Records Management Guidance

Best Practices for Managing Records on Legal Holds

This document provides guidance and best practice about how to manage records during the legal hold process, including how to comply with Executive Policy LGL-15-1-2-EP, Legal Holds Compliance.

Contact the Records Management Program for guidance on managing records under other types of hold (Public Records Act requests, audits, government investigations, etc.)

View the records management glossary for clarification about various terminology affecting public records and legal holds.

Responsibilities

The Prosecuting Attorney's Office (PAO) – Civil Division

- Legal Holds – If the county is engaged in a lawsuit (or reasonably anticipating it), the PAO Civil Division will issue legal hold notices, which means that responsive records must be retained even if they are past their retention. This might also include transitory records, which otherwise have no retention period. The PAO will send legal hold notices to relevant personnel and to the Records Management Program. These notices will describe the case and what records to hold.
  Pro Tip: For more information about records retention, see Basic Records Management training and the county retention schedules.

- The PAO is the office of record for litigation case file records, meaning all litigation case file records are PAO records.

- The PAO is responsible for informing client agencies and the Records Management Program when the legal issue is over so that they holds can be lifted.

The Client Agency (you)

- All employees are responsible for managing county records before, during, and after holds. Managing records according to your retention schedule will reduce the time, energy, and stress it costs to find and review records for discovery.
  Pro Tip: Keep your records in Content Manager (CM), the countywide records management system.

- You are responsible for following the directions from the PAO and the legal hold notice, including preserving records and not letting them be destroyed.

- If records are stored in Content Manager (CM), you are responsible for adding them to the appropriate legal hold. Contact the Records Management Program for guidance.

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- Records Management Roles – all agencies have specific people with assigned records roles. These people are likely the ones to manage and carry out legal hold records responsibilities. Specific responsibilities vary from agency to agency.
    - The Agency Records Officer (ARO) is appointed to work with the Records Management Program to establish best records management practices within their agency. They may delegate relevant legal hold duties to disposition authorities and records management leads. Executive Policy INF-15-1-1-EP currently includes statements that describe the responsibility of the Agency Records Officer to add new legal holds and release lifted holds on a central countywide legal holds tracking list hosted by the Records Management Program. That policy requirement is now obsolete with the processes described in this guidance document, but the rest of the Executive Policy is still in effect. The ARO should contact the Records Management Program to confirm or clarify holds if needed.
    - Disposition Authorities are appointed to review records that have met their retention requirements and halt disposition if the records in question are subject to legal holds, public records requests, audits or government investigations. The ARO is responsible for performing the task if the disposition authority is unavailable.
    - The Records Management Leads (RMLs) supports records management at the section or workgroup level. This might include informing colleagues of holds being issued, locating records for discovery, and making sure records under hold are clearly identified.

The Records Management Program (RMP)

- The RMP manages and supports Content Manager (CM), the countywide records management system that is also used to manage holds on any records within the system.
  Content Manager functionality includes:
    - Container records (digital folder or box) can be placed on one or more holds
    - Records on hold are excluded from any disposition process
    - Records are preserved in their native format
    - Inventory of records on hold can be retrieved
    - Records retention is resumed when the hold is lifted

- When notified by the PAO, the RMP confirms and adds legal holds to Content Manager to create a central list of holds. This list is available on a Power BI dashboard on the Public Records Committee (PRC) Teams site, which all AROs have access to. The dashboard information is synced to Content Manager daily and the RMP is responsible for managing the dashboard as well. Note that this list is only comprehensive for holds issued by Prosecuting Attorney's Office – Civil Division. For holds issued by other agencies or personnel, agencies will need to contact Records Management Program for guidance.

- The RMP is **not** responsible for determining which records to put on hold, but may help search for records and place them on holds in CM.

- The RMP lifts the Content Manager holds when notified by the PAO.

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- The RMP works with agencies to identify and assign appropriate retention schedules. The RMP will only assign the **Litigation Case Files** record category to the PAO.

Managing records under a legal hold

Manage records according to the directions in the hold notification. For clarification about the hold and what it applies to, send questions to the PAO.

- Create an inventory of the records under a hold so that you can track and manage them throughout the issue, as needed. An inventory should have a description and date range of the records, the retention schedule, and the records location. Inventories do not need to be detailed. Metadata can be exported from Content Manager to create inventories.

- Make sure people can tell the records are being held. This can be anything from putting a label on a box to adding a column in Teams or SharePoint. Add records in Content Manager to the appropriate hold(s).

- Records about work done related to the legal hold need to managed according to their retention schedule. The original records under a hold have their own retention schedule according to what kind of records they are.

Records	Responsible Custodian	Category
Case file	PAO	Litigation Case Files (GS53-02-04R3)
Agency records related to the hold - notice received from the PAO, - communications related to identifying records responsive to the hold, - communications with the PAO about the hold, - other related records	Agency employees in direct communication with the PAO about the issue	Project Files (Combo 43 Admin Projects: GS2024-020, GS2024-028, GS2024-029, GS50-06F-03R2, GS50-01-38R3, GS2024-018)
Other *copies* of records about the hold issue	Agency employees **not** responsible for coordinating the hold and **not** in direct communication with the PAO about the hold	General Office Communications (GS2010-001R4)
Copies of records provided to the PAO		Transitory

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- Records under hold must be preserved under the conditions stated by the hold notice.
    - Work with IT to hold records that might be scheduled for automatic deletion, such as chats or recordings in Teams.
    - Keep the records safe and secure. For example, paper records should be kept off the floor and away from sunlight and food. Electronic records should be backed up regularly. Be aware of software updates possibly affecting your electronic records – especially for records that depend on specific software to access.
    - Periodically check the records to ensure they are being preserved, especially for extended holds.

Managing records after a hold

After the PAO informs you that the hold is lifted, you are responsible for removing the hold from records **not** kept in Content Manager. Retention should resume based on the original cutoff date and retention schedule applied to the records.

- If records are managed in Content Manager, no further action is required from agency personnel. Records Management will release holds in that system after receiving the hold lift notice from the PAO.

- Make sure the records are not under other holds, which could include other legal holds, public records requests, and audits.

- If any records met their retention requirements before or during the hold, they can be dispositioned according to the retention schedule. This includes transitory records.

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