

LINCOLN UNIVERSITY

Procedure: Litigation Hold Procedures
Policy: HRM-118p
Effective Date: September 2011
Next Review Date: September 2014
Review Officer: Chief Human Resources Officer
Status: Approved by President and Active

1. Introduction

This document sets forth the “Litigation Hold” procedures relating to the preservation and handling of records in the event of litigation or threatened litigation and is designed to ensure the preservation of records, including Electronic Records, for discovery and other litigation purposes in accordance with appropriate measures that are to be implemented at the start of any litigation, or when the University determines there to be a reasonable threat of litigation.

2. Purpose of Litigation Hold Procedures

The Litigation Hold Procedures set forth herein are to be implemented at the commencement of any litigation involving the University, or, if earlier, as soon as the University is notified of threatened litigation or has otherwise determined that there is a reasonable basis to anticipate litigation involving the University. If the Legal Department determines that any litigation has been commenced or that there is a reasonable basis to anticipate litigation, it may implement the procedures set forth herein, including but not limited to the issuance of “Litigation Hold Notices” to University Personnel determined by the Legal Department to be “Key Employees” as defined in this Procedure.

3. Definitions

The following definitions apply specifically for the purposes of this Procedure:

3.1. “Electronic Records”

“Electronic Records” means those University Records (defined below) that are in electronic format, including but not limited to emails transmitted via the University System for the purpose of conducting University business. Electronic Records are considered University Records and, therefore, must be treated in the same manner as hard copies for the purposes of this Procedure and are subject to all the same requirements set forth for in this Procedure for hard copy records except that if an email or other Electronic Record has been printed out in hard copy and that hard copy of the record has been properly filed in the relevant subject matter file, the

electronic copy of that University Record may be deleted, unless it is subject to a Court Order prohibiting such deletion, or to a Litigation Hold Notice (described below), or a directive to the contrary from the supervisor.

3.2. “Key Employees”

“Key Employees” as used in this Procedure is defined as University Personnel who may have information and University Records relating to the circumstances of the litigation or “reasonably anticipated” litigation.

3.3. “Legal Department”

For the purposes of this Procedure, “Legal Department” means the University’s Office of Human Resources jointly with Counsel representing Lincoln University.

3.4. “Litigation Hold Notice”

“Litigation Hold Notice” as used in this Procedure means notification from the Legal Department of litigation or of “reasonably anticipated” litigation directing key employees to identify and locate University Records pertaining to the matter described requiring that such University Records be preserved and held in their original form until a written “Notice of Litigation Hold Release” is received.

3.5 “University Personnel”

“University Personnel” as used in this Procedure means every employee of the University, whether the employee is full-time or part-time, is permanent or temporary, or is a faculty, administration, staff, or student employee.

3.6 “University Records”

“University Records” for the purpose of this Procedure means any documents or data (“records”) containing information related to the University that are generated, received, or compiled by University Personnel in the conduct of University business, whether such document or data is in electronic, paper, or some other recorded form.

4. Determination of Relevant Sources of Affected University Records

The Legal Department shall work with the University’s IT Department to attempt to promptly identify all possible sources of relevant Electronic Records relating to the litigation concerning Key Employees. The Legal Department shall attempt to

address all sources of information and determine the format of such information as well as the accessibility and cost of retrieving the information, locating records, and taking actions necessary to secure and preserve relevant University Records. The Legal Department in consultation with the IT Department will also determine how such sources of University Records can be searched.

5. Suspension of Normal Document Destruction Timeframes

Once a Litigation Hold Notice has been issued in accordance with this Litigation Hold Procedure and sources of potentially relevant University Records, including Electronic Records, have been identified as being subject to the Litigation Hold, all affected University Personnel, including Key Employees, shall suspend any normal document destruction procedures (including email deletion) regarding such University Records subject to the Litigation Hold in order to preserve potentially relevant information.

6. Issuance of Litigation Hold Notices

- 6.1 Once a Key Employee has been identified by the Legal Department, a written Litigation Hold Notice shall be issued to such individual. The written notice shall describe the actions to be taken by the individual and the requirements of the Litigation Hold.
- 6.2 If the Legal Department determines that it is in the best interests of the University or the public not to alert an individual of the implementation of litigation related record preservation measures (for example, a Key Employee is the focus of an ongoing investigation that would be compromised by such notification), the Legal Department may take alternative measures in lieu of the issuance of a Litigation Hold Notice to ensure the preservation of records.
- 6.3 Once an employee of the University receives a Litigation Hold Notice such employee shall not be permitted, directly or indirectly, to destroy, alter, or delete any information the individual has pertaining to the described action, and the employee shall be obligated to cooperate with the Legal Department in preserving data covered by the Litigation Hold.
- 6.4 The Litigation Hold Notice shall instruct the individual to stop any deletion or destruction of any electronic information pertaining to the action, as well as the destruction of any University Records relating to the circumstances of the litigation that are in hard copy or any other format. Employees receiving a Litigation Hold Notice shall be required to preserve the information in its original form.

7. Ongoing Monitoring of Litigation Holds

The Legal Department after issuing any Litigation Hold Notice shall thereafter continuously monitor the Litigation Hold and the affected employees' compliance with the requirements of the Litigation Hold. The Litigation Hold shall continue until such time as the Legal Department issues to the Key Employees a written "Notice of Litigation Hold Release" terminating, cancelling, or modifying the prior written Litigation Hold Notice.

8. Confidentiality

Many records subject to record retention requirements contain confidential information. These records are protected by federal and state legislation, including but not limited to the Health Insurance Portability and Accountability Act (HIPAA), the Family Educational Rights and Privacy Act (FERPA), and the Gramm-Leach-Bliley (GLB) Act as well as various specific Policies of the University.

9. Dissemination of Procedure and Enforcement

- 9.1 This Procedure shall be disseminated by the Office of Human Resources to all University Personnel with recordkeeping responsibilities or with supervisory authority within the University and may be published on the University's website.
- 9.2 It is the responsibility of all University Personnel with recordkeeping responsibilities or with supervisory authority within the University including University Administrators and Supervisors for ensuring the enforcement of this Procedure, within their assigned areas of oversight.
- 9.3 Employees violating the Litigation Hold Procedures will be subject to disciplinary action, which may lead to termination of employment.

References

Lincoln University Record Retention Policy

Questions regarding this Procedure may be directed to:

**The Office of Human Resources
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