

**SALT LAKE COUNTY
COUNTY-WIDE POLICY
ON
LITIGATION HOLDS, PRESERVATION OF POTENTIAL EVIDENCE,
AND REPORTING OF POTENTIAL LITIGATION**

Purpose-

The purpose of this policy is to set forth the authority and process for initiating, implementing, monitoring, and releasing legal holds. The policy formalizes the responsibility of county personnel and agencies in preserving potential evidence, whether in physical or electronic form, which may relate to litigation involving the county and to the process of alerting county management about potential litigation.

Reference-

The policy and standards set forth herein are provided in accordance with Section 3.10 of Countywide policy 1400, which directs Salt Lake County Information Services to provide security systems and policies. Also reference the following:

Countywide IT security policies in the 1400 series
Countywide GRAMA policies in the 2000-2130 series

1.0 Scope

All county employees, consultants, volunteers, and elected officials are subject to this policy and must cooperate with Information Services and the District Attorney's Office in implementing and maintaining a "litigation hold" for preserving potential evidence, whether in physical or electronic form, and notifying Information Services and the District Attorney's Office about pending or possible litigation.

2.0 DefinitionsCounty personnel

This term includes any county employee, volunteer, elected official, and outside consultant or contractor.

Litigation Hold

The process of notification and preservation of evidence, in physical or electronic form, that may have evidentiary value and to suspend normal retention periods or document disposal procedures until the litigation has resolved and the District Attorney's Office has issued a litigation hold release.

Litigation Hold Notice

The written notice issued to County personnel to notify them that a litigation hold exists. The notice is used to put County personnel on notice that the County believes that it is currently under a duty to preserve potential evidence, in physical or electronic form, that it believes is relevant to an audit, investigation, or lawsuit.

Litigation Hold Release

The written notice issued to County personnel to notify them that a litigation hold has been released. The notice is used to put County personnel on notice that the County is no longer currently under a duty to preserve potential evidence, in physical or electronic form, that it believes is relevant to an audit, investigation, or lawsuit. County agencies may revert to normal data retention practices upon receipt of the release.

Notice of Claim

The formal notification of the county or its personnel that a potential litigant has asserted a claim

Pending Litigation

Means a matter has been initiated before a court or administrative body for the resolution of a dispute involving the county

Possible Litigation

Broadly encompasses litigation that is threatened by a person or entity, related to a notice of claim filed against the county or county personnel, or it appears reasonably likely that litigation may be filed against the county or its personnel

Potential evidence

Includes all records, whether in electronic or paper format, created, received, or maintained in the transaction of County business that may relate to pending or possible litigation involving the county or county personnel, and includes copies or drafts of such items

Personal Devices

Laptop computers, cell phones, PDA's, flash drives, or any other portable device capable of storing data

3.0 Policy

- 3.1 County personnel who become aware that litigation against the county or its personnel is reasonably likely must report that information to Information Services and the District Attorney's Office as soon as reasonably possible.
- 3.2 Upon receipt or knowledge of a litigation hold or that litigation involving the county appears reasonably likely, county personnel must take all reasonable steps to preserve potential evidence, including any records or material, in electronic or physical form; suspend the disposal of such material or records; prepare an inventory of such material or records, showing where that potential evidence is located, physically or on which electronic device it is stored; submit that inventory to Information Services and District Attorney's Office; and advise all persons they supervise or with whom they conduct county business and who may have been involved with or have knowledge of the litigation to preserve such evidence and to suspend its disposal.
- 3.3 County personnel shall maintain or surrender such potential evidence as directed by Information Services or the District Attorney's Office and shall not dispose of such potential evidence unless they have received a litigation hold release from the District Attorney's Office.

- 3.4 County personnel whose personal devices contain potential evidence shall notify Information Services and the District Attorney and shall cooperate in the retrieval and preservation of such evidence.
- 3.5 County personnel are required to adhere to the requirements of this policy and cooperate with Information Services and the District Attorney's Office in preserving potential evidence that may be of value in pending or possible litigation
- 3.6 The District Attorney's Office will determine and communicate to affected County personnel when a litigation hold is lifted and evidence need no longer be preserved. Normal County retention schedules remain in effect at the point any litigation hold is released.

4.0 Authorization

- 4.1 The District Attorney, with the assistance of Information Services and Records Management & Archives, shall take whatever actions it deems appropriate to preserve electronically stored potential evidence, including, but not limited to, copying the information electronically; taking possession of or arranging for the safe storage of any computer, telephone, or other electronic device owned by or issued by the county; down loading, mirroring, or copying any device's memory or hard drive; down loading or printing hard copies; taking physical possession of any county-issued electronic device holding potential evidence; and supervising the down loading or retrieval of potential evidence from the personal devices owned by county personnel.
- 4.2 The District Attorney's Office, or its designee, is authorized to issue a litigation hold; manage its duration and scope; determine when to release the litigation hold; and take such other actions it deems necessary to effectuate this policy, comply with court rules, and fulfill professional and ethical duties.

5.0 Exceptions

- 5.1 Other exceptions to this policy shall be approved in conformance with Countywide Policy 1001.

6.0 Enforcement

County personnel who fail to preserve potential evidence may be: subject to disciplinary proceedings, denied defense and indemnification by Risk Management, and incur personal liability to the county, and they may also be subject to court sanctions, including personal fines, punishment by contempt, personal liability for any judgment, and such other actions as deemed appropriate by the court..

7.0 Education

Training will be provided to County employees on this policy.

APPROVED and PASSED this 11 day of March, 2014.

SALT LAKE COUNTY COUNCIL

Michael Jensen

Date

ATTEST:

Sherrie Swensen, County Clerk

APPROVED AS TO FORM:

District Attorney's Office

Date