

California Electronic Discovery Act: Part Three

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Part Three in a multi-part series on the topic.

In [Part One](#) of this series, we discussed California's Electronic Discovery Act. [Part Two](#) discussed the importance in legal proceedings of electronic information from social media sites like Twitter and Facebook.

LinkedIn is another online social media site which has electronic information that you or your company may need to subpoena as evidence in a lawsuit.

LinkedIn bills itself as the "World's Largest Professional Network" and is geared to professionals and job seekers. This professional focus distinguishes it in terms of substance and content from much of the electronic information published on Facebook and Twitter. Of course, businesses do make use of Facebook and Twitter, which can be important pieces of their overall marketing and communication strategy. But the social interaction that predominates on those sites is of a non-professional nature.

Still, as with Facebook and Twitter, LinkedIn may well object to producing electronically stored information ("ESI") from its site. One basis for doing so is the Stored Communications Act ("SCA"). [18 USC §2701 et seq.] The SCA deals with the disclosure of wire and electronic communications and transactional records by providers of computing and electronic communication services.

Since much of the user information on LinkedIn may be publicly available and not private communication, subpoenas for information that are appropriately tailored may be subject to disclosure. Of course, LinkedIn may find it easier to object to producing ESI which is based on private communications between LinkedIn members.

In any case, LinkedIn's policy with respect to ESI requests by law enforcement agencies envisions three circumstances under which such requests will be considered:

1. Preservation Requests while steps are being taken to obtain a court order or other legal process (pre-litigation)
2. Formal legal requests
3. Emergency Requests to prevent serious bodily harm or death

Users of LinkedIn will be notified if their ESI has been requested (unless a statute or court order prevents disclosure). Notification provides the end user the opportunity to file legal motions, or seek protective orders to prevent disclosure.

On a broader basis, LinkedIn's User Agreement contains language regarding disclosure of user ESI to third parties that is similar to language found in user agreements on many social media sites. It reads in part:

"...we may access, preserve, and disclose your registration and any other information you provide if required to do so by law or in a good faith belief that such access preservation or disclosure is reasonably necessary in our opinion to: (1) comply with legal process, including, but not limited to, civil and criminal subpoenas, court orders or other compulsory disclosures . . ."

Bottom line, if you need ESI from these social media sites, there exists a legal process and site procedures to obtain it.

If, on the other hand, you are a social media user, once you are notified of any disclosure, you still have rights to attempt to protect the disclosure through the legal process and site procedures.

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