

Investigation by Design

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- **Cybersecurity incidents**
- **External privacy/security investigations**
- **Insider threat investigations**
- **Privacy impact assessments**
- **Government or customer audits**
- **AI impact assessments**
- **Litigation**

Activity Logs

- What data was accessed?
- Who accessed the data?
- When?

Development Documentation

- Why were certain data practices adopted?
- Why were certain vendors selected?
- What factors influenced selection of controls?

Data Inventories

- Where is data stored?
- Who are the custodians?
- What types of data are stored in specific areas?

Contract Inventories

- What contracts govern certain data sources?
- What are the key provisions?
- Who manages the relationships?

Responsibilities

- Who leads?
- Who is consulted?
- Who documents and reports?
- Who defines scope?

Privilege

- Who determines whether it should be sought?
- How to document?
- How to bolster?

Reporting

- How will findings be documented?
- Where will findings be stored?
- Who will receive findings?

Debrief

- Who is responsible for lessons learned?
- How are lessons learned documented and addressed?

Privilege Considerations

Assess the risk of scrutiny by regulators, plaintiffs' lawyers, and others

Be intentional from the start of an engagement about whether your goal is for a cyber consultant report to be protected from discovery

If you hope to protect report from discovery, structure retention to maximize protections, considering the “Who, When, What, Where, How”

Who hires and supervises

Consultants should be retained by counsel

Relying on outside counsel to retain consultant may be preferable

In the wake of Capital One, Clark Hill, and Rutters, there are various ways to structure retention of third-party consultants to maximize protections for their work

Questions & Contacts



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