Office/Contact: Office of General Counsel
Source: SDBOR Record Retention Manual
Link: https://sdbor.edu/financial-reports/

SOUTH DAKOTA STATE UNIVERSITY
Policy and Procedure Manual

SUBJECT: Legal Holds
NUMBER: 7:4

1. Purpose

   This policy and its procedures set forth the authority and process for initiating, implementing, monitoring, and releasing legal holds at the University.

2. Definitions

   a. Affected University Personnel: all University Personnel, including Department Heads or Directors, who are in possession or control of evidence which is the subject of a legal hold.

   b. Evidence: all records, regardless of form, created, received, or maintained in the transaction of University business, whether conducted at work or remotely. Such evidence may include, but is not limited to, paper records and electronic records.

   c. Electronic Records: all forms of information captured through electronic means including, but not limited to, e-mail, word processing documents, calendars, spreadsheets, voice messages, videos, photographs, or text messages, stored on servers, desktop or laptop hard drives, mobile devices, flash drives, memory sticks, or other mediums, regardless of location or ownership.

   d. Legal Hold (also known as a "Litigation Hold"): an order to cease destruction and preserve all records, regardless of form, related to the nature or subject of the Legal Hold. The Legal Hold supersedes any activities otherwise permitted under the SDBOR Records Retention Manual or other SDBOR or University protocols for destruction of records.

   e. Paper Records: any paper, correspondence, completed forms, bound record books, photographs, maps, drawings, notes, or other documents of a physical form.

   f. University Personnel: all University employees, whether permanent, temporary, full-time or part-time, and student employees.

3. Policy

   a. The University has a legal obligation to preserve Evidence, including Electronic Records, which are relevant to pending or potential claims or actions, such as an administrative, civil, or criminal proceeding or litigation. Upon notice of pending litigation, reasonably anticipated litigation, or administrative, civil, or criminal investigation or action, the

University will implement a Legal Hold notice that requires the retention of certain Evidence for an indefinite period of time due to the action.

b. Each employee of the University is responsible for acting in compliance with the Legal Hold notice regarding the preservation and maintenance of Evidence related to the action until the Legal Hold notice requirements have been removed by the University Office of General Counsel or SDBOR General Counsel.

c. The University Office of General Counsel, or the SDBOR General Counsel, is responsible for implementing the Legal Hold procedures upon notice of the need for a Legal Hold to preserve relevant Evidence. Identifying instances in which a Legal Hold notice is required and its subsequent implementation requires collaboration of multiple individuals within the University, including but not limited to the Vice President for Technology, successor, or designee.

d. The Vice President for Technology and Security, successor, or designee, is responsible for providing assistance with securing and preserving Evidence subject to a Legal Hold.

e. Costs and fees to preserve Evidence shall be the responsibility of the unit or college named in the Legal Hold.

f. Failure to properly implement a Legal Hold may result in court imposed sanctions. It is a violation of this policy, and in many cases the law, to destroy, alter, withhold, or obscure Evidence once a Legal Hold has been initiated. Violations of this policy and procedures are subject to disciplinary action, up to and including dismissal.

4. Procedures

a. Any University employee who becomes aware of any litigation, threat of litigation, other legal action, legal claim, or an investigation or action by any administrative, civil or criminal authority, through the receipt of notification or other information identifying the possibility of legal action or upon service of a summons and complaint, must immediately notify the University Office of General Counsel.

b. The University Office of General Counsel will review the case and determine whether to initiate a Legal Hold and identify Affected University Personnel.

c. The notice will inform affected personnel of their obligation to identify and preserve all Evidence that may be relevant to the Legal Hold. Affected University Personnel must acknowledge receipt, understanding, and compliance with a Legal Hold without undue delay in the form requested by the University Office of General Counsel. Affected University Personnel will cooperate and disclose the Evidence to the University Office of General Counsel upon and as requested.

d. Upon notice of a Legal Hold, Affected University Personnel must do the following:

1. Immediately suspend deletion, overwriting, or any other destruction of electronic records relevant to the Legal Hold that are under their control. This includes electronic records wherever stored including, but not limited to, on hard drives of University work station desktops, laptops, or computers at their home, on flash

drives, memory sticks, or mobile device. Electronic records must be preserved so that it can be retrieved at a later time, and the information must be preserved in its original electronic form. It is not sufficient to make a hard copy. Affected University Personnel must work with the Vice President for Technology and Security, successor, or designee, for proper preservation of electronic records.

2. Preserve any new electronic records that are generated after receipt of the Legal Hold notice that is relevant to the subject of the notice. This should be done by creating separate mailboxes and files and segregating all future electronically stored information in these separate mailboxes and files.

3. Preserve paper records under their control. Steps should be taken to identify all relevant paper records and to ensure the retention of such records. Affected University Personnel may make hard copies of electronically stored information; however, as stated above, the information must be preserved in its original electronic form.

4. Preserve any other physical evidence under their control.

e. University personnel subject to a Legal Hold must acknowledge receipt, understanding, and compliance with a Legal Hold without undue delay in the format designated by the University Office of General Counsel. Any Affected University Personnel subject to a Legal Hold should consult the Vice President for Technology and Security, successor, or designee, for assistance in securing and preserving their records.

f. The University Office of General Counsel will notify the Vice President for Technology and Security, or designee, of a Legal Hold and provide the Legal Hold notice and its scope; the Affected University Personnel whose electronic accounts must be preserved; the individual's status as faculty, staff, student, or retired, if known; and the Department affiliation for each individual, if known.

g. The Vice President for Technology and Security, successor, or designee, must acknowledge receipt, understanding, and compliance with the Legal Hold without undue delay in the format requested by the University Office of General Counsel.

h. If Affected University Personnel separate from employment during the course of a Legal Hold, Department Heads or Directors must take possession of any and all Evidence under the control of the separated personnel and notify the University Office of General Counsel.

i. Once notice of a Legal Hold has been issued, the University Office of General Counsel will continue to monitor compliance with this policy and any notice.

j. The University Office of General Counsel will determine when a Legal Hold is to be released and will notify Affected University Personnel, and the Vice President for Technology and Security, successor, or designee of the release.

5. Responsible Administrator

   The University Office of General Counsel, or designee, is responsible for the bi-annual and ad hoc review of this policy and its procedures. The University President is responsible for approval of this policy.

SOURCE: Approved by President on 10/30/2015. Revised 01/31/2024 (clerical).