

THE 10 BIGGEST CHALLENGES OF PRIVILEGE REVIEW

“There has to be a better way. I would be lying if I said I had not experienced an eight-pass review. **That is the challenge, and even the best reviewer is going to get it wrong at least part of the time.**”

Laura Kibbe

Assistant General Counsel
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INTRODUCTION

Privilege review is one the most expensive, time-consuming, and risk-laden parts of litigation. Text IQ pioneered what has now become the industry-standard way to automate privilege review. But prior to this solution, attempts to automate the privilege review process have failed. What makes privilege review so time-consuming and risky? And why has it historically been so hard to address with technology?

**IN THIS GUIDE,
WE'VE SUMMARIZED
THE 10 BIGGEST
PAIN POINTS
WHEN IT COMES TO
PRIVILEGE REVIEW.**

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Low risk tolerance means predictive coding is not appropriate

Predictive coding works well for responsive or relevancy review. 80–90% recall (responsive documents produced) is a good score for predictive coding in responsive review. However, even 90% recall or 95% recall would be unacceptable in privilege review. At 95% accuracy, 5% of your privilege documents would still be produced to the opposing side.

Non-lawyers discussing legal advice

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Privileged documents include both communications between attorneys and their clients regarding legal advice and communications between clients discussing legal advice given to them by an attorney. The latter can be difficult even for a skilled human reviewer. For example, consider an email between two people that reads, “I talked to Joe. He said to...” The reviewer would have to know that Joe refers to an attorney named Joseph Smith, for example, which requires more knowledge than what is on the four corners of the document. This problem is compounded when there are several hundred or even a thousand people with a generic name like Joseph.

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Incomplete lists of legal professionals

It can be impossible to determine whether a person is playing a legal role by looking at their job title, because job titles often don't accurately reflect a person's organizational role. Looking at an email from someone with the job title "Assistant," a human reviewer may not realize that the "Assistant" is the assistant to an attorney and transcribes emails on the attorney's behalf. This scenario could make the assistant's inbox a treasure trove of potentially privileged information.

Lawyers appearing in many different ways in a dataset

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One lawyer may appear several different ways in the same dataset. Take an example attorney named Sara Shackleton. Her name may appear as Sara Shackleton, Sarah Shackleton, Sarah Shackelton, S, SS, SSHAKL, and so on. Given that these variations likely exist for every attorney on the list, it can be impossible to keep up with a complete list of attorneys in a dataset. Imagine running a search for "S" –it would pull back 99% of the dataset!



The same person or entity appears in the dataset in multiple variations

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The Dual Hat Problem

It is very common for an in-house counsel or general counsel to offer both legal and business advice. Legal advice is covered under privilege, but business advice is not. Recognizing the difference between business and legal advice is incredibly nuanced and difficult. Text IQ was recently able to conquer this issue for a customer through its proprietary Social Linguistic Hypergraph.

Third-Party Agents

When a third-party agent, such as an expert witness or consultant, is given access to privileged information, that information typically loses its privileged status. This privilege can be protected by confidentiality agreements, NDAs, and the like. This adds a further layer of complexity to the review process.

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Different Laws Govern Privilege Across Jurisdictions

In Europe, for example, in-house counsel do not confer privilege at all. A privilege review must be sure to take into account the laws of the jurisdiction under which it is being conducted.

Draft Documents

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A contract or other document might go through several iterations before a final draft is sent to the opposing party. That final draft is not privileged, but every draft version of that document is covered by privilege. Finding those draft versions, which may be nearly identical to each other and the final draft, is a difficult task that is not easily addressed via search terms.

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Company-Specific Language

Every company has its own acronyms, project names, nicknames, slang, etc. This poses problems for search-based approaches or predictive coding, which are not able to understand the broader environment of the document. As Bobby Malhotra, ediscovery counsel at Munger, Tolles & Olson LLP, said in a webinar with Text IQ, "There is a distinction between the technological options that are available. There are tools out there that are more enhanced and have the tweaks to focus on relationships, context, and vernacular."

Privilege Log

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Creating a privilege log is a highly manual, time-consuming process because the log must contain sufficient specificity to prove that privilege is not being abused. The log must strike a balance between saying enough to meet the obligation without defeating the purpose of keeping the document privileged. Even the difference in a gerund phrase can make a distinction in arguments in privilege. This is often the most expensive and labor-intensive part of privilege review. Text IQ has developed a way to automate the privilege log process.

CONCLUSION

Privilege review is a complex and nuanced process. When the stakes are so high, you are right to be wary of technologies that claim to automate this process.

After interviewing hundreds of lawyers involved in privilege review, Text IQ has developed an industry-leading technology that offers a solution to these technical challenges while creating a workflow which combines the best of man and machine.

Want to learn more? Contact us: sales@textiq.com



Text IQ is a Top 100 AI company trusted by some of the world's largest enterprises and government agencies. With a reimagined approach to identifying, managing, and mitigating risk in enterprise data, Text IQ's pioneering AI technology uncovers 90% of sensitive information at a 75% reduction in cost and time. Enterprises, law firms, and government organizations have used Text IQ's AI to identify and protect sensitive and confidential information, reduce risk, elevate their privacy programs, and create fair and inclusive workplaces. Read more about Text IQ on TechCrunch, VentureBeat, Fortune, Forbes, and Axios.

Recently, Text IQ joined forces with Relativity, a unicorn and leading data platform, which has more than 300,000 users in over 49 countries and serves thousands of organizations globally—primarily in legal, financial services, and government sectors, including the U.S. Department of Justice and 198 of the Am Law 200. By joining hands with Relativity, we are excited to realize our shared vision of helping customers organize their data, discover the truth, and act on it.

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