Records Management Guidance
Best Practices for Legal Holds

This document provides guidance and best practice about how to manage the legal hold process, including how to comply with Executive Policy LGL-15-1-1-EP.

You can also adapt most of this guidance for other types of holds (Public Records Act requests, audits, government investigations, etc.) that might affect records in your agency.

View the records management glossary for clarification about various terminology affecting public records and legal holds.

Responsibilities

The Prosecuting Attorney's Office (PAO)

- Legal Holds – If the county is engaged in a lawsuit (or reasonably anticipating it), the PAO might issue legal hold notices, which means that responsive records must be retained even if they are past their retention. This might also include transitory records, which otherwise have no retention period.
  Tip: For more information about records retention, see the basic records management training and the county retention schedules.

- Legal Hold Notice – The PAO will send out legal hold notices to relevant personnel, including those who might have responsive records. These notices will describe the case and what records to hold.

- The PAO is the office of record for litigation case file records, meaning all litigation case file records are PAO records.

- The PAO is responsible for informing client agencies when the legal issue is over so that they holds can be lifted.

The Client Agency (you)

- All employees are responsible for managing county records before, during, and after holds. See the Regulations, Policies and Procedures for details. Managing records according to your retention schedule will reduce the time, energy, and stress it costs to find and review records for discovery.
  Pro Tip: Keep your records in Content Manager (CM), the countywide records management system.

- You are responsible for following the directions from the PAO and the legal hold notice, including preserving records and not letting them be destroyed. If any responsive records are stored in Content Manager, submit a Legal Hold Request Form to have holds applied to those records.

- The personnel who receive the hold notices are responsible for sending a copy to their Agency Records Officer (ARO) and for following the directions in the hold.

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- The **Agency Records Officer (ARO)** is responsible for tracking legal holds that affect their agency. This includes updating a countywide legal hold list ("Legal Holds-Master List") on the Public Records Committee (PRC) Teams site, notifying others in the agency about the hold where relevant, ensuring that held records are not destroyed, and delegating related duties to disposition authorities and records management leads.

- **Disposition Authorities** are appointed by the ARO to review records that have met their retention requirements and halt disposition if the records in question are subject to legal holds, public records requests, audits or government investigations. The ARO is responsible for performing the task if the disposition authority is unavailable.

- The **Records Management Leads (RMLs)** supports records management at the section or workgroup level; and might have a role in helping to manage records under the hold. This might include informing colleagues of holds being issued, locating records for discovery, and making sure records under hold are clearly labeled and are not destroyed.

The Records Management Program (RMP)

- The RMP hosts a central list of all known legal holds ("Legal Holds-Master List") on the Public Records Committee (PRC) Teams site, which all AROs have access to. Each ARO is responsible for updating that list over time, including adding new holds, updating details about existing holds, and updating the list when the hold has been lifted.

- The RMP manages and supports Content Manager (CM), the countywide records management system that is also used to manage holds on any records within the system.

- Content Manager (CM) Functionality:
    - Container records (folder or box) can be placed on one or more holds
    - Records on hold are excluded from any disposition process
    - Records are preserved in their native format
    - Inventory of records on hold can be retrieved
    - Records retention is resumed when the hold is lifted

- The RMP adds new holds in Content Manager, adds records to holds, and removes records from holds when they are lifted. But the RMP is **not** responsible for determining which records to put on hold.

- The RMP works with agencies to identify and assign appropriate retention schedules. The RMP will only assign the **Litigation Case Files** record category to the PAO.

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Managing records under a hold

Manage records according to the directions in the hold notification. For clarification about the hold and what it applies to, direct questions to the PAO.

- Create an inventory of the records under a hold so that you can track and manage them throughout the issue, as needed. An inventory should have a description and date range of the records, the retention schedule, and the records location. Inventories do not need to be detailed. Metadata can be exported from Content Manager to create inventories.

- Make sure people can tell the records are being held. This can be anything from putting a label on a box to adding a column in Teams or SharePoint. For records in Content Manager, complete the Legal Hold Request Form to ensure relevant records are identified, which halts any future disposition.

- Records about work done related to the legal hold need to managed according to their retention schedule:

Records	Responsible Custodian	Category
Case file	PAO	Litigation Case Files (GS53-02-04R2)
Agency records related to the hold - notice received from the PAO, - communications related to identifying records responsive to the hold, - communications with the PAO about the hold, - other related records	Agency employees in direct communication with the PAO about the issue	Project Files (GS50-01-39R1)
Other *copies* of records about the hold issue	Agency employees **not** responsible for coordinating the hold and **not** in direct communication with the PAO about the hold	General Office Communications (GS2010-001R3)
Copies of records provided to the PAO		N/A - Transitory

  - The original records under a hold have their own retention schedule according to what kind of records they are.

- Records under hold must be preserved under the conditions stated by the hold notice.

  - Work with KCIT to hold records that might be scheduled for automatic deletion, such as chats or recordings in Teams.

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- o Keep the records safe and secure. For example, paper records should be kept off the floor and away from sunlight and food. Electronic records should be backed up regularly. Be aware of software updates possibly affecting your electronic records – especially for records that depend on specific software to access.
- o Periodically check the records to ensure they are being preserved, especially for extended holds.

Managing records after a hold

After PAO informs you that the hold is lifted, you are responsible for removing the hold from the records and restarting their retention period. Retention should continue based on their original cutoff date and retention schedule.

- Inform the ARO that the hold has been lifted so that the central hold list can be updated.

- Contact the Records Management Program to remove holds from records in Content Manager.

- Make sure the records are not under other holds, which could include other legal holds, public records requests, and audits.

- If any records met their retention requirements before or during the hold, they can be dispositioned according to the retention schedule. This includes transitory records.

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