

Electronic messaging apps

A new challenge for attorneys seeking truth

For many, the lines between personal and business communications have blurred. Instead of using company email or phones, employees may be connecting with coworkers, customers, and suppliers through the dozens of electronic messaging apps.



Why are apps a problem?

Texts, messages, and group chats may be relevant records in an investigation. However, apps are outside of company control and often make it difficult, if not impossible, to retain messages.

What are regulators saying?

The U.S. Department of Justice recently highlighted the use of messaging apps in its Foreign Corrupt Practices Act Corporate Enforcement Policy. Other regulators and litigants have similar expectations.

Address the legal challenges posed by electronic messaging apps



Be proactive—update policies, procedures, communication, and training.



Avoid apps that send temporary, disappearing, or encrypted messages. It is exceedingly difficult, if not practically impossible, for a company to retain the messages sent through these types of apps.



If employees are using their own devices, business data will commingle with personal data. Alleviate privacy and confidentiality concerns by using an independent expert for data collection versus company IT staff.



If apps do contain messages relevant to an investigation, rely upon sound forensic collection procedures to preserve the best available evidence using a defensible process.

Communication platforms will continue to evolve. We anticipate increased attention and focus on these apps and the data they contain from both government regulators and the plaintiffs' bar. To continue the conversation on this or other forensic matters, please contact:

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