



# Litigation Hold Procedure

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## Introduction

Federal law requires parties to a lawsuit pending in federal court to preserve electronic data and documents pertaining to the lawsuit in conformance with the *Federal Rules of Civil Procedure*. There is a legal duty to preserve evidence (e.g., documents), including electronic documents, when the company receives notice indicating the evidence is relevant to pending litigation. This procedure was written to assist in the implementation of a Litigation Hold Notice process to comply with the *Federal Rules of Civil Procedure* and *Colorado Rules of Civil Procedure* provisions regarding preservation of hardcopy documents as well as Electronically Stored Information (ESI).

The penalties for non-compliance with the federal and state law regarding evidence retention in litigation are severe and potentially costly. The consequences for DRCOG could include, but are not limited to, monetary sanctions, payment of the opposing party's attorneys' fees and costs, preclusion of DRCOG's evidence at trial, dismissal of the company's claims and counterclaims, and default judgments against DRCOG.

## Scope

This procedure applies to employees and contractors of DRCOG. It includes all documents (hardcopy and electronic) referenced in the *DRCOG Document Retention Policy*.

## Purpose

There will be instances in which DRCOG must implement a Litigation Hold Notice requiring the retention of certain paper and electronic records for an indefinite period due to pending litigation. A Litigation Hold Procedure is the process whereby a company, when sued in court or, in certain circumstances, before an action has been commenced and there exists a potential for litigation, sends a Litigation Hold Notice suspending the normal document destruction operation outlined in the *DRCOG Document Retention Policy* for particular records relevant to the litigation. Notwithstanding the applicable records retention schedule, documents subject to a particular Litigation Hold Notice must be retained until the hold is removed.

Upon notice, the Administration and Finance Director, or designee, is responsible for implementing the Litigation Hold Procedure. General Legal Counsel is consulted prior to issuance of the Litigation Hold Notice.

## Documents

### Referenced Documents

DRCOG Document Retention Policy

## Definitions

- **DRCOG:** Denver Regional Council of Governments.
- **Electronic Record:** Also known as electronic files or electronic documents. Files or documents in computer-based format stored on computers or computer-related hardware. Such electronic files include, but are not limited to, e-mail messages, attachments, web-based files, text files, instant messaging files, voicemail, sound and video files, PDF documents, Microsoft Office documents or other similarly formatted documents, databases relevant to the claim, e-mail messages an employee may have deleted but which have not been deleted from the "Deleted Items" folder in Microsoft Outlook or similar programs, e-mail messages stored on storage drives, flash drives, CDs, DVDs, or other storage media. Electronic Records also include information that has been deleted from a computer or server but has not yet been overwritten and is still resident on the computer and is therefore retrievable, active on-line data, near-line data, off-line storage/archive data, and data backups. Electronic Records also includes metadata, which is the data embedded electronically in text and other files providing information concerning the properties and provenance of the file, including drafting history, authors, and revisions. This includes Internet cache files, Internet cookies, Internet favorites, and the like.

- **Electronically Stored Information:** Also known as ESI. Refer to *Electronic Record*.
- **Evidence:** Refers to hardcopy and electronic recordings, video tapes, writings, material objects, photographs, drawings, diagrams, testimony, or other items offered to prove the existence or nonexistence of a fact.
- **Hardcopy records:** Includes, but is not limited to, handwritten notes, correspondence, preliminary drafts, memoranda, raw data, sketches, notebooks, log books, invoices, appointment books, calendars, diaries, telephone messages, reports, articles, drawings, maps, plans, specifications, photographs, graphs, charts, working papers, schedules, printed data, proposals, draft and final contracts, subcontracts, purchase orders, change orders, change proposals, requests for bids/proposals, bids/proposals, daily reports, meeting minutes, standards, manuals and guides relevant to the claim stored on or off-site, whether maintained by DRCOG or its agents.
- **Litigation Hold:** A process by which an organization must preserve all records, including all forms of electronic communications, related to the subject of a dispute being addressed by a current or anticipated litigation for possible production in the litigation. During a litigation hold, normal record disposition policies are suspended.
- **Litigation Hold Notice Letter:** The communication distributed to preserve information and prevent or suspend destruction of paper documents and electronic data needed to be retained during a litigation hold.
- **Staff:** All employees and contractors performing services for DRCOG.

## Responsibilities

### General Legal Counsel

Assists with interpretation of and periodic review of the DRCOG Document Retention Policy to ensure proper retention periods are in place.

### IT Manager

Ensure the DRCOG computer systems support the records retention schedule and the litigation hold process.

### Division Directors

Ensures divisional adherence to the DRCOG document retention policy and the litigation hold process.

### DRCOG Staff

Obligated to notify appropriate personnel if they receive official notification of litigation against DRCOG or if litigation is suspected or anticipated.

## Training Requirements

The Administration and Finance Director will review the Litigation Hold Procedure annually, modify it accordingly, and inform and train all DRCOG employees on any changes.

## Policy Maintenance

This procedure is not intended to be a static document. It is dynamic and will change as the computing, technology, and regulatory environment changes. It will be reviewed and updated on a regular basis. At a minimum, the Administration and Finance Director will ensure a review of this policy by the appropriate personnel, including the General Legal Counsel, once per year.

## Enforcement

Any employee found to have violated this procedure may be subject to disciplinary action, up to and including termination of employment.

## Data Backups

Electronic documents are backed up once per day and retained for no more than 90 days. This backup process is intended strictly for disaster recovery purposes and does not serve as an archiving system.

## Litigation Hold Procedure

### Notification of Litigation

Employees are considered to be in receipt of an official notice of litigation when they receive a complaint, summons, and/or other official documents related to a lawsuit.

Employees who possess an official notice of litigation against the company must immediately inform their direct supervisor. The supervisor must, in turn, inform the Administration and Finance Director in writing within two (2) business days of their receipt of notification.

Employees who suspect or anticipate a notice of litigation must immediately inform their direct supervisor. The supervisor must, in turn, inform the Administration and Finance Director in writing within two (2) business days.

### Issuance of a Litigation Hold

The *Litigation Hold Notice Letter* is generated by the DRCOG Legal Counsel and is issued by the Administration and Finance Director or designee within five (5) business days of receipt of notification of pending litigation.

### Compliance with Litigation Hold

In response to a *Litigation Hold Notice Letter* issued by the Administration and Finance Director, or designee, all individuals who receive the notice must compile paper and electronic documents and data (including e-mail, voicemails, videos, etc.) as instructed in the notice letter. Electronic records must be retained in the original electronic format (e.g., burned to optical disk, saved in a secure folder on a server not subjected to unannounced deletion, etc.). It is not sufficient to print paper copies of electronic records as they must be maintained in their original electronic format. It is the responsibility of individuals to whom the litigation hold notice is issued to retain all records responsive to the notice until they receive written notification indicating otherwise.

### Rescinding the Litigation Hold

When the litigation has been resolved, the litigation hold will be rescinded. In consultation with and under the direction of the DRCOG Legal Counsel and Administration and Finance Director, or designee, will issue a letter rescinding the litigation hold. The letter will be sent to the appropriate individuals within five (5) business days of receipt of litigation resolution.

In addition to the re-implementation of the records retention schedule, the letter will include instructions regarding the disposition of the previously retained documents.

## Revision History

Date	Revision	Description	Author
09/29/2011	0.01	Initial release for review and comment.	Tim Feld
07/22/2015	0.02	Minor updates based on feedback	Tim Feld
08/07/2015	0.03	Minor updates based on Melinda Culley feedback	Tim Feld
08/27/2015	0.04	Modified page footer	Tim Feld
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