

Self Collecting Search Strategy May Be Discoverable

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In *S2 Automation v Micron Technology*, Micron served S2 with interrogatories and document requests that became the subject of Micron's motion to compel. The motion to compel covered several issues, including Micron's request that S2 divulge its "search strategy" for identifying responsive documents.

Micron contended that during discovery conferences it became apparent that S2's counsel had allowed his client to self-collect responsive documents with insufficient oversight. S2's counsel was unfamiliar with the content of the documents produced and was not aware that email attachments were produced separate from the source email. Although S2's counsel denied that it had been lax in overseeing discovery, the Court granted Micron's request and ordered S2 to provide "its search strategy for identifying pertinent documents, including the procedures it used and how it interacted with its counsel to facilitate the production process."

Rule 26(g)(1) of the Federal Rules of Civil Procedure requires every discovery response to be signed by at least one attorney of record and provides that the signature operates as a certification of the correctness and completeness of the discovery response. Finding that S2's counsel's compliance with Rule 26(g) was at issue, the Court held "[i]t can become necessary to evaluate whether an attorney complied with his rule 26(g) obligations and to evaluate the strategy an attorney used to provide responsive discovery" and that "[w]ithout some information about the search strategy S2 Automation used to provide responsive documents to requests for production, neither the Court nor Micron Technology can have a full understanding of the adequacy of S2 Automation's search strategy."

The S2 decision is the latest example of negative consequences from a company's self-collection of electronic records. While there may be times when self-collection is justifiable, counsel should exercise sufficient oversight to understand and explain the process used to opposing counsel.