

Legal Hold Policy

815.1 PURPOSE AND SCOPE

The purpose of this policy is to establish the process for identifying, initiating, monitoring, and releasing Legal Holds.

815.1.1 DEFINITIONS

As used herein, the terms below shall have the following meanings:

Legal Hold: The suspension of routine destruction of records and any other documents when legal action is reasonably anticipated, including but not limited to litigation or governmental investigation.

Discovery: The process of identifying, locating securing, and producing information and materials for the purpose of obtaining evidence for utilization in the legal process. The term is also used to describe the process of reviewing all materials that may be potentially relevant to the issues at hand and/or that may need to be disclosed to other parties, and of evaluating evidence to prove or disprove facts, theories, or allegations.

Electronic Discovery (also called e-discovery): The process of identifying, locating, securing, and producing Electronically Stored Information (ESI) for the purpose of obtaining evidence for utilization in the legal process. The term is also used to describe the process of reviewing all ESI that may be potentially relevant to the issues at hand and/or that may need to be disclosed to other parties, and of evaluating evidence to prove or disprove facts, theories, or allegations.

OCSD Personnel: Includes all current Department Members, sworn and professional staff, Reserves, permanent, temporary, full-time or part-time.

Affected OCSD Personnel: All Department Personnel who are in possession or control of Department records that are the subject of a Legal Hold.

Evidence: Includes all records, whether in electronic or paper form, created, received, or maintained in the transaction of Department business, whether conducted remotely or on site. Evidence may include, but is not limited to, paper records and electronic records and data stored on hard drives of Department workstation desktops, laptops, personal computers, flash drives, CD-ROMs, memory sticks, tapes, zip disks, diskettes, PDAs or other mobile devices, including embedded data and metadata, regardless of location.

Electronically Stored Information (also called ESI): Includes all forms of electronic communications, including, but not limited to, images, instant messages (IMs), blogs, wikis, e-mail, word processing documents, calendars, spreadsheets, voice messages, videos, photographs, text messages, or information stored in PDAs or other mobile devices.

Anticipated Legal Action: Occurs when any "triggering event" puts you on notice of possible legal action. A triggering event may include, but is not limited to, correspondence from an individual or attorney threatening litigation, filing a claim, requests for information re: hiring/firing,

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decisions, Public Records Act (PRA) requests or sensitive information, referral of a case to Risk Management.

Actual Legal Action: Occurs when a lawsuit is filed in court, whether the County is a plaintiff or a defendant, or if there is some legal mandate in effect, e.g. court order, subpoena for records, etc.. Legal counsel will be involved at this point, either County Counsel or outside counsel.

Custodian of Records: A person that is knowledgeable in records management policies and procedures and provides administrative and physical safeguards for the protection of the Department's Records, including ESI. The Custodian of Records is responsible for retention, disposition/destruction, and access to relevant Records and ESI. This person provides direction on specific actions that need to be taken to preserve digital records without interrupting our business operations and can provide testimony by being actively engaged from the onset of a Legal Hold.

ESI Coordinator: Serves as a technical authority and can identify relevant data sources and articulate what actions are needed to preserve ESI. This person can also provide testimony by being actively engaged from the onset of a Legal Hold.

Core Preservation Team: Is comprised of Information Technology (IT) staff, who understand file formats Members use, the metadata, or hidden information in those files and serves as a liaison to the ESI in the execution of the Legal Hold and eDiscovery.

Spoliation: The destruction of records or properties, such as metadata, that may be relevant to ongoing or anticipated litigation, government investigation, or audit.

Record: Any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of Recording upon any tangible thing and form of communication or representation, including letters, words, pictures, sound, or symbols, or combinations thereof, and any Records thereby created, regardless of the manner in which the Record has been stored.

815.2 POLICY

A Legal Hold shall be initiated and enforced when litigation or a government investigation is reasonably anticipated, requiring the Department and its Members to:

1. Suspend the normal and routine destruction of potentially relevant records (both electronic and paper) in a timely manner, and
2. Work cooperatively with the Custodian of Records (Director of Support Services Division) or his or her designee, the Electronically Stored Information (ESI) Coordinator (Support Services Systems Manager), S.A.F.E./RMB, and County Counsel in cataloging and maintaining all affected records.

815.3 SCOPE

1. The County Executive Office's Legal Hold policy shall supersede all other County policies, including the County Executive Office Electronic Records Management

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- Policy, related to the destruction of records and information management and Department's records control/retention schedules.
2. This policy works in concurrence with the County Executive Office Legal Hold Policy and is intended to uphold the rules of evidence that apply to a potential Discovery situation.
 3. This policy applies to all Department Members, including executive management, sworn personnel, professional personnel, contractors, and reserves.
 4. This policy covers all records, regardless of location or form, in the possession of the Department.
 5. This policy describes the Department's objectives and policies regarding Legal Holds.

815.4 REFERENCES

1. County Executive Office Legal Hold Policy
2. County Executive Office Records Management Policy
3. County Executive Office e-Discovery Guidelines
4. OCSD Records Control/Retention Schedules
5. OCSD Confidential Information Policy 215
6. Peace Officer's Bill of Rights Act
7. Penal Code §§ 832.7(a) and 832.8(a) and (f)
8. Evidence Code § 1043 through 1045

815.5 AUTHORITY

A Legal Hold may be initiated by the Department or by legal counsel. Only County Counsel or outside legal counsel may release a Legal Hold.

815.6 PROCEDURES

1. A "Legal Hold" shall be initiated when actual legal action has been initiated or litigation or a government investigation is reasonably anticipated in the judgment of the Custodian of Records or S.A.F.E./RMB, in consultation with County Counsel or outside legal counsel. A Legal Hold means that records (paper and electronic) that are the subject of the Legal Hold must be preserved and may not be destroyed, even if otherwise permitted under Department's records control/retention schedules, until officially released from the Legal Hold by County Counsel or outside legal counsel.
2. Any Department Member who become aware of any Department-related actual or anticipated legal action, threat of litigation, claim, administrative action, other legal action, or an investigation by any administrative, civil, or criminal authority (such as through the receipt of notification or other information identifying the possibility of legal action or upon service of a summons and complaint) shall promptly notify the Custodian of Records or S.A.F.E./RMB. The Custodian of Records or a representative from S.A.F.E./RMB, in consultation with County Counsel or outside legal counsel, shall

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determine whether to initiate a Legal Hold and will help identify Affected Department Members and Records subject to the hold.

3. The Custodian of Records and a representative from S.A.F.E./RMB shall communicate with each other in order to make necessary notifications of the Legal Hold and to ensure prompt action is taken to suspend destruction of all relevant records until the Legal Hold is released.

815.7 RESPONSIBILITIES

1. Custodian of Records
 - (a) Assist in development and execution of the Legal Hold Policy and promulgation of operating procedures.
 - (b) Confer with County Counsel or outside legal counsel early in the process and throughout the Legal Hold process to set clear goals and expectations to reduce risk.
 - (c) Oversee and prioritize Legal Hold efforts to address relevant evidence most at risk for spoliation if quick action is not taken to preserve it.
 - (d) Identify and contact, as early as possible, those who should be contacted for the timely preservation of relevant ESI related to the matter at hand.
 - (e) Instruct all Members to produce electronic copies of their relevant active files.
 - (f) Ensure that all backup media required to be retained is identified, segregated, and stored in a safe place.
 - (g) Maintain an index of preserved ESI.
 - (h) Actively monitor compliance with Legal Holds related to ESI.
2. ESI Coordinator
 - (a) Designate Core Preservation Team.
 - (b) Document how ESI is gathered, transported, analyzed, and preserved for production.
 - (c) Document the methodology used in the forensic acquisition of ESI contained on storage media, such hard drive, and what occurred at each step during the ESI retrieval process.
 - (d) Know where potentially relevant ESI is stored in active systems, backups, archival systems, and other locations, such as portable devices and third-party hosted systems.
 - (e) Implement forensic and other collection methods to reduce the risk of spoliation and foul play in particularly sensitive matters.
 - (f) Maintain an index of preserved ESI.
 - (g) Actively monitor compliance with Legal Holds related to ESI.
3. Core Preservation Team

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- (a) Assist in execution of the Legal Hold Policy related to ESI.
 - (b) Directly assists and supports the Custodian of Records and ESI Coordinator.
 - (c) Maintain an index of preserved ESI.
 - (d) Actively monitor compliance with Legal Holds related to ESI.
4. S.A.F.E./RMB
- (a) Assist in development and execution of the Legal Hold Policy and promulgation of operating procedures.
 - (b) Confer with County Counsel or outside legal counsel early in the process and throughout the Legal Hold process to set clear goals and expectations to reduce risk.
 - (c) Assist the Department and its Members in locating and preserving relevant records (paper and ESI).
 - (d) Oversee and prioritize Legal Hold efforts to address relevant evidence most at risk for spoliation if quick action is not taken to preserve it.
 - (e) Identify and contact, as early as possible, those who should be contacted for the timely preservation of relevant records (paper and ESI) related to the matter at hand.
 - (f) Ensure retention of Legal Hold policy, complaints, and investigative materials to meet compliance requirements.
 - (g) Coordinate and implement policy through organization's Departments.
5. Member responsibilities
- (a) To understand and comply with the CEO's and the Department's policies regarding Legal Holds.

815.8 RECORD REPOSITORIES

- 1. File cabinets
- 2. Off-site storage warehouses
- 3. Desks of Members
- 4. Shared drives/Home directories
- 5. Hard drives
- 6. Servers
- 7. Backup tapes (when necessary to restore data for meeting the Department's needs during litigation)

815.9 MONITORING OF LEGAL HOLDS

During the life of a Legal Hold, the Custodian of Records in collaboration with a S.A.F.E./RMB representative shall periodically reevaluate existing litigation Legal Holds and to remind Affected

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Department Members of their continuing obligations to preserve records. They shall also be required to make any necessary revisions if the scope of discovery has been modified or as new issues or allegations are identified, or as new sources of records are deemed relevant.

815.10 RELEASE OF A LEGAL HOLD

Depending on the circumstances, a Legal Hold may be for a very brief or long period of time, i.e. to satisfy a statute of limitations. Only County Counsel or outside legal counsel shall determine when a Legal Hold is to be released. Only after receiving notice from County Counsel or outside legal counsel shall the Legal Hold be released.

815.11 VIOLATIONS

It is a violation of this policy to destroy, alter, withhold, or obscure evidence once a Legal Hold has been initiated.

Additionally, it is a violation of law to destroy or conceal any book, paper, record, instrument in writing, or other matter or thing willfully and with intent to prevent it from being produced in evidence. Pen. Code § 135