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Parent Policy: [Records Management Policy](#)

## Legal Hold Procedure

<b>Office of Administrative Responsibility:</b>	General Counsel
<b>Approver:</b>	Office of General Counsel
<b>Scope:</b>	Compliance with this University procedure extends to all <b>employees</b> and <b>other affiliates</b> , as defined.

### Overview

When an existing or anticipated **legal proceeding** involves the University, the University has an obligation to identify, preserve, collect and produce **record(s)** in its custody or control that relate to that legal proceeding. This obligation is met, in part, by a **legal hold notice** that informs employees and other affiliates, who may hold such records, about the legal proceeding and the obligation to identify, preserve, collect and produce those records.

### Purpose

The purpose of this Procedure is to:

- describe the steps for issuing a legal hold notice
- set out the responsibilities of employees and other affiliates who receive a legal hold notice
- explain when employees and other affiliates are released from the responsibilities under a legal hold notice.

This Procedure applies only to records which are in the University's custody or control or to records in which the University has a right of access. Records which are not captured by this Procedure include, but are not limited to:

- records created or received by an employee or other affiliate as a result of personal activities or personal communications, or
- records in which an employee or other affiliate exclusively owns the copyright and in which the University does not have a right of use or access.

However, where an employee or other affiliate is specifically named as a party in a legal proceeding, they may have an independent obligation, as a party, to identify, preserve, collect and produce records in their custody or control. In such circumstances, the records within the employee's or other affiliate's custody or control could include records pertaining to their personal activities or personal communications, to the extent such records would be relevant to the issues in the legal proceeding.

**PROCEDURE****1. ISSUING A LEGAL HOLD NOTICE**

- a. Where an existing or anticipated legal proceeding involves the University, the Office of General Counsel (OGC):
  - will send a legal hold notice to those employees and other affiliates who appear to hold records that are or may be related to the legal proceeding (“related records”) and,
  - may provide a copy of the legal hold notice to other employees who may be able to assist with the identification, preservation, collection and production of related records (e.g. the University’s Records Officer, the Chief Information and Security Officer (CISO) or Director of the Information and Privacy Office (IPO)).
- b. The OGC will consult with affected employees and other affiliates to determine if there are other employees or other affiliates to whom a legal hold notice should be sent.
- c. If an employee or other affiliate who may hold related records intends to cease or ceases their employment or relationship with the University during a legal hold, they and the appropriate department/unit head will notify the OGC so that related records can be identified, preserved, collected and produced.
- d. Employees and other affiliates must notify the OGC as soon as they become aware of, or reasonably believe that, a legal proceeding has been or may be brought against the University to enable the OGC to determine whether a legal hold notice should be issued.

**2. RESPONSIBILITIES UNDER LEGAL HOLD NOTICE**

- a. Upon receipt of a legal hold notice, employees and other affiliates shall promptly acknowledge receipt of the notice by email or other writing to the OGC and follow the instructions contained in the legal hold notice which will typically include one or more of the following:
  - suspend related record destruction schedules
  - identify related records which are in the University’s custody or control
  - preserve related records and not delete, destroy, modify or alter related records
  - collect and/or save copies of related records
  - send to and/or share related records with a person(s) identified by the OGC.
- b. Where appropriate, the OGC and/or other offices, such as the CISO, may assist affected employees and other affiliates to identify, preserve, collect and produce related records (e.g. identification and collection of electronic records).
- c. The OGC will assist employees and other affiliates by coordinating the provision of related records to the OGC, external legal counsel or other representative having carriage of the legal proceeding on behalf of the University.
- d. The obligation to identify, preserve, collect and produce records related to a legal proceeding is a continuing duty. Therefore, subject to section 3 below, employees and other affiliates must also

identify, preserve, collect and produce any records discovered or generated after receipt of the legal hold notice.

- e. In some legal proceedings, University employees may be required to give evidence about the steps taken to identify, preserve, collect and produce related records. In addition, if the University fails to meet these obligations, it may be subject to legal sanctions or other adverse consequences in the legal proceeding.

### 3. RELEASE OF LEGAL HOLD AND RESPONSIBILITIES

- a. The OGC will determine when a legal hold is no longer required and, where that occurs, will notify affected employees and other affiliates that they are released from the responsibilities under the legal hold notice and, where appropriate, that record disposition schedules can be reinstated.

## **DEFINITIONS**

Definitions should be listed in the sequence they occur in the document (i.e. not alphabetical).

Any definitions listed in the following table apply to this document only with no implied or intended institution-wide use. <a href="#">▲ Top</a>	
<b>Employee(s)</b>	Any person who is employed by or performs a service for the University of Alberta including but not limited to a person <ul style="list-style-type: none"> <li>● described in the <i>Recruitment Policy (Appendix A) Definition and Categories of Academic Staff and Colleagues</i> or the <i>Recruitment Policy (Appendix B) Definition and Categories of Support Staff</i>, or</li> <li>● under a contract of service with the University (e.g. graduate student, postdoctoral fellow, temporary or casual worker, etc.), or</li> <li>● otherwise found or deemed by law to be an employee of the University.</li> </ul>
<b>Other affiliate(s)</b>	Other affiliate(s) means a natural or corporate person or other entity that has a contractual or other relationship with the University under which the University has a right of access to records in the custody of that natural or corporate person or other entity. Other affiliates may include but are not limited to volunteers or third party service providers.
<b>Legal proceeding</b>	Any manner or form of action or process commenced, brought, conducted or heard by or before, or otherwise involving any judicial, governmental, regulatory, administrative or arbitral tribunal or authority and includes, but is not limited to, an action, application, judicial review, appeal, prosecution, subpoena, notice, order, complaint, grievance, claim, hearing, inquiry, investigation, review, audit, examination, arbitration and mediation.
<b>Record(s)</b>	Any medium on which information is recorded or stored and includes, but is not limited to, forms such as documents, papers, letters, notes, books, maps, drawings, receipts, vouchers,

	photographs, images, audio and/or visual recordings, x-rays, emails, texts and any other information that is written, photographed, recorded or stored in any manner (e.g. hard copy, electronic, digital).
<b>Legal hold notice</b>	A notice issued to employees or other affiliates that advises of an existing or anticipated legal proceeding, the subject matter of the legal proceeding, the obligation to identify, preserve, collect and produce records related to the legal proceeding, and contains instructions about the steps to take to meet this obligation.

## **FORMS**

There are no forms for this Procedure. [[▲Top](#)]

## **RELATED LINKS**

Should a link fail, please contact [uappol@ualberta.ca](mailto:uappol@ualberta.ca). [[▲Top](#)]

[Legal Hold Notice – Anticipated Legal Proceeding](#)

[Legal Hold Notice – Existing Legal Proceeding](#)