



OECD International Academy for Tax and Financial Crime Investigation

Managing Financial Investigations



Filter Teams and Discovery

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What is a filter team?

- Designed to shield prosecution team from exposure to certain off-limits material
- Comprises lawyers, agents, or both
- No overlap with prosecution team
- Similar to a “Special Master,” though undertaken entirely by the government

What Are Some of the Benefits?

- Respects rights of defendants and third parties
- Minimizes suppression exposure
- Ensures compliance with applicable ethical obligations
- Demonstrates the government's good faith to the court

When Should You Use a Filter Team?

- Government takes possession of evidence that may include material protected by recognized common law or constitutional privilege
- Which privileges/rights?
 - Attorney-client communications (including joint defense agreements)
 - Spousal communications
 - compelled statements (U.S. Const., 5th Amendment)
 - Others: Priest-penitent, psychotherapist

When Should You Use a Filter Team?

- Search warrant productions
 - In particular, e-mail productions
- Subpoena Returns
- Wiretap interceptions
- Voluntary interviews
 - Make sure your investigative agents have the appropriate guidance

Some Best Practices

- Prosecution team should provide filter team with necessary facts about the investigation
 - Names/identifiers for known lawyers, spouses, etc.
- Keep communication one-way
- Keep reviewed material segregated if filter team concludes privilege applies
- Keep a good record of what the filter team reviews, what decisions are made, and what is produced to prosecution team
- Engage counsel for potential privilege holder (if possible)

Filter Team Discovery Issues

- Is the prosecution team responsible for material in the possession of the filter team?
 - Answer: YES
- Types of discoverable material held by the filter team:
 - Statement of a defendant and evidence that is material to the preparation of the defense
 - Material that impeaches witnesses
 - Exculpatory materials

Filter Team Discovery

- Prosecution team produces cleared material to defendant
- Filter team produces segregated material to defendant
- Filter team negotiates/litigates privilege as to contested material

- This can be more complicated in multidefendant investigations and cases

Filter Team Discovery

- Transparency is key
- Engage the court early and often
- Avoid having to make decisions that require choosing between respecting an individual's privilege interests and a defendant's discovery rights
 - Use the court where possible
- Make a good record – it can be years between filtering and bringing charges

Common Filter Problems

- Materials never reviewed
- Materials never produced
- Inadvertent spillover
- No record maintained

Discovery Related to the Filter Process Itself

- What if a defendant wants to challenge the way the filter process was conducted?
- What does the government possess that may be discoverable?
 - Internal memoranda regarding filter process and inadvertent spillover
 - For electronic filtering, a treasure trove of data

A Few Final Thoughts

- Always know the capabilities of your reviewing software and be prepared to litigate disclosure
- Same discovery issues may arise in connection with other filter-like scenarios (e.g., wiretap pertinent/non-pertinent designations, search warrant execution/responsiveness designations)
- There tends to be little case law in this area, so courts facing these questions are likely to rule based on their sense of fairness
 - In other words: RESULTS MAY VARY



Questions