



ADMINISTRATIVE DIRECTIVE

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I. PURPOSE

The purpose of this Administrative Directive (AD) is to insure that documents, electronically stored information (ESI), photographs, and other material collected in relation to an incident that may result in litigation against the City will be gathered, preserved, and held until such time as the City Attorney (CA) or Risk Manager (RM) lifts the hold.

II. POLICY

Under both state and federal law, the City is required to preserve information in its possession that relates, or may come to relate, to litigation against the City. The City is obligated, with very few exceptions, to turn all such information over to the other party. In the event certain information is not disclosed, the City can be sanctioned by the court. The sanctions can run from refusing to allow the City to use such information at trial, have the court instruct the jury that they are to presume the information was unfavorable to the City, or imposing monetary sanctions.

Therefore, it is the policy of the City that it will take all reasonable measures to preserve and segregate those documents, electronically stored information (ESI), photographs, and other material collected in relation to an incident that may result in litigation against the City.

III. DEFINITIONS

- A. **Claim** - A written or emailed announcement of personal injury or property damage alleged to be the responsibility of the City provided to the Clerk in accordance the State and federal law and court rule.
- B. **Complaint** - A legal document initiating litigation with the City.
- C. **Department Custodian** - A department director, appointed officer, or elected official (collectively called "Directors").
- D. **Electronically Stored Information (ESI)** - Information kept by the City in digital form. This includes, without limitation, emails, documents, pictures, maps, diagrams, plans, and videos.
- E. **Legal Hold** - A notice provided by the City Attorney, Risk Manager, or Clerk to Department Custodians of actual or potential litigation against the city instructing the Department Custodian to gather and maintain certain ESI and TI. If a City employee is personally named as a defendant in a lawsuit, a Legal Hold will be provided to that employee.
- F. **Notice** - Any written or emailed announcement provided to a City employee while on duty that the person providing the notice threatens or intends to sue the City over a specific incident or course of conduct. This definition does not include Claims.



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- G. Record Control Official**- The individual designated pursuant to A.D. 1-05-1(III) (F), Custodian of Record - The City Clerk.
- H. Tangible Information (TI)** - Information kept by the City in physical form. This includes, without limitation, emails, documents, pictures, maps, diagrams, plans, and videos.

IV. GENERAL

- A. Acceptance of Claims and Complaint** - The only person authorized under state and federal law to accept delivery of a Claim is the City Clerk. If an individual attempts to deliver a Claim to an employee, that employee shall proceed as provided in B.4 below. The Clerk is the only person who is authorized to accept delivery of a Complaint unless an employee is personally named in the lawsuit. In that instance, the City employee must accept delivery of the Complaint.
- B. Disposition Of Claims**
1. **City Attorney** - Upon receipt of a Claim from the Clerk, the CA shall notify the appropriate Department Custodian and Clerk and instruct that person to initiate a Legal Hold if, in the opinion of the CA, the potential liability exceeds \$40,000.00. The notice shall be on a form approved by the CA.
 2. **City Clerk** - When a Claim is received by the Clerk, the Clerk will process it pursuant to the Office's internal policy and forward it to the Risk Manager and City Attorney. If the Clerk receives a Legal Hold, the Clerk publishes it on the Clerk's intranet website.
 3. **Equal Opportunity Programs Department (EOPD)** - In the event a Claim is mistakenly delivered to EOPD, it will immediately forward the Claim to the CA. In the event a complaint of employment misconduct is filed by an employee of the City the complaint will be forwarded to the CA.
 4. **Other Departments** - If any other department receives a Claim by process server, hand delivery, mail, or fax, the claim shall be directed to the Record Control Official who shall immediately forward it to the CA. If it is simply a Notice that the person is going to or may sue the City, the employee shall likewise forward the Notice to the Contact Record Control Official who shall immediately forward it to the CA.



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- 5. **Risk Manager** - If a Claim is sent to the Risk Manager (RM), the RM shall forward it to the City Attorney (CA) if, in the opinion of the RM, the potential liability of the City exceeds \$40,000.00. For all other Claims, the RM shall forward it to the CA in the RM's discretion.

V. CUSTODIAN RESPONSIBILITIES

- A. **DEPARTMENT CUSTODIANS** - Each department director is ultimately responsible for the timely and complete response to a Legal Hold notice. To assist in this duty, each director shall appoint an employee with the department to be the department's Record Control Official. This person should have knowledge of the various divisions or sections within the department so as to know where to direct the notice. The name of this individual shall be provided to the City Clerk, Risk Manager, and City Attorney. This responsibility shall continue until the Legal Hold Notice is closed.
- B. **Record Control Official** - The Record Control Official shall undertake to fulfill, at the director's direction, the Legal Hold Notice as soon as it is received. Once the Record Control Official receives the Legal Hold notice, the Record Control Official shall identify all employees, ESI, and TI that may be related to the matter. Have an employee in the department that is authorized to use RETAIN a computer program that allows certain members of staff to search and collect all emails related to the matter. As to ESI and TI, collect it in such a way that it can be transferred to the CA. As documents are compiled they will be transferred to the CA, RM, or both as appropriate. The CA will notify the affected employees once the case is settled, dismissed, or otherwise ended. This responsibility shall continue until the Legal Hold Notice is closed.
- C. **City Clerk/Custodian of Record** - When the Clerk receives a Legal Hold Notice; the Notice shall be placed on the City intranet until the Clerk is informed by the CA that it is closed.

Appendices Attachment "A" Legal Hold Notice

References Policy A.D. 3.06-1

Review Responsibility and Frequency The City Attorney, City Clerk, and Risk Manager shall review this directive and annually, based on date of publication.

Authorized



 City Manager

8/9/17

 Date

Michael J. Ortega

Memo to:

From:

Re: [CASE NAME AND NUMBER]/[BRIEF DESCRIPTION OF DISPUTE]

The City has been served with a complaint by (COMPANY/INDIVIDUAL) and concerning [NATURE OF DISPUTE]. Therefore, the City is required to preserve all data relevant to this dispute. Failure to preserve documents may cause the court to impose penalties and sanctions against the City which could cause the City to be found liable for damages under this lawsuit.

Specifically, you must preserve all relevant paper and electronically stored information and other data including, but not limited to:

- **Electronic files.** Retain all relevant electronic files, including, but not limited to, active files, archived files, deleted data which is currently recoverable, and legacy data relevant to the case. Relevant information may be in various electronic formats, such as voicemails, text messages, social media posts, calendars, and word processing files, spreadsheets, PDFs, JPEGs, PowerPoint presentations, Access and other databases, including cloud-based storage, temporary internet files, cookies, and .ZIP files, among others, wherever it resides, including the Internet.
- **Personal electronic devices.** The requirement to retain relevant electronic files applies to your personal electronic devices. This applies to any files contained on personal devices such as phones, tablets, laptops, and PC's. If you have work related files stored on such devices they must be segregated and preserved.
- **Paper documents.** Preserve all paper copies of files, presentations, calendars, diaries, notebooks, and other physical paperwork related to the matter, even if duplicate copies may exist in electronic format.
- **Other materials.** Relevant information is not always presented as a document. Other relevant data such as maps, plan documents, models, diagrams, images, and presentations also must be retained.
- **Subsequently-made documents.** Your duty to preserve relevant information is ongoing. Be sure to preserve all relevant documents that are composed or received after your receipt of this letter.
- **Electronic hardware and software.** Maintain a copy of hardware and software needed to view electronic files, including all relevant encryption and de-encryption systems, compression and decompression software, and relevant passwords. If hardware containing relevant information is replaced or becomes outdated, retain the appropriate hardware so that relevant data still may be accessed.

To help ensure the preservation of relevant paper, electronically stored information, and other data, we suggest that you take the following steps immediately:

- **Suspend all data destruction policies.** Until you identify the location of all potentially relevant data, you should suspend all data destruction policies, including backup tape recycling. This suspension should continue for those locations that contain relevant information for the duration of the case.
- **Identify the locations of relevant data.** Consider all possible locations and types of data that may be relevant, including data stored on proprietary databases, thumb drives, and employees' personal devices. After you identify all locations containing relevant data, you may resume regular data destruction policies for locations without relevant information.
- **Identify employees with relevant data.** List all employees who may have possession or control over potentially relevant data, including:
 - key players and their assistants;
 - employees in relevant business units;
 - records department personnel;
 - IT personnel; and
 - other employees that may deal with document retention or storage of documents or data (including former employees' files).

(The following bullet points would only be included in the notice that comes from the Department Custodian.)

- **Inform affected employees.** Immediately draft a litigation hold notice and distribute it to all employees who may have relevant data. The litigation hold notice should explain the purpose and scope of the litigation hold and the actions the employees must take to comply with the hold. Keep a record of all employees who receive this notice. If you need assistance preparing a litigation hold notice, please contact us.
- **Notify affected third parties.** Third parties that may have relevant information may include:
 - former employees;
 - consultants and professionals;
 - vendors; and
 - any other individuals who may have information related to this matter.
- **Develop a collection process.** Ensure that you collect all relevant paper, electronically stored information, and other data, and store and organize it in an efficient and safe manner. You should maintain all paper documents and electronic storage of relevant data under lock and key.

Please contact me with any questions or concerns you may have or for further advice.

Thank you in advance for your cooperation.