

Text Message from Site: “Can We Delete This?”

The Evidence You Collect Today Will Be Used Against You Tomorrow — Unless You Do This

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Key Takeaways

Before the next incident, dispute, or regulatory investigation, every construction organization needs to understand four realities:

- **Assume everything may be disclosed.** Emails, Microsoft Teams messages, text messages, photos, and informal communications can all become evidence in a dispute. Employees should communicate as though every message may eventually be reviewed by a regulator, judge, arbitrator, or opposing counsel.
- **Control of project records matters.** If key information sits in a SharePoint site, shared drive, or project folder that becomes inaccessible after employees leave or relationships deteriorate, critical evidence can be lost.
- **Photos and videos need context.** A photo without information about who took it, what it shows, where it was taken, and when it was captured may become a liability rather than an asset.
- **Witnesses do not stay forever.** The employee who witnessed the incident may no longer work for the company by the time litigation begins. Interview witnesses early and preserve contact information while memories are fresh.

A Common Construction Scenario

A significant incident occurs on a project site. Within minutes, supervisors take photos on their phones. Team members exchange text messages about possible causes. Safety managers begin preparing reports. Discussions start in Microsoft Teams. Consultants arrive, and project records begin accumulating rapidly.

Two years later, litigation starts.

The employee who captured the key photographs has left the company. Nobody remembers who took several images. Critical Teams conversations are difficult to locate. Access to a project folder has changed hands multiple times. Witnesses have moved on to other employers.

Suddenly, the challenge is not understanding what happened. It is proving it.

Construction organizations generate enormous volumes of information every day. The real risk is not failing to collect evidence. It is failing to preserve, organize, and document it in a way that remains useful years later.

Evidence preservation in construction litigation starts long before a claim is filed.

Assume Everything will be Discoverable

One of the most important investigation principles is also the simplest: assume everything will be disclosed.

Instruct employees to assume that investigation records and communications may eventually become public. Employees should stick to known facts, avoid speculation, and refrain from emotional or inflammatory commentary.

For construction teams, this extends far beyond formal reports. A text message between supervisors, a Teams discussion about potential causes, or an email sent in the first hours after an incident may all become relevant evidence later.

The best approach is to communicate carefully, document facts accurately, and avoid assumptions before the facts are known.

Protect Access to Project Records

Most construction projects rely on shared digital environments to store information. Project documentation may reside in SharePoint, shared drives, project management systems, or cloud collaboration platforms.

When an investigation or dispute arises, organizations should promptly identify where relevant records are stored and who controls access to them.

Take immediate steps to preserve potential evidence and issue document hold instructions when litigation is contemplated. Preservation obligations extend to electronic records, emails, notebooks, equipment, samples, and other relevant materials.

Evidence cannot support your position if it cannot be located or accessed.

A Photo is Only as Good as its Context

Construction investigations often rely heavily on photographs and video footage. Yet, organizations frequently underestimate how important context is.

Document the who, what, where, when, and purpose of photographs and videos collected during an investigation.

A photograph can be powerful evidence if its origins and significance are clear. Without that supporting information, the same image may invite questions about timing, authenticity, location, or relevance.

Organizations should establish clear protocols for capturing, labeling, storing, and preserving visual evidence before an incident occurs.

Interview Witnesses Before Memories Fade

Construction disputes often take years to reach arbitration, trial, or regulatory hearings.

By that point, key witnesses may have retired, relocated, changed employers, or become difficult to contact. Assume witnesses may be former employees by the time litigation occurs and document witness accounts as soon as possible after an event.

Early interviews often produce the most reliable evidence. Memories are fresher, details are clearer, and critical information is less likely to be lost over time.

Organizations should also ensure they obtain and maintain current contact information for important witnesses wherever appropriate.

The Best Time to Preserve Evidence is Before You Need It

Most evidence problems cannot be fixed after the fact. Deleted messages are difficult to recover. Missing photographs cannot be recreated. Lost access to project records can create significant challenges. Witnesses' memories inevitably fade.

The organizations best positioned to manage disputes are not necessarily the ones that gather the most evidence. They are the ones that know how to preserve it.

For construction companies, evidence management is not just an operational issue. It is a legal risk management issue. The records your team creates today may become the evidence that determines the outcome of a dispute tomorrow.

Practical Steps

- Identify where project records are stored.
- Confirm who controls access.
- Preserve texts, emails, Teams messages, photos, videos, notebooks, samples, and equipment when litigation is contemplated.
- Label visual evidence with details on who, what, where, when, and why.
- Interview witnesses early and maintain up-to-date contact information.

If your organization has not reviewed its incident-response and evidence-preservation practices recently, now is the time to do so.

Our [Construction Litigation](#) team works with owners, contractors, subcontractors, and insurers on these issues every day, helping clients assess risk, protect their interests, and navigate complex legal and regulatory challenges. Whether a matter is just beginning or already underway, we can help answer your questions, identify practical next steps, and work toward the best possible outcome.

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