State of New Mexico: eDiscovery Access and Use Policy Version 1.1 (4/2025)

PURPOSE:

The Department of Information Technology is onboarding agencies to the Premium eDiscovery services and tools available under the M365 G5 license. Premium eDiscovery adds significant capabilities to those currently available under Standard eDiscovery. Associated with those enhanced capabilities are enhanced risks relating to IPRA compliance, data governance, and privacy. Paramount among those risks is the possibility of inadvertent disclosure of privileged, encrypted, or confidential communications. Until G5 license data classification and sensitivity labels are implemented at both the tenant and agency levels, Premium eDiscovery users will have access to all agency data that resides in the M365 environment and DoIT managed government cloud. The access can include executive and attorney communications, HIPAA data, FERPA protected materials, work product, trade secrets, and other legally protected data. The Premium eDiscovery tool can also result in data duplication and proliferation that may complicate IPRA compliance. To mitigate these risks and challenges, agency access to Premium eDiscovery is subject to these policies.

USE AND ACCESS CONTROLS:

- To preserve attorney-client privilege, executive privilege and confidentiality, access to the eDiscovery tool shall be managed by the highest-ranking member of an agency legal team in collaboration with the agency leader. In most agencies these responsibilities will rest with the **general counsel and the cabinet secretary**. If your agency does not have a Gov X general counsel, an employed or contracted attorney designated by the agency leader shall manage eDiscovery access. Decisions concerning who is granted access, and at what level, are to be made by agency legal and leadership, in writing, and communicated to DoIT for implementation.

- To be granted access to the eDiscovery tool, a prospective user must complete all training mandated by DoIT and agency must agree to comply with this policy. On a form provided by DoIT, an agency shall maintain a running log showing who within the agency has, or has had, access to the tool and during what period of time. Agency legal shall direct DoIT to terminate a user's access within 24 hours of that user being separated from employment with the agency, change in position, or change in eDiscovery responsibilities. Agency legal may request termination of a user's access

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at any other time in the discretion of the agency. All authorized users of the tool must receive annual training within thirty (30) days of the user's training anniversary.

- To ensure continuity of services and proper legal oversight of the function, an agency shall have at least two fully trained users of eDiscovery, at least one of whom shall be an agency attorney or contract legal counsel for the agency. An agency who has fewer than two authorized users because a user separates from employment or otherwise becomes unavailable shall ensure that a replacement user is trained and onboarded as soon as practical, and in no case more than 30 days after the user level falls below two.

- DoIT shall maintain an agency-by-agency list of all authorized users of eDiscovery. To ensure that DoIT's list is up-to-date, an agency shall inform DoIT of any change in authorized users within 7 calendar days of the change. DoIT shall establish a self-serve process for agencies to provide the required user information.

- Agency shall provide every authorized eDiscovery user a copy of this Policy, and shall not request eDiscovery access for a user who has not confirmed acceptance of this policy in writing. Agency shall retain signed user acknowledgements for the period of time required by the State Records Act and associated rules.

- All use of the eDiscovery tool is under the direction and control of the agency eDiscovery attorney lead. All use of the eDiscovery tool is subject to the control of agency legal even if User is outside of the legal department. The agency eDiscovery attorney lead and each authorized user are jointly responsible for compliance with this policy.

- DoIT shall process eDiscovery access and termination requests as promptly as possible but shall not be responsible for any delay in access or termination. Upon request, DoIT shall confirm to agency user access status.

- At least annually, DoIT shall select a random number of agency access and use logs and compare entries to data logged within the tenant. Agency agrees to cooperate with any eDiscovery use/access verification conducted by DoIT to verify that only

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authorized users have used the platform, and consents to DoIT sharing user access findings with the Office of the Governor.

- Having the same person hold both eDiscovery system administration and use privileges could result in claims of data manipulation, improper access, or data loss. To avoid such risks and contentions, an agency shall segregate M365 system administration functions and eDiscovery application use. No member of an agency IT department with M365 system administration privileges shall be an authorized user, but may only hold permissions required for purposes of application administration and management. For purposes of this policy, identifying authorized users of eDiscovery, without the ability to grant or withdraw eDiscovery access within M365, is not considered a system administration function.

EXECUTIVE RECORDS:

If a search conducted using the eDiscovery tool generates responsive records from the exec.nm.gov domain, only an owner of the record, a person who is employed or contracted to perform legal services for the agency, or a custodian of records who is under direct supervision of the agency legal department, shall view the content of such records. If any such record appears to be responsive to an IPRA or discovery request and appears to contain information protected by executive privilege (e.g., policy formulation, strategic matters, sensitive topics, etc.), agency legal shall provide the Governor's Office of General Counsel access to the record for purposes of conducting an executive privilege review before any such record is produced in response to the request.

DUPLICATE RECORDS:

To minimize record duplication and proliferation, facilitate eDiscovery processes, and ensure compliance with data governance standards, agencies shall delete all collected records from within the eDiscovery platform no later than seven business days after the associated record production process is completed. An agency may export any collected records it wants to preserve into a SharePoint site.

IMPLEMENTATION:

After a prospective user completes required training, the attorney managing the eDiscovery function or the agency leader must submit a request to DoIT for eDiscovery access through this link: Premium eDiscovery Access Request Form. As part of the access request process, the managing attorney or agency leader shall certify that eDiscovery user will comply with this policy. DoIT will confirm access has been granted by e-mailing the authorized representative and the legal department lead.

Agencies are required to manage their eDiscovery risks by implementing the controls and adhering to the policies outlined above. Please direct any questions or concerns about these instructions to Heather Sandoval at heather.sandoval@doit.nm.gov