

Legal Holds presented by Kevin Callaghan



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What is a Legal Hold?

- A temporary suspension of the destruction of records that may be relevant for litigation, public records requests, audit, or any other government investigation.
- The hold must be implemented as soon as the organization is notified regarding possible legal proceedings or receives a records request.

What is a Legal Hold Process

- A set process to identify and preserve materials relating to the litigation or request
- Legal team needs to be able to create, acknowledge and track the legal holds.
- The process must include all records regardless of format. This includes paper and electronic documents and files.

Partners

- General Counsel/Legal (Process Leader)
- Information Services or Strategic Technology Solutions (STS)
- Human Resources
- Targeted Division(s)
- Affected Vendor Partners
- State Records Management

Establishing a Legal Hold

- Once an employee learns of potential litigation, public records request, or audit the employee should notify their supervisor.
- The supervisor should contact the agency's general counsel to notify them of the situation.
- The General Counsel's office will then determine if a legal hold is to be issued.

Determining Scope

- Determine types of records and the date range covered by the legal hold.
- Review retention guidelines of affected records series.
- Identify the business units affected that need a written legal hold notice.
- Completely examine every potential source of material.

Record Source Types

- Paper originals & copies
- Digital documents
- Email & attachments
- Calendars
- Spreadsheets & databases
- Network Drives
- Presentation Materials
- Video & audio (voicemail)
- Graphic files
- File Shares & web based collaboration sites
- Agency Website & social media
- Metadata and system logs
- Archival data & backup tape/media
- File Servers & print servers
- Cloud based storage

Identification Phase

- Identify information that may be relevant to the legal hold, across all formats as discussed above.
- Identify who may have the relevant information and material.
- Identify all locations and storage media materials.

Issuing a Legal Hold Notice

- A Destruction Hold Notice must be sent out to all parties based on currently available information.
- Depending on the scope of the hold General Counsel should arrange a meeting to determine the parameters of the legal hold
- Personnel should include the affected divisions, information systems, and records officers/coordinators.

Issue Formal Hold Notice

- Send written notice to all employees at all applicable levels identifying the materials covered under the Legal Hold.
- Give instructions on what is to be preserved and the method and place of preservation.
- Notify Information Services of the need to preserve all electronic data.
- Notify the Records Officer and Coordinators to prevent any destruction of physical records.

Documentation

- Eliminate Manual Processes whenever possible. Set rules and automated processes to locate, quarantine and preserve electronic data.
- Document steps taken to preserve the documents, digital information, and other materials to demonstrate actions taken to comply with the legal hold.

Continuing Actions

- Track changes in employees over the course of the litigation. Take steps to preserve records of outgoing employees.
- Educate personnel involved so they are aware of their ongoing responsibilities. Keep them updated on any changes in requirements.
- Account for any changes in the agency's data landscape.

Final Goal

- Preserve all data and produce it as required by the court, auditors, or requestors.
- Accomplish this through a cost effective and well documented process.
- Once the legal hold is lifted, to be able to properly and systematically destroy materials as per the appropriate records schedule.