

WHAT TO DO WHEN YOU RECEIVE A “LITIGATION HOLD” NOTICE

A Guide for University Faculty, Staff, and Others

What is a “Litigation Hold” Notice?

- Notice from an authorized UW department (Attorney General’s Office, Risk Management, UCIRO, or other unit which is involved in responses to complaints or lawsuits) that a lawsuit has been filed or is “reasonably anticipated” in the future
- Notice could be verbal, or via email or letter
- Directs you to identify and locate records pertaining to the matter described
- Directs you to suspend routine destruction of these records
- UW and individuals are exposed to possible liability and sanctions if obligations not met

What is a “record”?

- Scope is broad!
- Records include paper and electronic records
- Business related information wherever it is stored (UW workstation, PDA, even your home)
- All forms of records including email, word processing, calendars, voice mails, videos, photos, post it notes, etc

Your Duties Under a “Litigation Hold”

- Suspend routine destruction of records
- Discontinue personal practices for destruction of records
- Preserve records in their original electronic form
- Preserve hard copies
- Preserve new records generated or received after the litigation hold
- Follow specific instructions
- Consult with designated contact person with questions
- Advise your supervisor

Finding Records

Where Do I Search?

- All locations that contain paper documents relevant to the matter, including your home
- On-site and off-site locations (including the Records Center)
- Electronic storage locations: Mail folders, document folders, servers, CD's, DVD's, hard drives, desktops, portable devices, etc
- Systems outside of UW ownership where UW records may reside (remote applications such as "Office Live Workspace", Google documents, Wikis managed by another institution, or email list archived by another institution)

What Do I Search For?

- Emails
- Word Processing documents
- Spreadsheets
- Databases
- Digital Images
- Audio/Video files
- Web Pages
- Instant Messages
- Blogs
- Calendars
- Technical Drawings

Tips on Searching for Electronic Documents

- MS Outlook or Outlook Express: Go to Tools menu, select Instant Search (All Mail Items), enter keywords, dates, people, etc.
- PINE: Select the folder or folders to search and use the “;” Select command, then select P Properties or T Text to find messages. The T Text command allows for a search of text, P Properties lets you mark folders containing messages.
- Documents in your group Drive: Click the Search tool on the menu bar, search files and folders for key words, names, dates, etc.

Contact your systems support expert with questions.

What do I do with the Records I've Located?

- Follow the directions in the “litigation hold” notice and ask questions if unclear
- Do not make hard copies of electronic records and delete the electronic formats; records should be preserved in their original format
- First step is to locate and preserve; later, you may be instructed to copy all or certain records and send them to those involved in managing the case (but keep originals in their original formats)
- Store all records in a safe place where they will not be destroyed

How Long Do I Have to Hold Documents?

- Until you receive final notification (via email or letter) that confirms that matter is resolved
- At that time, document retention reverts back to the regular records retention schedule; do not simply discard/delete the documents
- Feel free to check in with the UW unit managing the complaint or litigation to check on its status

Will My Records Be Disclosed?

- Possibly!
- Record identification and preservation is the first step to a “litigation hold”
- UW’s attorneys and/or those managing the litigation may request copies of the records; UW’s attorneys will carefully decide whether records should be disclosed in litigation
- If your records are requested, you should keep your originals and provide only copies

What is “Electronic Discovery”?

- Process by which relevant information is gathered by the parties in a lawsuit
- Electronic records are treated the same as other evidentiary documents and are subject to discovery requests and rules
- Federal Rules of Civil Procedure require preservation of electronic records when a lawsuit is reasonably anticipated

Why Is This Important?

- Court decisions and rules place substantial obligations on public and private organizations to:
 - ▣ Preserve all electronic records that could be relevant to pending or anticipated lawsuit
 - ▣ Retrieve and produce these in the litigation
- UW and individuals have a legal duty to preserve and turn over, as required, electronically stored records
- UW and individuals are exposed to possible liability and sanctions if obligations not met

Who Can Help?

- Department systems administrator
 - ▣ Locations of departmental electronic records
- UW person who issued the “Litigation Hold” notice, or the contact specifically identified by that person
- Sometimes others will be assigned to assist, including UW Technology, an outside attorney or an IT consultant

Where Can I Get More Information?

- Handbook: “Guidelines to Electronic Discovery at the University of Washington” (includes checklists to aid records searches)

Powerpoint: “A Guide to Managing Documents at the University of Washington”

<http://www.washington.edu/admin/ago/ediscovery.pdf>

- Designated UW Contact for the “Litigation Hold”
- Office of Risk Management 543 3657
- Attorney General’s Office 543 4150