ARIZONA DEPARTMENT OF CHILD SAFETY

| TITLE | POLICY NUMBER | |
|---|---|---|
| Litigation Preservation | DCS 06-02 | |
| RESPONSIBLE AREA | EFFECTIVE DATE | REVISION |
| Office of General Counsel | 04/23/18 | 4 |

## I. POLICY STATEMENT

The Department is committed to complying with requirements for preserving records that relate to matters that the Department reasonably anticipates to be litigated, and the records may be related to the subject of the actual or anticipated litigation. Civil and criminal sanctions may be imposed on the Department or on an individual by a court for failure to preserve records and comply with discovery requirements.

## II. APPLICABILITY

This policy applies to all Department employees who are, may be, or have been identified in a lawsuit, situation, claim, charge, grievance, or incident for which the Department or its employees reasonably anticipated litigation.

## III. AUTHORITY

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| A.R.S. § 38-421 | Stealing, destroying, altering or secreting public record; classification |
| A.R.S. § 39-121.01 | Definitions; maintenance of records; copies, printouts or photographs of public records; examination by mail; index |
| A.R.S. § 41-151.12 | Records; records management; powers and duties of director; fees; records services fund |

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| A.R.S. § 41-151.13 | Records management officer; duties |
| A.R.S. § 41-151.14 | State and local public records management; violation; classification; definition |
| A.R.S. § 41-151.15 | Preservation of public records |
| A.R.S. § 41- 151.16 | Production and reproduction of records by agencies of the state and political subdivisions; admissibility; violation; classification |
| A.R.S. § 41-151 | Definition of records |
| A.R.S. § 41-151.19 | Determination of value; disposition |

Arizona State Library, Archives and Public Records Schedule Numbers: CS-1182, Rev. 1 (DCS - All Divisions)

Currently applicable Arizona Rules of Civil Procedure regarding discovery of electronic records

Currently applicable Federal Rules of Civil Procedure regarding discovery of electronic records

| | |
|---|---|
| DCS 02-24 | Records Management |

## IV. DEFINITIONS

Attorney General's Office or A.G.: The Arizona Attorney General unit assigned to provide legal assistance to the Department.

Arizona Department of Administration / Risk Management (ADOA): the unit with ADOA whose purpose is to protect the state's assets from loss and minimize employee injuries on the job.

Department or DCS: The Arizona Department of Child Safety.

DCS Distribution Center: The facility where DCS records are stored, retrieved, and

eventually destroyed according record retention schedules.

Electronically stored information, or ESI: is any information that is created or stored electronically. ESI includes the metadata (defined below) contained in all electronic documents. Examples of items which may include ESI are: writings, drawings, graphs, charts, originals and copies, word processing documents, e-mail and e-mail attachments, spreadsheets, instant and text messages, databases, calendars and planners, audio (including DCS Hotline audio calls) and videos, PowerPoint slide decks and other multimedia, voicemail and all other types of information that is commonly created, stored, and transferred by a computer, including relevant information stored on your home computer(s) and other personal electronic device(s).

Employee: For the purpose of this policy, employee means all DCS full-time, part-time, paid employees; students; interns; and volunteers.

Litigation Preservation Process: The identification, collection, and preservation of information that may be relevant to pending or reasonably anticipated litigation or other legal process (e.g., court-ordered retention orders, audits, grievances, public records requests).

Litigation Preservation Hold Notice: Letter or other notice informing employee of actual or reasonably anticipated litigation, otherwise known as a pre-claim, and directing employee or group of employees to identify, collect, and preserve relevant information. The letter may come from the Department, another agency, the AG, or private individual, entity, or their attorney.

Litigation Preservation Service Ticket: a request from a supervisor or Litigation Liaison to the Information Technology (IT) department to place a litigation hold on an employee's records.

Litigation Liaison: The person or persons to whom the Department assigns overall responsibility for notifying the appropriate Program regarding litigation preservation. The Litigation Liaison ensures that the litigation preservation holds are implemented.

Metadata: a set of data that describes and gives information about other data.

Non-state entities: DCS contractors, subcontractors, Department agents, vendors, or licensees.

Office of General Counsel: The Department's internal counsel.

Reasonable anticipation of litigation: When an organization reasonably believes or is on notice of a credible probability that it will become involved in litigation, seriously contemplates initiating litigation, or when it takes specific actions to commence litigation. The standard for reasonable anticipation of litigation is objective. If a reasonable person would have expected litigation, the Department's duty to identify, collect, and preserve generally is triggered.

Records: All hardcopy and electronic books, paper, emails, maps, photographs, drafts, markups, or other documentary materials, regardless of physical form or characteristics, including prints or copies of such items produced or reproduced on film or electronic media pursuant to A.R.S. § 41-151.16; made or received by any governmental agency in pursuance of law or in connection with the transaction of public business and preserved or appropriate for preservation by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the government, or because of the informational and historical value of the data contained therein, and includes records that are made confidential by statute. Library or museum material made or acquired solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference and stocks of publications or documents intended for sale or distribution to interested persons are not included within the definition of records. All records media are included in this definition from the traditional paper forms to electronic types in use (i.e., email, social media), and/or forms of records not yet invented.

## V. POLICY

A. All employees shall retain any record that is relevant to pending or reasonably anticipated litigation as follows:

1. For active or reasonably anticipated litigation, the records shall be held until final resolution of the action, which shall include final adjudication of the action at the last level of appeal, or until order of the court, or when the normal record retention ends, whichever is later;

2. In the case of reasonably anticipated litigation:

a. The Department shall retain relevant records until the prospect of litigation ends or according to the public records schedules for CS-1182, Rev. 1 (DCS - All Divisions) whichever is later; and

b. If there is no court action, until the expiration of all time periods within which legal action may be taken.

B. The Department shall ensure that all information related to actual or anticipated litigation, including paper, electronically stored records, and ESI are:

1. Never stored on a local drive or computer's desktop and are always retained on a network location, such as an employee's OneDrive or division shared drive;

2. Maintained according to the DCS Record Retention schedules.

a. Records subject to the litigation preservation process shall not be destroyed until the litigation preservation is lifted. Email accounts will be suspended by the Department after an employee's termination from employment for 30 days and terminated after 60 days unless subject to litigation preservation and/or requested to be preserved to ensure compliance with retention schedules; and

b. Emails tracked to a case in Guardian that is under litigation preservation shall not be untracked or removed from Guardian.

3. Identified and placed on litigation preservation when the Department becomes aware of a lawsuit, situation, claim, charge, grievance, or incident that may reasonably and credibly lead to litigation. These include, but are not limited to, the following:

a. Receipt of a Litigation Preservation Hold letter or notice from the Office of the Attorney General;

b. An incident, conversation, email, or other event that indicates litigation is reasonably and credibly anticipated;

c. Occurrence of any event that may reasonably and credibly lead to litigation as determined by the Office of General Counsel and/or Office of the Attorney General;

d. Opening of a pre-claim investigation;

e. Filing of a Notice of Claim;

f. Filing of a lawsuit;

g. Charges of employment discrimination; and/or

h. Personnel actions as they pertain to anticipated litigation.

4. Retained and not released until authorized to do so;

a. If there are records subject to litigation preservation, the Department Litigation Liaison should be notified and shall give instructions for the continued identification, collection, and preservation of the records.

b. When an employee resigns, terminates employment with the Department, or is on extended leave (e.g., sick, administrative, leave without pay), the employee's supervisor shall:

i. contact the Litigation Liaison within 15 days after the employee's end of employment with the Department to determine whether the employee has any records subject to litigation preservation; and

ii. ensure that the employee's records (hard copy and electronic) are not destroyed or deleted until the supervisor has determined that the employee did not have any records subject to litigation preservation. The supervisor must make this determination within 30 days of the employee's termination.

c. Prior to destroying, disposing, or deleting any record which was subject to litigation preservation, the supervisor and/or Distribution Center shall ensure that the time frame outlined in the applicable Department disposition schedule has passed.

d. DCS Information Technology (IT) shall contact the Litigation Liaison to determine if an employee whose account is scheduled for termination is subject to litigation preservation before deleting any information from or 'wiping' the computer, laptop, tablet or cellular device/phone of an employee who has terminated employment.

C. The Department shall document all actions taken in response to litigation preservation, particularly those actions taken to preserve any relevant records. Items to document may include, but are not limited to, the following:

1. Copies of all notices sent to persons and/or entities regarding the identification, collection, and preservation of relevant records and any responses received.

2. Records of conversations regarding identification of sources and preservation of records.

3. Signed confirmation of having been notified to identify, collect, and preserve records.

4. Copies of all emails/correspondence from any counsel.

## VI. PROCEDURES

A. The DCS Litigation Liaison is the point of contact for receipt of litigation preservation notices.

1. The Litigation Liaison receives notices of:

a. pre-claim investigations, claims, lawsuits, summons and personnel actions against DCS from the Attorney General's Office;

b. a claim or summons directly from a client or employee or through their attorney;

c. Equal Employment Opportunity Commission (EEOC) charges from the Director's Office of Equal Opportunity and from Department's Human Resources (HR);

d. lawsuits against the Department; and

e. incidents, conversations, emails, or other events that indicate litigation is reasonably anticipated.

2. The Litigation Liaison shall notify the Attorney General's Office:

a. That a notice, summons, claim, complaint, or correspondence from attorneys was received to determine if the Attorney General's Office received the claim and to seek advice; and/or

b. When the Department reasonably believes, or is on notice of a credible probability, that it will become involved in litigation.

3. The Litigation Liaison forwards any notices, summons, claims, complaints, or correspondence not received from the Office of General Counsel to the Office of General Counsel.

4. The Litigation Liaison forwards any notices, summons, claims, complaints, or correspondence received to the Arizona Department of Administration/Risk Management to plnewclaims@azdoa.gov.

5. When a DCS employee receives notice of responsibility to identify, collect, and preserve records from someone other than the Litigation Liaison, the employee notifies the Litigation Liaison.

   a. Email: Litigation@azdcs.gov

   b. Phone: (602) 255-2500

B. The Litigation Liaison manages the litigation preservation notification process.

1. Upon receipt of a notification described in VI.A.1, the Litigation Liaison consults with the A.G. and the Office of General Counsel to identify:

   a. employees named specifically in the claim or pre-claim; and

   b. employees who may have relevant information; including:

      i. current and former DCS employees who were witnesses to or involved in the incident;

      ii. current and former DCS Employees or others who were or may be directly involved in the Intake, Assessment, Case, file, incident, or other matter;

      iii. supervisors, managers, investigators, or any others who may have received reports of the incident or who were consulted about it;

      iv. non-state entities and their employees, including contractors, subcontractors, Department agents, vendors, or licensees, who were witnesses to the incident, or who were involved in the Intake, Assessment, Case, file, incident, or other matter; and

      v. for identified non-state entities, the Litigation Liaison, in

consultation with the A.G. and the Office of General Counsel:

(a) reviews the relevant contract to determine any contractual obligations regarding the preservation of information obtained or created under the contract;

(b) provides the entity written notice of the legal matter, asking them to identify their staff or subcontractors that may have been or may be involved in the legal matter, and to provide relevant names and contact information.

2. The Litigation Liaison sends identified employees:

   a. The appropriate Litigation Preservation Hold Notice; which instructs them to:

      i. identify, collect, and preserve all related paper, other non-electronic information and ESI until further notice;

      ii. acknowledge receipt of litigation preservation; and

      iii. provide confirmation of completion.

   b. A Certificate of Completion; and

   c. Litigation Hold File Notice label.

3. The Litigation Liaison sends identified non-state entity employees:

   a. The appropriate Litigation Preservation Hold Notice; which instructs them to:

      i. identify, collect, and preserve all related paper, other non-electronic information and ESI until further notice;

      ii. acknowledge receipt of the litigation preservation; and

      iii. provide confirmation of completion.

   b. A Certificate of Completion

4. The Litigation Liaison notifies the DCS Distribution Center:

a. of litigation preservation for an identified Intake, Assessment, Case, file, incident, or other matter; and

b. the record type, name and number as identified in Guardian.

5. The Litigation Liaison emails the appropriate Litigation Preservation Hold Notice records request to the DCS Hotline Call Center, which instructs them to:

a. identify, collect, and preserve all related hotline audio calls, other non-electronic information, and ESI until further notice;

b. acknowledge receipt of the litigation preservation hold request; and

c. provide confirmation of completion by placing the requested audio calls inside the designated Litigation Case folder for preservation.

6. The Litigation Liaison will provide in this Litigation Preservation Hold Notice records request:

a. notice of the litigation preservation hold records request for all identified Intake audio calls, pertaining to an Assessment, Case, file, incident, or other matter; and

b. the record type, name, and number as identified in Guardian.

7. The Litigation Liaison submits a Service Ticket to DCS IT that includes:

a. notification of the litigation preservation for identified employees or Intakes, Assessments, Cases, files, incidents, or other matters; and

b. employee or record specifics, as well as employee name and email address, and the Liability Management Section (LMS) number if available.

8. The Litigation Liaison emails the Office of Learning and Development:

a. the litigation preservation letter for identified employees; and

b. request for training records of specific employees or topics concerning an Intake, Assessment, Case, file, incident, or other matter when specifically requested as part of a record request from

the A.G., plaintiff or Office of General Counsel after a lawsuit is filed and discovery is initiated.

9. The Litigation Liaison notifies the Arizona Department of Administration/Risk Management Division of any reasonably anticipated litigation, or litigation preservation notice:

   a. Email: plnewclaims@azdoa.gov

   b. Phone: (602) 542-2182

10. The Litigation Liaison maintains a list of all litigation preservation holds or any other notices regarding reasonably anticipated litigation in effect for the Department.

11. The Litigation Liaison tags an intake, assessment and/or case in Guardian as subject to litigation preservation.

12. The Litigation Liaison responds to requests from within the Department:

   a. whether an employee is or was involved in an Intake, Assessment, Case, file, incident, or other matter on litigation preservation; and

   b. whether a record is on litigation preservation.

C. Any employee involved in an Intake, Assessment, Case, file, incident, or other matter on litigation preservation ensures that data and records relevant to a litigation preservation are identified and preserved.

1. Upon receipt of a litigation preservation notice, the employee:

   a. in coordination with, and under the guidance of the Litigation Liaison, IT, and management, will identify, collect, and preserve information related to the case(s), persons and/or situation described in the Litigation Preservation Hold notice, or which indicates a reasonable anticipation of litigation regardless of whether it is subject to litigation preservation;

   b. ensures that all paper, and other non-electronic information is secured by placing them in the hard file and then labeling each folder, binder or box with the Litigation Hold-Paper Files label:

   "CONTENTS OF THIS CASE FILE ARE SUBJECT TO A

LITIGATION HOLD. DOCUMENTS CONTAINED HEREIN SHALL NOT BE DESTROYED OR PERMANENTLY REMOVED.

UPON RECEIPT OF THIS CASE, A NEWLY ASSIGNED DCS SPECIALIST AND/OR DCS SUPERVISOR SHALL IMMEDIATELY EMAIL THE DCS OFFICE OF GENERAL COUNSEL AT Litigation@azdcs.gov NOTIFYING THEM OF THE CHANGE IN CASE ASSIGNMENT."

c. completes and returns the Certificate of Completion; and

d. ensures, in coordination with, and under the guidance of the Litigation Liaison, IT, and management, that all ESI is preserved in a secure location:

i. relevant emails and attachments are not deleted from the email client; and

ii. all other ESI is saved to the employee's personal drive (OneDrive) and/or shared drive if appropriate and that ESI is not deleted.

2. When an employee is or was involved in an Intake, Assessment, Case, file, incident, or other matter on litigation preservation transfers within the Department or leaves the Department:

a. The employee informs the Litigation Liaison and provides:

i. the employee's name and contact information; and

ii. the location of secured paper and other non-electronic information pertaining to the litigation preservation.

b. The employee informs the employee's supervisor:

i. that the employee possesses records that are subject to litigation preservation;

ii. that the employee is aware of information that may indicate a reasonable anticipation of litigation; and

iii. that paper and other non-electronic information pertaining

to litigation preservation are labeled as such.

c. The employee's supervisor has 30 days past the employee's resignation date to examine the employee's records to determine if any records should be on litigation preservation. If there are records that should be on litigation preservation, the supervisor must create a litigation preservation service ticket and note it in the ticket that the employee's records should be on litigation preservation.

d. The employee's supervisor will complete the actions identified above in C.2.(a) and (b) when an employee leaves abruptly without notice or fails to complete these steps as required.

e. DCS IT preserves the employee's ESI when the employee is or was involved with an Intake, Assessment, Case, file, incident, or other matter on litigation preservation. DCS backs up the user's email mailbox contents and their OneDrive or share drive.

f. The employee's supervisor provides the Litigation Liaison with the name and contact information for the employee who is newly assigned to the Intake, Assessment, Case, file, incident, or other matter subject to litigation preservation.

3. When an employee is or was involved with an Intake, Assessment, Case, file, incident, or other matter on litigation preservation and closes a case subject to litigation preservation, the employee:

a. ensures all paper and non-electronic information or records are labeled with the Litigation Hold-Paper Files label; and

b. forwards paper and non-electronic records to DCS Distribution Center.

4. When an active Intake, Assessment, Case, file, incident, or other matter that is subject to litigation preservation, or for which the Department has a reasonable anticipation of litigation, is transferred to another Program, Unit or Office, the assigned employee:

a. ensures that all relevant paper and other non-electronic files are labeled as litigation preservation (see VI.C.1.b); and

b. notifies the Litigation Liaison that the Intake, Assessment, Case, file, incident, or other matter is transferring.

5. When the Distribution Center receives notice from the Litigation Liaison that records are subject to litigation preservation, the Center shall:

a. determine if any records exist;

b. if a record exists, the Distribution Center shall affix a label to the closed record storage clearly identifying the case as being subject to litigation preservation. The label shall include the following elements:

i. The statement: “This case is subject to litigation preservation and must be preserved superseding record retention schedules.”;

ii. Case Name and Case ID;

iii. Date Distribution Center Received Case;

iv. Preservation Hold Begin Date (date a litigation preservation hold notice was received by Distribution Center);

v. Preservation Hold End Date (date a notice to release a litigation preservation hold was received by Distribution Center); and

vi. Name and Signature of Distribution Center Staff affixing label.

c. maintain a log of all cases on litigation preservation as notified by the Litigation Liaison.

6. Purge and Retention Schedule Activities.

a. All paper or other non-electronic records with a litigation preservation hold label are exempted from scheduled or automatic processes to delete or purge.

b. DCS IT suspends all scheduled or automatic processes to delete or purge ESI for which the Department has a reasonable anticipation

of litigation.

D. The Litigation Liaison ensures that data and records relevant to litigation preservation are collected.

1. When the A.G.'s office requests production or updated production of records subject to litigation preservation, the Litigation Liaison:

a. Forwards the request for records to the Centralized Records Coordination Unit (CRCU):

i. with updated employee contact information for the Intake, Assessment, Case, file, incident, or other matter on litigation preservation; and

ii. with updated assignment information for the Intake, Assessment, Case, file, incident, or other matter on litigation preservation.

b. CRCU requests the records from:

i. the employee(s) responsible for, or in possession of "the requested information;

ii. the employee(s) assigned to an Intake, Assessment, Case, file, incident, or other matter on litigation preservation;

iii. DCS IT; and/or

iv. DCS Distribution Center.

c. Forwards the request to any other Department program for which relevant records are requested (e.g. Policy Unit, Learning & Development, Office of Procurement and Contracts, Ombudsman, Human Resources, etc.):

i. with specific documents and/or document description requested;

ii. the time period from which records should be gathered; and

iii. the date needed by the A.G.

d. In consultation with the Office of General Counsel, the Litigation

Liaison will instruct CRCU to redact any records deemed appropriate by the A.G. and Office of General Counsel.

2. The employee responsible for, or in possession of, requested records copies paper and other non-electronic records and forwards them to CRCU when directed to do so by the Litigation Liaison, Office of General Counsel and/or A.G.:

   a. Site Code: C010-19

   b. Email: DCSrecordsrequests@azdcs.gov

3. DCS IT copies litigation preservation ESI as requested by the Litigation Liaison, Office of General Counsel, Arizona Department of Administration/Risk Management and/or A.G.

4. CRCU processes the records, which include a scanned copy of the hard file, data from Guardian, Office of Child Welfare Investigation (if applicable), and Protective Services Review Team (if applicable) and sends them to the A.G.'s office, per the A.G.'s request.

E. The Litigation Liaison communicates changes in status of litigation preservation.

1. When the Litigation Liaison receives notification from the A.G.'s office that litigation preservation has been lifted, the Litigation Liaison:

   a. Checks the litigation log to determine if the information/ records are, or should be, subject to additional litigation preservation holds.

   b. Notifies, in writing (absent any additional litigation preservation holds, or any need for additional litigation preservation holds):

      i. The employee assigned to the Intake, Assessment, Case, file, incident, or other matter, and their supervisor;

      ii. All employees to whom a litigation preservation hold was issued;

      iii. DES;

      iv. DCS Distribution Center;

      v. DCS IT;

vi. General Counsel; and

vii. Attorney General's Office.

2. On receipt of written notification from the Litigation Liaison that the litigation preservation hold has been lifted:

a. The employee reverts to DCS 02-24 Records Management;

b. DCS IT removes the litigation preservation hold from employee related ESI; and

c. DCS Distribution Center removes the litigation preservation hold labels from the employee's paper and other non-electronic records, and processes accordingly.

## VII. FORMS INDEX

*Internal Litigation Hold File Notice label (DCS-1707)*