy supersedes Discovery Services Policy (CIO Directive No.: CIO 2159.1).

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## **11. CONTACTS**

For additional information about this policy, please contact the Director of the eDiscovery Division within OMS-ORASE.

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***Vaughn Noga, Chief Information Officer and Deputy Assistant Administrator  
for Information Technology and Information Management***