

Legal Hold

Purpose There are circumstances when a “legal hold” must be issued to suspend the normal and routine destruction of records. Present and future records that are involved in litigation, or are reasonably anticipated to be involved in foreseeable legal action, must be preserved until the city administrator releases the legal hold.

Scope This policy applies to all city personnel and covers all records, regardless of form, made or received in the transaction of city business.

Definitions These terms as used in this policy will have the following designated meanings.

Affected City Personnel means all city personnel who are in possession or control of records that are the subject of a legal hold.

City Personnel includes all employees (including permanent, temporary, full-time and part-time employees, council members, board and commission members, and volunteers).

City Administrator means the chief officer of the city or his designee or designees.

City Attorney means the chief legal officer of the city.

Evidence includes all records, whether in electronic or paper form, created, received, or maintained in the transaction of city business, whether conducted at home or work. Such evidence may include paper records and electronic records stored on servers, desktop or laptop hard drives, mobile devices, clouds, tapes, flash drives, memory sticks, DVDs, CD-ROMs, or other media.

Electronic records or electronically stored information (ESI) includes all forms of electronic communications, including e-mail, word processing documents, spreadsheets, databases, calendars, voice messages, videotapes, audio recordings, photographs, Share Point files, telephone or meeting logs, Internet usage files, and information stored in mobile devices, clouds, or removable media (e.g., CDs, DVDs, flash drives, etc.).

Legal hold is an order to cease destruction and preserve all records, regardless of form, related to the nature or subject of the legal hold.

Potentially discoverable means any items, including documents, tangible things, or ESI that may fall within the scope of discovery in a particular lawsuit under the Federal or State Rules of Civil Procedure (meaning the items could be responsive to a discovery request determined by the city attorney to be reasonably calculated to lead to the discovery of admissible evidence at the trial of the matter).

**Notice of
Litigation**

Any city personnel must immediately notify the city clerk when they become aware of any litigation, threat of litigation, other legal action, or an investigation by any administrative, civil or criminal authority, which involves the city as a party. This awareness may be through the receipt of notification or other information identifying the possibility of legal action or upon service of a summons and complaint.

When the city clerk receives notice that a lawsuit has been filed against the city or any of its employees acting in the course and scope of their employment, or when the city, in consultation with the city attorney, reasonably anticipates litigation against it, the city clerk must act to preserve documents, tangible things, and electronic records that may relate to the litigation and that are in the city's possession, custody, or control.

Notice of actual pending litigation may come from differing events including receipt of a discovery request or the service of a complaint or petition.

Reasonable anticipation of litigation is determined on a case-by-case basis considering the facts and circumstances known to the city regarding the potential for litigation. The standard, however, requires more than a mere possibility of litigation. City attorney will make the final determination of whether litigation is reasonably anticipated.

**Legal Hold
Procedures**

Legal Hold Determination. The city attorney will determine whether to initiate a legal hold as soon as reasonably possible after receiving notice of the pending or potential litigation.

Response Team. The city clerk will work with a representative from Information Technology (IT) and a representative from each department involved in the matter (collectively, the "Response Team") to determine the preliminary scope and subject matter for the legal hold as follows:

- a) Identify and list all persons with knowledge of facts that may relate to the pending or potential litigation, including persons who created, edited, communicated, handled, or had custodial responsibility for potentially discoverable documents and tangible things, (NOT including ESI);
- b) Develop a plan for preserving potentially discoverable documents and tangible things (NOT including ESI) held by persons with knowledge of facts that may relate to the pending or potential litigation.
- c) Identify and list all persons with knowledge of facts that may relate to the pending or potential litigation, including persons who created, edited, communicated, handled, or had custodial responsibility for potentially discoverable ESI;
- d) Identify all IT architecture within the preliminary scope and subject matter of the pending or potential litigation;

- e) Develop an ESI preservation plan, including taking immediate steps to preserve data held by central services (e-mail, calendars, etc.).

Legal Hold to Employees. The city administrator and city clerk will notify affected city personnel in writing when a legal hold has been initiated. The notice will inform affected city personnel of their obligation to identify and preserve all evidence that may be relevant to the legal hold.

- a) Upon notice of a legal hold, affected city personnel must do the following:
 - i) Immediately suspend deletion, purging, overwriting, or any other destruction of electronic information relevant to this dispute that is under their control. This includes electronic information wherever it is stored, including on hard drives of city work station desktops or laptops, on flash drives, CD-ROMs, DVDs, memory sticks, tapes, zip disks, diskettes, mobile devices, clouds, etc. This electronic information must be preserved so that it can be retrieved at a later time and must be preserved in its original electronic form, so that all information contained within it, whether visible or not, is also available for inspection – i.e., it is not sufficient to make a hard copy (print-out) of electronic communication. The original file format should be retained. Affected city personnel are encouraged to contact the IT department with any questions concerning suggested methods for preserving electronic records.
 - ii) Preserve any new electronic information that is generated after receipt of the legal hold notice that is relevant to the subject of the notice. This should be done by creating separate folders and files and segregating all future electronically stored information in these separate folders and files.
 - iii) Preserve hard copies of documents under their control. Steps should be taken to identify all relevant paper files and to ensure the retention of such files. Affected city personnel may make hard copies of electronically stored information; however, as outlined in item 1 above, the information must be preserved in its original electronic form.
 - iv) If affected city personnel use their home computers or cloud computing for city-related business (including e-mail on their city e-mail accounts or on personal accounts such as AOL, Yahoo Mail, Gmail, Facebook, other social media tools, etc.), they must preserve the data on those computers or in personal clouds.
 - v) Inform the city clerk of any other city employee who may have relevant data subject to hold.
- b) City personnel subject to a legal hold must acknowledge receipt, understanding, and compliance with a legal hold without undue delay by email or in writing. Any city

personnel subject to a legal hold should consult IT for assistance in securing and preserving their records.

- c) Once affected city personnel have received notification, ALL RELEVANT RECORD DESTRUCTION MUST CEASE IMMEDIATELY. They must cease following any document retention or destruction policy in place relating to the documents covered by the legal hold until the legal hold is released. This is imperative. If a person fails to follow this protocol, the person and/or the city maybe be subject to fines and penalties, among other sanctions.

Legal Hold to IT and Third-Party Vendors. The city administrator and city clerk will issue a legal hold to IT and to any third-party vendors who hold or store potentially discoverable data.

- a) The legal hold must provide the following information where relevant:
- i) Official notification of the legal hold;
 - ii) Identification of all affected city personnel whose electronic accounts must be preserved, including user names, if known;
 - iii) Identification of each person's status of employment if known;
 - iv) Identification of department affiliation for each person, if known.
- b) IT and the vendor must acknowledge receipt, understanding, and compliance with the legal hold without undue delay by e-mail or in writing to the city administrator and city clerk.
- c) IT must provide legal hold assistance to affected city personnel in a timely manner.

Storage of Potentially Discoverable Data. At the direction of the response team, the IT support department/division head will assign an IT support employee to serve as the legal hold data manager ("data manager") for the case. The data manager will ensure secure storage areas for potentially discoverable ESI for the case. To this end, the data manager must:

- a) Plan and build a case folder structure;
- b) Establish voicemail and e-mail hold areas; and
- c) Develop instructions on how to use these areas for the individuals involved in the case.

Except under written direction of the city administrator, data covered by a legal hold request must never be placed on a shared file server or be accessible to personnel with the exception of the city attorney and IT.

Instructions for Storage. The data manager must send notices to each affected city personnel to inform the individual of the instructions for storing the potentially discoverable data, and attempt to answer the individual's questions, as appropriate.

Collection of Existing Tangible Data. The response team or designee must develop a collection plan for documents and tangible things (NOT including ESI), which is subject to approval by the city attorney and trial counsel. Pursuant to this approved collection plan for documents and tangible things (NOT including ESI), the response team or designee will begin to collect the documents or tangible things. The response team should inform the city attorney and trial counsel when the collection is complete.

Collection of Ongoing Tangible Data. The response team or designee must develop an ongoing collection plan for documents and tangible things (NOT including ESI), which is subject to approval by the city attorney and trial counsel.

Collection of Existing ESI. Upon direction from the city attorney or the assigned trial counsel, the data manager will begin to collect existing ESI. The data manager should mirror all files in the data custodian's devices pursuant to the legal hold. The data manager should inform the response team and trial counsel when the data collection is complete.

Collection of Ongoing ESI. The data manager must develop an ongoing ESI data collection plan, which is subject to approval by the response team, the city attorney and trial counsel.

Back-up Media. Back-up media is intended only for disaster recovery, does not contain the official records of the city, and may continue to be purged according to its regular purge schedule.

Auditing Legal Hold. Once notice of a legal hold has been issued, the city administrator will take steps to see that the information that is legally protected will not be disclosed to outside parties. The city administrator will follow the auditing procedures specified below to monitor compliance with this policy and approved plans.

Departing City Employees. If affected city personnel separate from employment during the course of a legal hold, department heads or directors must take possession of any and all evidence under the control of the separated personnel and notify the city attorney. Upon termination of affected city personnel, the city attorney must review the contents of all systems utilized by affected city personnel prior to the deletion of the system's data and prior to the destruction of the system.

Legal Hold Auditing Procedures After legal hold letters have been issued, the legal hold response team will implement the following procedures for ensuring compliance with the legal hold.

- a) The city administrator will send written notices to all recipients of legal hold notices reminding them of the obligation to preserve data. These reminders should be sent at least monthly until the end of the active discovery phase of litigation.

- b) The reminder notice should also include a request to notify the city administrator of any newly discovered sources or locations of relevant data.
- c) The data manager will randomly select one legal hold recipient and check the person's electronic activity for the previous week to determine if the person is properly saving relevant data. This should be done at least once every quarter until the end of the active discovery phase of litigation. The data manager must prepare a written report to the city attorney stating the findings from these random samples.
- d) If noncompliance with the legal hold is discovered, the city administrator must meet with the affected individual, explain the deficiencies, and advise of potential consequences from further noncompliance. The city attorney must be accompanied in the meeting by the person's supervisor, department director, or human resources.
- e) After meeting with the employee, the city administrator must notify the data manager to monitor the noncompliant employee's electronic activity.
- f) The data manager must monitor that employee's electronic activity on a sporadic basis, but no less than one day in every week, for a period of at least one month.
- g) The data manager must give a report in writing to the city administrator regarding the results of this monitoring.
- h) If there are any further instances of noncompliance, the city administrator must meet with the person's supervisor, department director or human resources to institute disciplinary proceedings.
- i) During the legal hold period, the data manager must also report to the city administrator any problems with data collection, including technology limitations. The response team will determine the best course of action, in consultation with the assigned trial lawyer.

Expected Conduct When a person is required by this policy to take or refrain from certain actions, the person must use reasonable efforts to comply, based on the circumstances of the situation.

Violations Violations of this policy are subject to disciplinary action up to and including dismissal.

Release of a Legal Hold Upon the conclusion of the anticipated or pending litigations, as determined by the city attorney and trial counsel, the city attorney will issue a notice to the response team, data manager, and all affected city personnel, lifting the formal legal hold. The city attorney will also provide instructions regarding the disposal or destruction of all documents, tangible things, or ESI preserved and/or collected during the anticipated or pending litigation.