

University of Louisiana System

**Title: *RECORDS RETENTION &
LITIGATION HOLD***

Effective

Date: OCTOBER 10, 2012

Cancellation: None

Chapter: Miscellaneous

Policy and Procedures Memorandum

Each institution shall develop a records retention policy which shall contain, at a minimum, the requirements outlined in state law as well as a litigation hold component.

I. Definitions

- A. *Electronically Stored Information (ESI)*: includes but is not limited to: electronic files; communications including email and instant messages sent or received and voicemail; data produced by calendar software; and information management software. In addition to specific data that are electronically stored and readily retrievable, ESI includes data that may not be visible that is generated by computer hard-drive, email and instant messaging, information management software, handheld computer devices (i.e. Blackberry), telecommunications devices and back-up storage devices. ESI may be stored on different electronic devices and removable devices (i.e. internal and external drives, PDAs, smart phones, servers, laptops, backup tapes, thumb drives, CDs, DVDs) and may also reside at different locations (i.e. on the home or work systems, institutionally owned or personal systems in department files, etc.)
- B. *Evidence*: includes all records, whether electronic or paper form, created, received, or maintained in the transaction of University business, whether conducted at home or at work.
- C. *Litigation Hold Notice*: an order to cease destruction and preserve all records whether paper or electronic that must be retained during litigation notwithstanding the institution's records retention and disposition schedule.

- D. Litigation Hold Officer: the individual appointed to serve as the official institutional representative with the authority and responsibility to oversee litigation hold procedures, coordinate with the System office and determine appropriate actions relative to the disposal of documents.
- E. Litigation Hold Procedures: suspension of normal operation of document destruction policies for particular records that are relevant to pending litigation.
- F. Records: all documents, papers, letters, books, drawings, maps, plats, photographs, magnetic or optical media, microfilm, microphotograph, motion picture film, or other document or any other material, regardless of physical form or characteristic, generated or received under law or in connection with the transaction of official business, or preserved by an agency or political subdivision because of other informational or legal value. This term shall not be construed to include library and museum material developed or acquired and preserved solely for reference or exhibition purposes, extra copies maintained for convenience in reference or stocks of standard publications, or processed documents.
- G. Records Management: the systematic application of management techniques to the creation, utilization, maintenance, retention, preservation, and disposal of records for the purpose of reducing costs and improving efficiency of records keeping. Includes management of filing and microfilming equipment and supplies; filing and information retrieval systems; files, correspondence, reports, and forms management; historical documentation; micrographics; retention programming; and vital records protection.
- H. Records Retention Officer: the individual appointed to oversee records management at the institutional level.
- I. Retention and Disposal Schedule: a set of disposition instructions prescribing how long, in what location, under what conditions, and in what form records series shall be kept.

II. General Requirements

- A. Louisiana Revised Statutes 44:411 as amended requires all agencies to develop a formal records retention schedule and submit such schedule to the State Archivist for approval. The schedule shall propose the length of retention time for administrative, legal or fiscal purposes after a document has been created or received by the institution.
- B. An institution's schedule, once approved by the State Archives will be valid for five (5) years from the date of the approval. Ninety days prior to the five-year anniversary, each institution shall submit its schedule for renewal.

Each institution shall designate a Records Retention Officer who has adequate knowledge of the institution's organizational structure and operations and can communicate effectively with institutional personnel and the State Archives. The Records Retention Officer shall have the authority to oversee records management at the institutional level, including:

- 1) development of the retention schedule;
- 2) compliance with legal requirements; and
- 3) processing disposal requests and destruction of agency records as necessary.

III. Litigation Hold Requirements

A. General

There are circumstances when records that are involved in litigation, or which can be reasonably anticipated to relate to foreseeable actions must be preserved until the resolution of such litigation. A litigation hold requires the retention of relevant paper and electronic records for an indefinite period of time due to pending litigation. Any and all records which might provide insight into the litigation must be maintained until the completion of the issue.

There are severe and potentially costly penalties under federal law for not retaining such documents. Accordingly, in conjunction with their records retention policy, each institution shall develop and include an internal process for placing legal holds on records that may be involved in state or federal investigations or litigation.

B. Authorized Personnel and Responsibilities

1. UL System Office

The General Counsel shall be responsible for providing all institutional oversight, guidance and assistance.

2. UL System Institutions

The Litigation Hold Officer shall be responsible for coordinating with the UL System Office and institutional personnel.

C. Notification Process

1. Any University personnel who become aware of litigation, threat of litigation, other legal action or investigation by any administrative, civil or criminal authority shall immediately notify the Litigation Hold Officer.

2. Employees who have received notice of pending or potential claims or action against the University must submit such notice to the

designated individual/office within two (2) business days of receipt of such notice.

3. The designated individual/office shall notify the Litigation Hold Officer within three (3) business days of receipt of such notice. In addition, the General Counsel for the UL System shall be notified of any legal action or investigation no later than three (3) business days subsequent to the designee's receipt of such notice.

D. Litigation Hold Process

1. The University has a legal obligation to preserve evidence and records, including electronically stored information (ESI), that may be relevant to pending or potential legal actions, such as lawsuits, government audits and administrative hearings. Federal law requires the institution to take action in the form of a litigation hold to preserve all paper and ESI information that may be relevant to the claim.
2. The Litigation Hold Officer will issue an official Litigation Hold Notice (Attachment A) regarding the matter to the appropriate individuals, including the institution's Information Technology Services/Office within three (3) business days of receipt of notification of pending litigation.
3. The notice shall provide the categories of electronic and paper documents, including ESI that must be retained and preserved in their original format.
4. All employees who receive a litigation hold notice must acknowledge receipt, understanding and compliance with the notice by returning a signed copy of the notice to the Litigation Hold Officer.
5. All employees who receive the litigation hold notice must compile paper and electronic documents and data as instructed in the notice letter.

Retention shall extend to any new electronic information generated after the hold has been put into place which may be relevant to the subject of the notice.

6. It shall be the responsibility of the Litigation Hold Officer to retain all records responsive to the notice until receipt of written notification that the litigation hold has been removed.

Electronic records must be retained in the original format (saved to a disk/CD and/or saved in a secure folder on the system service that is not subject to automatic or unannounced deletions.)

7. If affected personnel use home computers for institutional related business (including e-mail on institutional accounts) they must preserve the data on those computers.

8. Such retention efforts could actually predate any official notification. Records relating to any complaints, grievances or controversies which could potentially rise to the level of a lawsuit shall be retained.

Policy References:

Louisiana Revised Statute 44:401 et seq.
Louisiana Administrative Code 4: XVII. Chapters 1-15
Federal Rules of Civil Procedure

Review Process:

System Office Staff
Vice Presidents for Academic Affairs
Legal Counsel

Distribution:

University Presidents
Vice Presidents for Academic Affairs
Vice Presidents for Business and Finance

ATTACHMENT A

FROM: _____

DATE: _____

RE: LITIGATION HOLD NOTICE LETTER

Notice to Preserve Information and to Prevent Deletion or Destruction of Emails and other Electronic and Paper Files

The Institution has been sued by _____(NAME)_____.
_____(NAME)_____ can be expected to allege the following wrongful acts by the Institution's employees: _____(CLAIM)_____.

Pursuant to the rules of the court, the Institution is required to take all reasonable steps to identify all hard copy and digitally maintained filed (i.e. electronic records) that contain documents that may be relevant to the case. The electronic records that must be maintained include, but are not limited to: electronic mail; electronic files of all types (Microsoft Word, Excel, Adobe, etc); recordings of telephone calls or meetings; voicemail messages; video tapes, and audio tapes. Failure to do so could result in sanctions being issued by the court that could seriously harm our ability to defend the case.

Therefore, it is imperative that you take all reasonable steps to prevent the automatic, intentional or accidental destruction of this information and data, including attorney-client privileged communications. You must IMMEDIATELY HALT all routine housekeeping or deletion efforts that could modify or destroy all electronic records/electronically stored information and hard copy documents, including records that may have been generated on your home computer and handheld devices that involve the following:

- 1.
- 2.
- 3.
- 4.
- 5.

Be further advised that any new hard copy or electronic records received or created after the date of delivery of this letter that are relevant to this matter are not to be destroyed and you must take the appropriate steps to avoid the destruction of such documents.

Please preserve all electronic records in the form in which they currently exist until further notice. IT IS IMPERATIVE THAT YOU RETAIN THE DOCUMENTS IN THEIR ORIGINAL ELECTRONIC FORM. It is not sufficient to print electronic records and retain paper copies.

Other information may be identified as our investigation of the matter continues. I will follow up with you soon to discuss any information that you may have and how we may proceed with collecting it.

Please return a signed copy of this notice letter prior to date indicating that you have received it and understand the instructions that you have received. If you have any questions, please contact me at telephone/email . Please also note that the Institution's obligation is ongoing and you should not delete or modify these files until you receive written notice from me that we are no longer under a duty imposed by the court to preserve these records.

The Institution will exercise all reasonable methods to protect the privacy of the preserved data. The purpose of the litigation hold notice is to comply with federal law. It is not intended to and should not suggest any assessment of the merits of (NAME'S) claim.

I understand that these requirements may create a burden for you and I am prepared to discuss with you any questions or concerns that you may have. I appreciate your cooperation in this matter.

I UNDERSTAND RECEIPT OF THIS LITIGATION HOLD NOTICE AND I UNDERSTAND THAT I HAVE AN AFFIRMATIVE OBLIGATION TO COMPLY WITH THE DIRECTIVES SET FORTH HEREIN.

Employee Name

Employee Signature

Date