

Bobby Malhotra Discusses Navigating Privacy Regulations in eDiscovery with *Bloomberg Law*

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Winston & Strawn partner Bobby Malhotra spoke with *Bloomberg Law* to discuss the challenges discovery providers face in navigating an increasing number of privacy and data minimization considerations while managing overwhelming amounts of electronic evidence. Following a case against an eDiscovery vendor that resulted in a jury award for privacy violations during discovery, valuable lessons have emerged for service providers and litigators.

Litigators should approach eDiscovery with “a privacy lens,” said Bobby, who focuses on eDiscovery and data privacy issues. “Especially when handling sensitive information like Social Security numbers, financial account details, and health records,” he said.

With the plethora of electronic evidence including emails, text messages, audio recordings, and application data, parties are more frequently tempted to over-collect data during discovery. The Federal rules of Civil Procedure currently require parties to take “proportionality” into consideration when approaching discovery, weighing the time and expenses required against the value of the potential evidence, but the rules don’t yet explicitly reference privacy considerations.

“We have to balance the need for fulsome, comprehensive discovery against the desire of conducting a targeted collection to address privacy issues,” Bobby said. Technological limitations may also require broad collection of data from a mailbox or device, for example, “so it’s not always possible.”

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