



COUNTY OF ERIE

JEREMY C. TOTH
COUNTY ATTORNEY

KRISTEN M. WALDER
DEPUTY COUNTY ATTORNEY

DEPARTMENT OF LAW

May 14, 2025

Hon. Michael P. Kearns
Erie County Clerk
92 Franklin Street
Buffalo, New York 14202

Re: Forensic Audit of the Clerk's Concentration Account
Our File No.: 7-20240002

Dear Mr. Kearns:

I write in response to your letter addressed to me, dated May 8, 2025, as well as the letter you sent to the Erie County Legislature, dated May 12, 2025, regarding the ongoing audit of your office being conducted by Weaver.

Attached please find a memo and attachments from Weaver regarding confidentiality. I can assure you none of the emails of Alex McDougall have been publicly disclosed nor will they be. Moreover, unless specifically authorized by this office, Weaver will not even review any of the emails. Even when Weaver is ultimately permitted to view an email, any private information in that particular email will remain private.

In terms of rendering an opinion about the disclosure of emails to Weaver, it was always my intention to render those opinions based upon the individual email involved. Thus, Assistant County Attorney Aaron Rubin and I have devised a list of search terms that we anticipate will identify potential emails with sensitive information. Weaver will set aside all emails with those terms. Then Weaver will conduct their own search using whatever terms they deem appropriate for their purposes. Any emails that Weaver identifies as relevant to their investigation that are also flagged as containing potentially confidential information will be reviewed by Aaron Rubin and myself. At that point, we will notify your office, share the email in question, and our opinion as to whether it or any part should be disclosed to Weaver. I do not know how to render a conclusive opinion without reviewing the individual email in question.

That said, and to the extent it may be helpful, Aaron Rubin has reviewed the general concept of sharing these emails with the auditor and has found no statutory barrier to that action. But let me repeat, no documents or data has been or will be disclosed to the public. It is normal for third-party contractors that assist government agencies and, in so doing, to gain access to sensitive data or documents. Moreover, a government officer, department, or agency acting within the scope of its powers and duties is regularly granted access to potentially sensitive data or documents maintained by another.¹

The auditor, Weaver, is subject to explicit confidentiality rules and is working at the direction of the County Attorney's office, as the County Legislature mandated. Under Sections 209 and 501(3) of the New York County Law and Sections 202(8) and 602 of the Erie County Charter, the County Legislature has the powers and duty to make investigations as it deems to be in the County's best interest and into any subject matter within its jurisdiction, "including the conduct and performance of official duties of any officer or employee paid from county funds and the accounting for all money or property owned by or under the control of the county".

Please note, the process explained above is cumbersome and not legally required to preserve confidentiality. Weaver is under contract with my office and bound by confidentiality, as described above, as well as their own professional ethical obligations. They are not an "outside agency", independent from my office, free to do what they want with these emails. However, out of deference to your concerns, we have devised a more elaborate process with an additional layer of screening that will necessarily require more time and effort. That said, you are fundamentally mistaken in your belief that Alex McDougall's emails, or any county employee's emails, are yours. Government records, in whatever form they are kept, are not the exclusive possession of any one elected official or officer.

You also raise a concern that Alex McDougall "had access to sealed records and data relating to pistol permits and criminal records..." You may be confusing access to an electronic database where confidential information is stored and an email. If Alex McDougall accessed a system in which this information was stored that will not be captured in his email and so would not be reviewed by anyone in my office or at Weaver.

On the other hand, if Alex McDougall somehow captured data from one of these systems and then emailed that information to someone else, that email would be reviewed. So, for example, it appears from your public comments, Alex McDougall had access to DCJS criminal history record information. The criminal record history itself would not appear in his emails unless Alex McDougall took the information from the DCJS system and emailed it to someone else. If that occurred, that email is potentially a violation of DCJS rules. Thus, it would not be the reproduction of that email for Weaver's review that would be the violation, but the original email that was sent. However, even in that situation, our screening process should flag that particular email and allow us to remove any confidential information before Weaver's review.

¹ See, e.g., *N.Y.C. Compt. v. N.Y.C. Dep't of Fin.*, 46 Misc. 3d 403 (Sup. Ct. N.Y. Cty. 2014) (requiring a municipal Department of Finance to provide confidential tax data to the City Comptroller); Education Law § 2-d (setting confidentiality requirements for third party contractor or subcontractor access to protected student data).

Hon. Michael P. Kearns
Erie County Clerk
May 14, 2025
Page 3

Turning to your May 12th letter to the Erie County Legislature, I will remind you that I was reluctant to be put in the position of having the County Attorney's office conduct or supervise this audit. Had you chosen not to ignore the original County Legislative Resolution, my office would not have been involved at all. It was only your disregard of the Legislature that prompted them to pass a second resolution directing my office to coordinate this review. Should the Legislature determine it is no longer necessary for the County Attorney's Office to facilitate this audit, they can rescind the resolution directing same. Absent such action by the Legislature, this audit will continue.

Finally, as I have told you many times in the past, simply because you disagree with my opinion and simply because I am appointed by the County Executive, does not create a legal conflict entitling you to independent legal counsel paid for by the County Attorney's budget. You are of course entitled to commission your opinion at your own cost. Given you have two attorneys in senior positions, I am not sure why you feel there is a need for another opinion and if they have useful research that they wish to share I am always grateful for assistance.

I will not respond to the histrionics demonstrated at your press conference last week other than to say you misinformed the public, though I am not sure if that was deliberate or just based on a misunderstanding of this process. I would ask that you publicly clarify that no private information was disclosed to the public, nor will such information be made public.

Very truly yours,

JEREMY C. TOTH
Erie County Attorney
Direct Dial: (716) 858-2204
E-mail: jeremy.toth@erie.gov

JCT/dld

Attachment

cc: Erie County Legislature
Hon. Mark C. Poloncarz, Erie County Executive
Dr. Kevin R. Hardwick, Erie County Comptroller
Hon. John C. Garcia, Erie County Sheriff
Hon. Michael J. Keane, Erie County District Attorney



**ERIE COUNTY– FORENSIC SERVICES
ATTN: ERIE COUNTY’S DEPARTMENT OF LAW**

Memorandum

To: Jeremy Toth, Erie County Attorney

From: Weaver

Date: May 12, 2025

Subject: Overview of Confidentiality and Data Security Protocols

This memorandum outlines key procedures and contractual language relevant to the handling of confidential information in the context of our ongoing engagement. The following exhibits are included to provide clarity and reference for our data management and security practices:

- **Exhibit A:** Email Data Handling Procedures – A summary of internal protocols for managing and securing email communications containing sensitive information.
- **Exhibit B:** Security Details from Disco – An overview of the security measures implemented by Disco, our e-discovery platform, to protect client data.
- **Exhibit C:** Engagement Letter Confidentiality Language – Excerpts from the engagement letter that define the terms and obligations related to confidentiality.

Tim Mohr, Partner
May 12, 2025

Exhibit A

CONFIDENTIAL



**ERIE COUNTY—FORENSIC SERVICES
ATTN: ERIE COUNTY CLERK’S OFFICE
EMAIL DATA TRANSFER AND PRIVACY PROCEDURES**

Weaver agrees to handle all data in accordance with the procedures outlined in Appendix A. We commit to ensuring that all data management practices comply with the specified guidelines to maintain the integrity, confidentiality, and security of the data.

Timothy L Mohr

Tim Mohr, Partner
April 21, 2025

Appendix A

Proposed Procedure to Obtain Emails:¹

1. Erie County (Department of Law) will provide to Weaver the population of Mr. McDougall's emails for the entirety of his employment at Erie County Clerk's Office ("McDougall's Emails").
2. Erie County (Department of Law) will provide to Weaver a list of keywords to identify emails subject to privacy concerns (the "Exclusion Keywords").
3. Weaver will ingest McDougall's Emails to an eDiscovery platform and will provide access to individuals designated by Erie County (Department of Law) ("Erie County Designated Individuals").
4. Erie County Designated Individuals will perform email searches on McDougall's Emails using the Exclusion Keywords. The objective is to identify the potential population of emails subject to privacy concerns ("Emails Subject to Privacy Concerns").
5. Weaver will work with Erie County Designated Individuals to remove the Emails Subject to Privacy Concerns from the eDiscovery platform.
6. Weaver will start the analysis of McDougall's Emails only after the Emails Subject to Privacy Concerns have been removed from the eDiscovery platform.
7. Erie County Designated Individuals will continue to have access to the eDiscovery platform throughout the duration of Weaver's Forensic Audit.
8. Erie County Designated Individuals will have the option to provide to Weaver supplementary keywords to identify additional emails subject to privacy concerns throughout the duration of Weaver's Forensic Audit.

¹ Meeting via WebEx held on February 18, 2025. Attendees: Robert Cathcart, Aaron Rubin, Logan Woods, Nathaniel Francis, and Victor Padilla.



Security Overview

DISCO's global technology infrastructure is designed to protect client data.

At a high-level:

- DISCO has obtained SOC2 Type 2 and ISO 27001 certifications from independent auditors.
- DISCO leverages Amazon Web Services (AWS) for server infrastructure through its data center located in Dublin, Ireland (for the EU/UK) and employs encryption on data at rest and in transit.
- Using DISCO Cecilia Q&A does not violate the EU Artificial Intelligence Act Article 5(1)(d)

COMPLIANCE WITH INTERNATIONAL SECURITY STANDARDS DISCO annually engages with independent auditors who certify DISCO's compliance with ISO 27001 and SOC 2 Type 2 standards. Proof of these certifications can be provided to clients and client's customers upon request and receipt of a signed NDA.

PUBLIC COMPANY REPORTING REQUIREMENTS As a publicly traded company (NYSE: LAW), DISCO is required to comply with the US SEC Cybersecurity Reporting Rules. These rules, which came into effect in July 2023, require mandatory notification to the SEC via a public filing within four business days after a company determines that it has experienced a material cyber security incident. These public companies cyber security reporting requirements add a layer of accountability and transparency.

ENTERPRISE DATA HOSTING DISCO uses AWS to provide enterprise availability and dependability for its hosted platform. A primary data center is supported with hot backups maintained throughout the AWS infrastructure to help reduce downtime in the event of service interruption.

INDEPENDENT SECURITY ASSESSMENT Completing their assessments on a monthly basis, respected third party risk platform [Bitsight](#) ranked DISCO's security program as "Advanced" in the past 18 months (Dec 2023). According to Bitsight this score positions DISCO within the top 10% of technology vendors across all sectors in terms of security practices and configurations.

ENCRYPTION Data is protected at rest with AES 256 encryption, using strong key management techniques. Host communications are protected with TLS, while a dedicated rapid file transfer tool uses AES 256 security.

ACCESS CONTROL DISCO provides clients with the ability to leverage both single sign-on (SSO) for internal users and multi-factor authentication (MFA) for external users. In addition, clients can use customizable role-based permissions in databases to restrict users' access to the information required to complete their tasks.

MONITORING DISCO does not currently have client-facing tools available to monitor access to client's databases.

CHAIN OF CUSTODY DISCO's services are designed to enable clients to establish and maintain a secure chain of custody which, if needed, can be audited and reported on. Client data is transferred and loaded into DISCO using one of the following four methods: (a) cloud connector for data sources like Microsoft 365, (b) High-Speed Uploader feature, (c) secure web browser feature, or (d) shipping of media to DISCO regional facilities. Once loaded to a DISCO database, client data is managed in a way to maintain its evidentiary integrity at all times.

NETWORK SECURITY OF PRODUCTION ENVIRONMENT Firewall and intrusion detection systems are in place, with 24/7 monitoring. Antivirus software is installed on production systems with regular updates. Quarterly vulnerability scanning and third-party penetration testing, including at both the network and application layers, are implemented to help DISCO identify potential vulnerabilities.

LAYERED SECURITY Development and test environments are logically separated from the production environment. Change control, patch management, and SDLC policies and procedures to support production security and stability.

When data is deactivated from a DISCO project, it remains present in the DISCO environment for up to 2 full billing periods following the deactivation date to allow clients to reactivate the database. If not reactivated within 31 days of deactivation, a full data destruction process is implemented. Data is unrecoverable beyond the 31 day grace period.

US MAINTENANCE ON EU DATABASES DISCO deploys software on a weekly basis to all instances across the globe. Software deployment is managed by US-based employees, however, the deployment process does not include accessing client data.

CECILIA & THE EU AI ACT Cecilia Q&A pulls answers directly from the documents in an Ediscovery database — and cites its sources. It does not have independent information about a person's personality traits or characteristics outside of the information contained in the database documents. Even were that information contained within the documents, Cecilia Q&A would clarify that any answer provided is based on the underlying documents and is not an independent prediction of risk.

DISCO Generative AI

Cecilia Q&A, Cecilia Q&A (single-doc), Cecilia doc summaries

PRIVACY AND SECURITY

DISCO takes the following steps that are designed to protect the confidentiality of client data processed by Cecilia:

- A thorough vendor selection process that includes security review and analysis of data retention and data protection policies.
- Verification that vendors do not allow LLMs to train on or retain client data.

As a result:

- LLMs do not train on client data or learn from client usage.
- LLMs do not retain client data after being queried and returning a response. LLMs forget the query, response, and client data used to generate the response immediately after providing the response.
- Vendors meet DISCO's ISO 27001 and/or SOC 2 Type 2 product certification.
- Data is encrypted at rest and in transit.

A current listing of the subprocessors DISCO uses is available online at:

csdisco.com/subprocessors. DISCO regularly evaluates and updates the LLMs used in DISCO products. To date, the following providers' LLMs have passed our rigorous testing standards: AWS-hosted Bedrock, Anthropic's Claude in AWS Bedrock, OpenAI, and Writer.

WHY CECILIA?

Lawyers are making the most of Cecilia's generative AI by:

- Jumpstarting theory of the case
- Understanding complex issues quickly
- Playing better defense
- Investigating difficult issues
- Improving productivity and performance
- Streamlining workflows

“
If we had Cecilia at the beginning of the case, we would have saved thousands of dollars and many hours.”

– Associate, Am Law 50 firm

Exhibit C

GENERAL TERMS

1. **Expenses.** In addition to the fee for our services, reasonable and necessary out-of-pocket expenses we incur (such as parking, reproduction and printing, postage and delivery, and out-of-market travel, meals, and accommodations) will be invoiced at cost. The total amount stated on each invoice will include a separate administrative and technology charge. The charge represents an estimated allocation of our support personnel, telecommunication, and technology infrastructure expenses. The amount stated on each invoice will also include any sales, use, gross receipts, excise, or other transaction tax imposed on our fees or expenses.

2. **Payment.** Any disagreement with the charges must be communicated to us in writing within thirty (30) days of the invoice date, after which any right to contest the invoices will be waived. For invoices not paid within sixty (60) days of the invoice date, a late charge will be added to any uncontested outstanding balance. The late charge will be assessed at a rate of half a percent (0.5%) of the unpaid balance per month. If invoices are not paid within ninety (90) days of the invoice date, this engagement (and any other engagements for the same party) will be placed on hold and we will stop work until the balance is brought current, or we may withdraw, and we will not be liable for any damages that may result.

3. **Term.**

A. This engagement ends at the earlier of the completion of our services described above, the provision of any deliverables described above, or the termination of this engagement. Any party may earlier terminate this engagement at any time with ten (10) days' written notice to the other party. If the engagement is terminated, our engagement will be deemed to have been completed upon written notification of termination, and we will be paid for our time expended and expenses incurred through the date of termination.

B. If we are requested to perform additional services not addressed in this engagement letter, we will communicate our ability to perform the services, the scope of additional services we agree to perform, and the fee arrangements we would use. We also may issue a separate engagement letter covering the additional services. In the absence of any other written communication from us documenting the arrangement for performance of such additional services, those services will continue to be governed by the terms of this engagement letter.

4. **Ethical Conflict Resolution.** In the unlikely event that circumstances occur which we in our sole discretion believe could create a conflict with either the ethical standards of

our firm or the ethical standards of our profession in continuing our engagement, we may suspend our services until a satisfactory resolution can be achieved or we may resign from the engagement. We will provide notice of such conflict as soon as practicable and discuss any possible means of resolving the conflict prior to suspending our services.

5. [Intentionally Omitted]

6. **Confidentiality.**

A. During the course of this engagement, the parties may disclose to each other, orally, in writing, or otherwise, information that is identified as or which is otherwise categorized by law as proprietary, confidential, or privileged ("Confidential Information"). Confidential Information does not include material which (i) is in the public domain through no fault of the receiving party, (ii) was already known to the receiving party before it was first disclosed to the receiving party by or on behalf of the disclosing party related to this engagement, (iii) is received by the receiving party from third-parties without confidentiality restrictions, unless those third-parties were acting for or on behalf of the disclosing party related to this engagement, or (iv) is developed by the receiving party independently of, and without reference to, any Confidential Information communicated to the receiving party by or on behalf of the disclosing party. We will use the Confidential Information disclosed to us during this engagement solely to perform services for which we have been engaged.

B. We may be requested to make the Confidential Information available to regulators and other government agencies, pursuant to authority given by law or regulation. Responding to many such requests is mandatory. In those cases, we will follow C below. Access to such Confidential Information thereafter will be provided under our supervision and we may, upon their request, provide the regulator or agency with copies of all or selected portions of the Confidential Information. The requesting party may intend or decide to distribute the copies or information contained therein to others, including other regulators or agencies.

C. Unless otherwise stated herein, prohibited by law or direction of law enforcement, or agreed in writing, the parties will (i) provide prompt notice of any request received to make Confidential Information pertaining to this engagement, including any of our work product, available to outside parties not involved in the performance of these services and (ii) obtain written consent from the affected party before disclosing the Confidential Information in response to the request. If consent is withheld, the parties

will cooperate with any lawful efforts taken to minimize the disclosure or protect the Confidential Information.

D. We will invoice for reasonable and necessary time and out-of-pocket expenses we incur to respond to any request (such as a subpoena, summons, court order, or administrative investigative demand) pertaining to this engagement in a legal matter to which we are not a party. Our time to facilitate the response will be charged at our then-current standard hourly rates, our expenses (including attorney's fees) will be invoiced at cost, and our administrative and technology charge will be applied. If we agree to perform additional substantive services related to or arising out of the request, such matters may be the subject of a new engagement letter.

E. The parties agree to maintain Confidential Information using the same standard of care each uses to protect its own information of like importance but in no case less than a reasonable standard of care.

F. All rights to Confidential Information (including patent, trademarks, copyrights, or other intellectual property rights) shall remain vested in the disclosing party, and no rights in the Confidential Information are vested in the receiving party, except the limited right to use the Confidential Information solely to perform its obligations or exercise its rights under this engagement letter.

G. We will return or destroy the Confidential Information upon the disclosing party's request within a reasonable period of time, except that we will maintain any copies of the Confidential Information for the period necessary to comply with any applicable laws or professional standards and our own document retention policy (e.g. we will maintain our workpapers for seven (7) years from the date of any attest report we issue). Following such a period, we may destroy the Confidential Information without notice.

H. We may at times provide documents marked as drafts. Those documents are for review purposes only and should not be relied upon. They should not be distributed and should be destroyed, unless otherwise required by law.

I. We may transmit and store data via email, the cloud, or other electronic and Internet-based mechanisms to facilitate this engagement. Please be aware that those mediums inherently pose a risk of misdirection or interception of Confidential Information. Any request to limit such transmissions or use a different means of transmission or storage must be made in writing and we will not be responsible for any resulting compromise in data security.

J. We do not act as the host or repository of financial or non-financial information or as an information back-up service provider for our clients. It is the responsibility of our

clients to maintain a complete set of their own financial and non-financial data and records. If some portion of the data and records is contained only within our files, inform us before the issuance of our deliverable and we will provide a copy.

K. Unless otherwise stated herein or agreed in writing, neither this engagement nor engagement letter is intended for the benefit of any third party. Any party may inform us of any third party who will receive our deliverable. If we are not informed in writing by a party, we are not aware of the identity of such third parties and we do not anticipate their reliance upon our professional services or deliverable unless otherwise agreed in writing.

7. Limitations on Liability.

A. Each party to this engagement letter other than us gives the following releases to us and our partners, employees, and contractors, and each of their heirs, executors, personal representatives, successors and assigns ("Our Representatives"). We and Our Representatives are hereby released from and against any liability and costs, including related liabilities, losses, damages, costs, expenses, and attorneys' fees, resulting from or arising out of: (i) knowing misrepresentations or unintentional or unauthorized disclosures to us or Our Representatives by any party (other than us) or their officers or employees (except those of the Erie County Clerk's Office), (ii) disclosure of our work product to anyone not a party to this engagement letter who we were not informed of in advance, or (iii) misdirection, interception, or failed delivery of information connected with this engagement during transmission, submission, or storage.

B. Our and Our Representatives' total aggregate liability pertaining to this engagement and engagement letter shall be limited to one (1) times the amount of our fees (excluding any reimbursable expenses) the party bringing the claim paid to us for the services in question. In no event shall we or Our Representatives be liable for indirect, incidental, consequential, special, multiple, exemplary, or punitive losses or damages—even if advised of their possible existence.

C. Satisfaction of a claim or cause of action arising from nonattest services (if any) which are part of this engagement or performed pursuant to this engagement letter shall only be sought from the limited liability partnership, Weaver and Tidwell, L.L.P. In no event will our partners, directors, employees, or agents be individually liable for any liability, damages, expenses, or losses of any nature, caused by or resulting from the engagement, engagement letter, or use of our work product. While we are entering into this

engagement letter on our own behalf, this paragraph is also intended for the benefit of Our Representatives.

D. All limitations on liability contained herein shall apply to the fullest extent permissible by applicable laws and professional standards (including, without limitation, any applicable rules and interpretations of the AICPA, PCAOB, and SEC), regardless of the cause of action (whether contract, negligence, or otherwise), except as finally determined to have resulted solely from our fraud, gross negligence, or willful misconduct.

8. Dispute Resolution Procedure.

A. No claim arising out of or relating to this engagement or engagement letter shall be filed more than two (2) years after the earlier of the termination of this engagement or the date of the delivery of our work product in question, if any. This limitation applies and begins to run even if no damage or loss has been suffered, or the injured or damaged party has not become aware of the existence or possible existence of a dispute.

B. If a dispute arises out of or relates to this engagement or engagement letter, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation before resorting to litigation. In such event, the parties will attempt to agree upon a location, mediator, and mediation procedures.

C. This engagement letter and all disputes between the parties shall be governed by, resolved, and construed in accordance with the laws of the State of New York, without regard to conflict-of-law principles. Any action arising out of or relating to this engagement or engagement letter shall only be brought in, and each party agrees to submit and consent to the exclusive jurisdiction of the federal or state courts in the State of New York and convenience of those situated in Erie County, New York.

D. [Intentionally Omitted]

E. Whenever possible, this engagement letter shall be interpreted in such a manner as to be effective and valid under applicable laws, regulations, or published interpretation, but if any term of this engagement letter is declared illegal, unenforceable, or unconscionable, that term shall be severed or modified, and the remaining terms of the engagement letter shall remain in force. The court should in such case modify any term declared to be illegal, unenforceable, or unconscionable in a manner that will retain the intended term as closely as possible.

F. If because of a change in status or due to any other reason, any of the terms of this engagement or any contract we have now or enter into in the future with any of the other parties, would be prohibited by, or would impair our

independence when required under laws, regulations or published interpretations by governmental bodies, professional organizations or other regulatory agencies, such provision shall, to that extent, be of no further force and effect and the contract shall consist of the remaining portions.

9. Miscellaneous.

A. We have non-CPA owners who may provide services pertaining to this engagement.

B. We do not provide legal advice or services. If necessary, refer to appropriate legal counsel for advice or services of that nature.

C. This engagement letter sets forth all agreed upon terms and conditions of our engagement with respect to the matters covered herein and supersedes any that may have come before. This engagement letter may not be amended or modified except by further writing signed by all the parties. Any provisions of this engagement letter which expressly or by implication are intended to survive its termination or expiration will survive and continue to bind the parties. The use of electronic signatures or multiple counterparts to execute this engagement letter shall have the same force and effect as a manually or physically signed original instrument.