

Document Code No.: LGL-15-1-1-EP

Title: Legal Holds Compliance

Affected Agencies: All Executive Branch Agencies of King County Government

Authorities: RCW Title 40 - Public Documents, Records, and Publications.

King County Code 2.12, Federal Rules of Civil Procedure

Keywords: Policies, Guidance, Guidelines, Communications

Sponsoring Agency: Department of Executive Services, Records and Licensing Services Division



King County

Executive signature:

Daw Constable

Effective Date:

2/22/21

I. Purpose

This policy provides guidance for the management and preservation of records, documents, and other items subject to a legal hold.

Legal Holds attempt to ensure that specific records will be available for the discovery process prior to the commencement of litigation. Legal Holds seek to prevent spoliation (destruction, alteration, or mutilation) of evidence, which can have a negative impact on the defense, and can result in court-ordered financial sanctions. Legal Holds apply to all hard-copy and electronically-stored records, including email and draft documents.

II. Applicability and Audience

This policy affects all King County Executive Branch departments, divisions, and agencies and, in addition, any non-Executive Branch King County agencies adopting this policy.

III. Definitions

Agency: Any King County executive department, office, division, or agency.

Agency Attorney: The attorney or designee from the King County Prosecuting Attorney's Office who issues the Legal Hold Notice.

Agency Records Officer: Agency Records Officers are the individuals appointed by the Agency Director to work with the King County Records Management Program to establish and implement records management best practices within their agency.

County Records: Any document, including any paper, correspondence, completed form, bound records book, photograph, film, sound or video recording, map, drawing, machine-readable material, or other document, regardless of physical form or characteristics, and including copies thereof, that have been made by or received by any agency of King County in connection with the transaction of public business. County records are also Public Records. (King County Chapter 2.12.005)

Discovery: A phase in litigation in which information is sought, located, secured, searched, and produced with the potential intent to use it as evidence in a lawsuit.

Disposition of Public Records: Public Records may be destroyed or transferred only in accordance with Washington State Public Records Law and the approval of the Washington State Local Records Committee. (RCW 40.14070)

Electronically Stored Information (ESI): Includes email, documents, writings, drawings, graphs, charts, photographs, sound recordings, images and other data or data compilations stored in any medium from which information can be obtained and translated (if necessary) by an agency into a reasonably usable form.

Legal Hold: A process that is used to preserve all forms of potentially relevant information when litigation is pending or reasonably anticipated. A Legal Hold temporarily suspends the Records Retention Schedule for records that are subject to the hold.

Legal Hold Notice: A written request by the Agency Attorney which initiates the Legal Hold process by instructing an agency to preserve all records, including hard-copy documents and electronically stored information (ESI) that may relate to pending or anticipated legal action involving an agency.

Personnel: Executive Branch employees, appointed staff, elected officials, and others who may have knowledge and control over the records subject to a Legal Hold. All Personnel have a duty to preserve records under their direct control that are subject to a Legal Hold.

Public Records: Per RCW 40.14.010, the term "public records" shall include any paper, correspondence, completed form, bound record book, photograph, film, sound recording, map drawing, machine-readable material, compact disc meeting current industry ISO specifications, or other document, regardless of physical form or characteristics, and including such copies thereof, that have been made by or received by any agency of the state of Washington in connection with the transaction of public business, and legislative records as described in RCW 40.14.100.

Records Retention Schedule: A document providing authority for the final disposition of Public Records approved by the State Local Records Committee. (KCC 2.12.060 and RCW 40.14.070)

IV. Policy

A. Policy Fundamentals

1. It is the policy of King County to abide by applicable state and federal laws, court decisions, and court rules pertaining to the protection and preservation of records placed under a legal hold in response to litigation or anticipated litigation.

B. Notification

1. Personnel who become aware of pending or anticipated litigation must ensure that all pertinent information is communicated with the appropriate

Agency Attorney. If deemed necessary, the Agency Attorney will issue a Legal Hold Notice to appropriate Personnel.

2. Personnel who receive a Legal Hold Notice must send a copy to their department or agency's Agency Records Officer.
3. Personnel who receive a Legal Hold Notice must carefully read and fully comply with all requests made in the notice.

C. Preservation

1. An agency must take reasonable steps to preserve records when it learns of pending or anticipated litigation.
2. All potentially relevant records subject to a Legal Hold shall not be destroyed, discarded, or deleted until the Legal Hold is affirmatively lifted.
3. Agency Records Officers must work with agency/department staff, with KCIT, and with the Records Management Program to ensure that automatic deletion procedures and records management disposition practices are suspended for records covered by a legal hold for the duration of the hold.

D. Documentation and Tracking

1. Agency Records Officer will be responsible for tracking Legal Holds for the Agency.
2. Agency Records Officers must enter legal holds issued to their departments/agencies into the central countywide legal holds tracking list hosted by the Records Management Program.
3. Agency Records Officers must follow procedures established by the Records Management Program to ensure that centrally-held electronic records are not destroyed.

E. Release of Legal Hold

1. When an Agency Records Officer is notified by the Agency Attorney (or his/her designee) that a Legal Hold has been affirmatively lifted, s/he shall update the tracking list with the release date and notify the division records coordinators and disposition authorities accordingly.
2. Any automatic deletion procedures and records management destruction practices that were suspended for the hold will resume.

V. Implementation Plan

- A. This policy becomes effective for Executive Branch agencies on the date that it is signed. Department Implementation will include an orientation to senior Executive Branch Leadership, with encouragement to the separately elected officials to adopt similar policy/practice, an orientation to the PAO, and an orientation to Agency Records Officers and the Records Management network through the Records Management Quarterly meeting prior to implementation.

VI. Maintenance

- A. This policy will be maintained by ARMMS or its successor agency.
- B. Procedures in support of this policy will be constructed, reviewed annually, and maintained by the Public Records Committee (PRC).
- C. This policy will automatically expire five (5) years after its effective date. A new, revised, or renewed policy will be initiated by Records Management Program or its successor agency prior to the expiration date.

VII. Consequences for Noncompliance

- A. Noncompliance with this policy may result in a number of consequences, including spoliation of public records. These consequences carry with them risks of fines and fees, material impacts to legal action and the carriage of justice. Personnel who fail to carry out the duties associated with this policy may receive additional training in this area and may have their failure to comply reflected in performance feedback.

Appendix:

Agency Records Officers List: <https://www.kingcounty.gov/depts/records-licensing/records-management/roles/aros.aspx>