

University Policy: Electronic Discovery and Data Preservation Policy

Policy Category: Ethics, Integrity, Legal Compliance

Subject: Federal Discovery Rules

Responsible Executive: Vice President & Chief Information Officer

Office Responsible for Review of this Policy: Office of the Vice President and General Counsel

Procedures: N/A

Related University Policies: Records Retention and Disposal Policy

I. SCOPE

This policy, which applies to all faculty and staff, addresses the rules on preserving electronic information relevant to a litigation or legal dispute (e.g., lawsuit, employment claim). Although the scope of this policy specifically addresses electronically stored information, employees should be aware that the duty to preserve documents related to a legal dispute also covers paper documents and information, stored in any format.

II. POLICY STATEMENT

The University complies with federal and local laws regarding preservation of documents, whether electronic or in any other form, in connection with legal disputes. Federal and state courts have long recognized that electronic data is subject to the same discovery rules as other evidence relevant to a lawsuit. **Therefore, upon notice that a lawsuit has commenced against the University, or upon reasonable anticipation that a lawsuit may be brought, the University and all of its relevant personnel are under a legal duty to preserve all evidence, whether hard copy or electronic, relevant to the legal dispute. The failure to observe this legal duty may result in imposition by the courts of significant monetary sanctions and other penalties.**

III. DEFINITIONS

Discovery: The process by which relevant information is exchanged between parties in a lawsuit. It is conducted via production of documents, whether hard copy or electronic, and the taking of depositions.

Litigation Hold or Preservation Hold: The Office of General Counsel's notification of an employee's duty to preserve certain stored information. Notice to suspend routine or intentional purging of relevant data; including, overwriting, reusing, deleting, or any other destruction of electronic information relevant to a lawsuit, including electronic information wherever it is stored-at a University work station, on a laptop, or at an employee's home.

IV. POLICY

In a legal dispute, the University and its employees have a legal duty to locate, preserve, and subject to the rules governing discovery, turn over electronically stored information. Federal rules require a party to suspend any type of destruction of electronic information relevant to a dispute. This includes all forms of electronic communications – e.g., e-mail, word processing, calendars, voice messages, videos, photographs, information in PDAs, and any other locations where data may be stored. This electronic information must be preserved so that it can be retrieved, if necessary, at a later time. The information must be preserved in its original form, so that all information contained within it, whether visible or not, is also available for inspection (i.e. it is not sufficient to make a hard copy of electronic communication).

Although the information must be preserved, no data will be disclosed to the opposing party without first being appropriately reviewed by the Office of General Counsel to determine legal necessity and relevancy, and for removal of all legally privileged information. To ensure compliance with federal discovery rules, the following protocol will be followed when the General Counsel's office receives notice that litigation has been or may be commenced:

- The General Counsel's office will notify the Chief Information Security Officer (CISO) immediately of such litigation notice;
- General Counsel's office will consult with the affected unit and individuals as needed to identify relevant parties who might possess electronic data;
- General Counsel's office will send a litigation hold or preservation hold notice to affected individuals;
- The CISO will work with the unit's IT personnel as needed to identify all data storage devices and ensure appropriate preservation, including the creation of mirror images of hard drives so as to minimize any interference with ongoing activities;
- When the obligation to retain the preserved data ends, General Counsel's office will notify appropriate parties;
- When the duty to preserve evidence ends, the archived data will be returned to the affected individuals or destroyed, at their option.

Affected individuals must also preserve any new electronic information that is generated after receipt of the litigation hold or preservation hold notice that may be relevant to the dispute (such as an employment claim by a current employee where relevant new documents may be created during the ongoing employment relationship). Again, all hard copies of documents under the control of affected individuals must also be preserved.

Records, hard copy and electronic, that are not under a legal or preservation hold should be stored or destroyed in accordance with the University's records retention and disposal policy.

V. EFFECTIVE DATE AND REVISIONS:

This Policy is effective as of July 1, 2010. Reviewed September, 2014; October, 2016.