



Policy Title: GE2022 - Litigation/Legal Hold Notice

Subject Area: General

Responsible Official(s): University Counsel

Responsible Office(s): Legal Counsel

Policy Statement

In certain circumstances, the University has a legal obligation to preserve records that may be relevant to actual, pending or potential legal or regulatory actions against the University. In those circumstances, the routine destruction of records is suspended, and the records must be preserved. This policy defines standards for preservation of records in compliance with applicable law regarding litigation/legal holds, as well as to define the procedure for implementing such holds when litigation commences or is anticipated.

Definitions

Legal Claim – An anticipated or pending lawsuit or other legal or administrative action against the University or an investigation or legal action by a governmental or administrative agency. This includes any litigation, threat of litigation, claim or an investigation by any administrative, civil or criminal authority.

Litigation/Legal Hold Notice – The written notice issued by the Office of Legal Counsel (“OLC”) to cease destruction and to take steps to preserve records related to a legal claim.

Litigation/Legal Hold – The process by which the University acts to preserve records related to a legal claim, typically initiated by the Litigation/Legal Hold Notice.

Records – All records, materials, things, documents, information, and/or communications that relate or may pertain, in any way, to the legal claim, regardless of form, whether electronic or non-electronic, written, audible, or visual, created, received, maintained, or stored in the transaction of University business, whether conducted at home or work, and may include, but is not limited to, physical materials or items, non-electronic materials or electronic information stored on desktop or laptop computers, hosted/cloud storage services, mobile/handheld devices, smartphones, tablets, gaming devices, wearable technology, smartwatches, virtual/voice assistants, smart speakers, servers, removable media (e.g., tapes, disks, CDs,

DVDs, Blu-rays, USBs, flash drives, memory sticks, etc.). It may also include e-mail, word processing documents, spreadsheets, databases, instant messages, text messages, social media messages and files, calendars, voice messages, audio recordings, photographs, videos, SharePoint files, Wiki materials, telephone or meeting logs, contact manager information, internet usage files, log data, metadata, or other computerized information or databases that may contain records related or pertinent, in any way, to the legal claim.

Policy

Any University employee who becomes aware of any University-related legal claim must immediately notify the OLC. An employee is deemed to be aware of a legal claim when they are in receipt of notification or other information identifying the possibility of a legal claim or upon service of a complaint and summons. In those circumstances, the routine destruction of records is suspended, and an employee has a duty to preserve records. The OLC will determine whether, what, and when records will be preserved or put “on hold” (i.e., preservation or litigation/legal hold).

The OLC will send a Litigation/Legal Hold Notice (“Notice”) to all employees who may be in possession of potentially relevant information, as determined by the OLC. The Notice will inform employees of the nature of the threatened or actual legal claim and instruct employees to preserve records relating to the claim(s). Any employee who questions whether records in their possession are potentially relevant should contact the OLC to discuss.

When employees receive a Litigation/Legal Hold Notice, they must immediately do the following:

1. Confirm receipt of the Notice and acknowledge understanding and compliance by their signature.
2. Take action to determine if they have records that are potentially relevant to the litigation.
3. Immediately suspend deletion, alteration, overriding, or any other destruction of records under their control that are subject to the Litigation/Legal Hold. This includes electronic records wherever stored, including, but not limited to, cell phones, hard drives of University workstation desktops, laptops, or computers at their home, on flash drives, CD-ROMs, memory sticks, tapes, zip disks, or diskettes. For electronic records, employees should note the location where potentially relevant records are stored and refrain from editing, changing, moving, or otherwise altering this data. Employees should consult with Information Technology Services, the OLC, and, for matters handled by the Office of the Attorney General (OAG), the OAG attorney for recommended methods for preserving the electronic records. The OLC may contact employees directly to schedule meetings with an OAG attorney, as needed, to discuss preservation of records, electronic or otherwise.

4. Preserve hard copies of records/documents under their control. Steps should be taken to identify all relevant paper files and to ensure the retention of such files. Affected University personnel may make hard copies of electronically stored information; however, the information must be preserved in its original electronic form.
5. Preserve any records that are generated after receipt of the Notice that are subject to the Litigation/Legal Hold.

The OLC will also notify Information Technology Services of a Litigation/Legal Hold and provide official notification and identification of all affected University personnel whose electronic accounts must be preserved. The University reserves the right to take additional measures to preserve records including, but not limited to, seizure of hard copy documents, and preventing the automated deletion of email records and manual deletion of documents on University drives.

Suspension of Document Retention Protocol

A Litigation/Legal Hold supersedes any document retention policy which might otherwise require or permit the destruction of records after a certain date or event. This includes any records that might otherwise be automatically deleted by automated computer programs.

Separated Employees

If an employee who receives a Litigation/Legal Hold Notice separates from employment during a Litigation/Legal Hold, the employee's supervisor must take possession of records under the control of the departing employee that are subject to the Litigation/Legal Hold and promptly notify the OLC. The supervisor should also notify and consult with Information Technology Services, the OLC, and the OAG attorney, if applicable, regarding retention of the departing employee's electronic records and/or any electronic devices where records are stored.

Release of Litigation/Legal Hold

The OLC will determine and communicate in writing to employees who have received a Litigation/Legal Hold when it may be lifted, and Records no longer need to be preserved.

Violations

It is a violation of law and this policy to destroy, alter, withhold, or obscure Records once a Litigation/Legal Hold has been initiated. Violations of this policy are subject to disciplinary action up to and including termination of employment.

FAQs

What is anticipated litigation?

Litigation is anticipated when the University receives information that a claim or dispute has arisen which has a strong possibility of being litigated. This is a fact specific inquiry which shall be done in consultation with the OLC. Some examples include EEOC complaints, Office for Civil Rights complaints, government or internal investigations, and claims filed with the Tennessee Claims Commission.

What happens once I receive the Litigation/Legal Hold Notice?

The Litigation/Legal Hold Notice will provide a description of the materials that need to be protected as well as how the information should be stored. The Office of Legal Counsel will provide guidance throughout this process and the Information Technology Services will assist employees in storing relevant electronically stored information.

Why is compliance with a Litigation/Legal Hold important?

Compliance with a Litigation/Legal Hold is important because if the University destroys (even accidentally) a relevant document after the University knew or should have known about the possibility of litigation, a court or other administrative body could sanction the University. These sanctions could (1) affect the University's ability to defend itself in a Legal Claim and (2) affect the University's ability to make or prove a claim against an opposing party. Possible sanctions could include monetary sanctions, denial of certain testimony that favors the University, or an adverse inference ruling against the University. An adverse inference ruling means that a judge could instruct a jury that it should infer that the lost or destroyed electronic record supports the opposing side's case even if the University believes that the record would support the University's case.

Can I just keep printed versions of the documents?

No. Preserving a printed version of all correspondence and documents may not suffice because electronic versions often provide information such as track changes and other metadata that may not appear on the printed version of these documents. You should contact Information Technology Services for recommended methods for preserving electronic records. You must not edit, change, or move electronic records without consulting with Information Technology Services, the OLC, and the OAG attorney, if applicable.

Related Documents, Policies and Forms

[BF4005 - University Records Management Program](#)

Last Revision Update Log: 08/12/2025

UM1700 – Issued: March 2, 2009
GE2022 supersedes UM1365