

## **I:01:06 Litigation Holds**

### **Policy**

All VSCC employees are required to suspend routine or intentional purging, overwriting, re-using, deleting, or any other destruction of electronic information relevant to a federal law dispute, including electronic information wherever it is stored – at a VSCC workstation, on a laptop, at an employee’s home, etc. The electronic information must be preserved in its original electronic form. The same requirement exists for paper documents. VSCC employees must suspend routine or intentional destruction of paper documents that are relevant evidence in a federal lawsuit as outlined in a Litigation Hold Notice. This requirement includes all forms of attorney-client privileged and non attorney-client privileged electronic documents. In the context of federal litigation, although all information must be preserved, no data will be disclosed to the opposing party without first being reviewed to determine legal necessity, relevance, and privilege. Privileged documents (e.g., attorney-client communications) will not be disclosed to the opposing party.

### **Background**

Federal law requires parties to a lawsuit pending in federal court to preserve electronic data and documents pertaining to the lawsuit in conformance with the *Federal Rules of Civil Procedure*. There is a legal duty to preserve evidence (e.g., documents and things), including electronic documents, when VSCC has notice that the evidence is relevant to pending federal litigation.

### **Litigation Hold Procedures**

1. Institution's Notification of Federal Litigation (Responsible Party: All Employees)
  - 1.1. Employees have an affirmative duty to inform VSCC’s Records Coordinator (Vice President of Business and Finance) when they receive official or unofficial notification of federal litigation or anticipated federal litigation against the institution.
  - 1.2. VSCC Employees are considered to be in receipt of official notice of litigation when they receive a complaint, summons, and/or other official documents related to a federal lawsuit.
  - 1.3. Additionally, employees that receive notification of any of the following documents as actions that are related to anticipated federal litigation must notify the Records Coordinator accordingly.
    - 1.3.1. Equal Employment Opportunity Commission Charge
    - 1.3.2. Tennessee Human Rights Commission Charge
    - 1.3.3. Occupation Safety Health Administration Violation Complaint v. Employee or student Harassment / Discrimination complaint pursuant to TBR Policy (P-080)
    - 1.3.4. Title VI or Title XI Complaint

2. Employee's Notification of Federal Litigation to Records Coordinator (Responsible Party: All Employees)
  - 2.1. Based on the abovementioned parameters, employees who have official or unofficial knowledge of federal litigation or anticipated federal litigation against the institution must inform the institution's Records Coordinator, in writing, of the matter within two (2) business days of their receipt of notification.
3. Records Coordinator's Issuance of Litigation Hold Notice (Responsible Party: Records Coordinator)
  - 3.1. The institution's Records Coordinator, or designee, will issue an official litigation hold notice regarding the matter to the appropriate individuals within five (5) business days of receipt of notification of pending litigation or anticipated litigation. Do not distribute the model litigation hold notice. Should a matter arise that requires your institution to implement an official litigation hold, the Records Coordinator, or a designee, must contact the institution's attorney to discuss drafting a litigation hold notice for the particular case.
4. Employees' Compliance with the Litigation Hold Notice (Responsible Party: Employee recipients of the litigation hold notice)

In response to an official litigation hold notice issued by the institution's Records Coordinator or his/her designee, all individuals who receive the notice must compile paper and electronic records (including e-mails, voicemails, videos, etc.) as instructed in the notice letter. Electronic records must be retained in the original electronic format (e.g., burned to disk / CD, saved in a secure folder on the system server that is not subjected to unannounced deletion, etc.). It is not sufficient to print paper copies of electronic records as they must be maintained in their original electronic format. It is the responsibility of individuals to whom the litigation hold notice is issued to retain all records that are responsive to the notice until they receive written notification indicating otherwise.

VSCC Source: February 25, 2008 President's Cabinet

## **Volunteer State Community College Litigation Hold Internal Procedures**

### Information Technology Responsibility

1. Assist the Records Coordinator (Vice President of Business and Finance) with identifying where Electronically Stored Information (ESI) is located, including all institutionally owned equipment, personally owned by the individual or by a third party. These locations include, but are not limited to: PC's PDA's, email systems, instant messaging systems (IM), voice mail (VM) systems, network storage, etc.
2. Provide the Records Coordinator with information as to how long ESI can be expected to be retrievable through routing system backup procedures performed by IT.
3. Assist the Records Coordinator with the identification of threats of non-compliance so the appropriate policies can be developed to mitigate the risk.
4. Coordinate with the Records Coordinator in the development of an archival strategy consisting of hardware, software and process accountability. The process should ensure that the information saved complies with TBR guidelines and policies as well as state and federal law.
5. Coordinate with the Records Coordinator to establish protocols, systems and controls that can be easily managed and monitored in order to ensure compliance.

### Telecommunication Coordinators Responsibility

1. Assist Records Coordinator with the retrieval of voice mail.
2. Provide Records Coordinator with information on how long voice mail can be expected to be retrievable through backup system.
3. When appropriate, monitor/record telephonic transactions.

### Email and Document Archiving

When you receive notification that ESI (email or documents) you created or maintained are to be maintained as part of a litigation hold, you are responsible for maintaining those documents in an unaltered state. To meet those requirements, please follow the instructions in the appendices below to archive the documents safely.

See Appendix A – Email Archiving for Email Archiving process.

See Appendix B – Document Archiving for Document archiving.

See Appendix C – Voice Mail Archiving

## Appendix A – Email Archiving

### Creating a Folder (Microsoft Outlook)

1. In Outlook, create a folder by selecting File | Folder | New Folder
2. A dialog box will appear,
  - 2.1. Input the folder name (something like Litigation Hold).
  - 2.2. Ensure that the Folder Contains: selection has Mail and Post Items selected,
  - 2.3. Then click on Mailbox as the location and click OK.
3. You will have a folder in Outlook Mailbox with the name you gave in 2.1 above. This is where you will store all email items related to the litigation investigation. This folder will not be subject to unannounced deletion.

### Filing Email

1. Use the folder created in steps 1 – 3 above, you may file all email items that must be retained under TBR Guidelines G-070 or a litigation hold notice.
2. In Outlook click on the email you wish to file:
  - 2.1. Right click the email with your mouse then left click Move to folder
  - 2.2. In the dialog box listing your folders, select the folder created in steps 1 – 3 above then
  - 2.3. Click OK. Your email will be moved to the new folder.

### Create a Backup

1. On your computer, go to My Documents or on your U: drive and create a folder using the same name you used in the Creating a Folder steps above.
  2. Export the Outlook folder to the new archive location.
    - 2.1. In Outlook, select File | Import and Export | Export to a file |click Next
    - 2.2. Select Personal Folder File (.pst) from the list; click Next.
    - 2.3. Select the folder you created; click Next.
    - 2.4. Enter the path (or browse) to the folder created. Name the file the same as the folder you created for ease of identification... ensure you retain the .pst extension. Select Finish.
    - 2.5. A dialog box will pop up asking you to create a name for the pst file. Use the name you created previously and click OK. Do not apply a password<sup>1</sup>. This file must be retrievable in your absence. If the password is lost so is the data.
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## Appendix B – Document Archiving

Document archiving is a simple process. Simply copy or move the documents related to the Litigation Hold to the same folder created in the “Create a Backup” step in Appendix A. This will ensure that all ESI documents are in one place. To protect your files against accidental deletion, you will now need to back up the folder. You may use a CD-R, DVD or Flash Drive depending on the total size of the documents to be saved. You may use the following procedure:

### Backup Procedure

1. Right click on the folder you created and stored all the ESI.
2. Select Send to
3. Select the drive you plan to use to store the information to. If it is a Flash Drive, you files will be copied to the drive. Repeat these steps each time you add new information to the folder.
4. If you chose a CD or DVD you will need to follow these steps:
  - 4.1. Open My Computer
  - 4.2. Open the CD or DVD drive listed in the dialog box.
  - 4.3. Select File | Write these files to CD/DVD
  - 4.4. Follow the instructions in the dialog box or wizard. You may accept the title of today’s date or change it if appropriate. Select Next.
  - 4.5. The computer will write the files to the CD/DVD. Once it is done, the CD/DVD will eject.
  - 4.6. Select Finish and store the CD/DVD in a safe place.

## Appendix C – Email Archiving

### Archiving Voice mail message

Employees are responsible for saving all voice mail messages related to a federal litigation hold. Once voice mails are deleted by the employee, we are unable to retrieve it after 24 hours. Emails can be saved on the voice mail system for up to 99 days. The system will hold up to 250 emails per voice mail system. If notification of a litigation hold has been received, voice mail messages may be archived on tape by the Director of Telecommunications.

**Volunteer State Community College  
Litigation Hold Notice**

To: \_\_\_\_\_

From: \_\_\_\_\_

Date: \_\_\_\_\_

**RE:** LITIGATION HOLD NOTICE LETTER: Notice to Preserve Information and to Prevent Deletion or Destruction of Emails or other Electronic and Paper Files

Volunteer State Community College has been [sued in federal court] by \_\_\_\_\_ . \_\_\_\_\_ can be expected to allege the following wrongful acts by the Institution's employees \_\_\_\_\_ .

Pursuant to the rules of court, VSCC is required to take all reasonable steps to identify all hard copy and digitally maintained files (e.g., electronic records) that contain documents that may be relevant to the case. The electronic records that must be maintained include, but are not limited to: electronic mail; electronic files of all types (Microsoft Word, Excel, Adobe, etc.); recordings of telephone calls or meetings; voicemail messages; video tapes, and audio tapes. Failure to do so could result in sanctions being issued by the court that could seriously harm our ability to defend the case.

Therefore, it is imperative that you take all reasonable steps to prevent the automatic, intentional or accidental destruction of this information and data, including attorney-client privileged communication. You should conspicuously label any documents or data that include attorney-client privileged communication. **IMMEDIATELY HALT ALL ROUTINE HOUSEKEEPING OR DELETION EFFORTS** that could modify or destroy the following files:

1. All electronic records / electronically stored information and hard copy document files involving the following:
  - a.
  - b.
  - c.
  - d.
  - e.
  - f.
  - g.

Be advised that any new hard copy or electronic records created after the date of delivery of this letter that are relevant to this matter are not to be destroyed and you must take the appropriate steps to avoid the destruction of such documents. **NEW RECORDS THAT ARE SUBJECT TO THIS NOTICE MUST BE RETAINED UNDER THIS LITIGATION HOLD IN THE SAME MANNER AS EXISTING DOCUMENTS.**

PRESERVE ALL ELECTRONIC RECORDS IN THE FORM IN WHICH THEY CURRENTLY EXIST UNTIL FURTHER NOTICE. IT IS IMPERATIVE THAT YOU RETAIN THE DOCUMENTS IN THEIR ORIGINAL ELECTRONIC FORM. IT IS NOT SUFFICIENT TO PRINT ELECTRONIC RECORDS AND RETAIN PAPER COPIES.

Other information may be identified as our investigation of the matter continues. I will follow up with you soon to discuss any information that you may have and how we may go about collecting it.

Please return a signed copy of this notice letter prior to \_\_\_\_\_ indicating that you have received it and understand the instructions that you have received. If you have any questions, please contact me at \_\_\_\_\_. PLEASE ALSO NOTE THAT THE INSTITUTION'S OBLIGATION IS CONTINUING AND YOU SHOULD NOT DELETE OR MODIFY THESE FILES UNTIL YOU RECEIVE WRITTEN NOTICE FROM ME THAT WE ARE NO LONGER UNDER A DUTY IMPOSED BY THE COURT TO PRESERVE THESE RECORDS.

The Institution will exercise all reasonable methods to protect the privacy of the preserved data. The purpose of this litigation hold notice is to comply with federal law. It is not intended to and should not suggest any assessment of the merits of \_\_\_\_\_ claim.

I understand that these requirements may create a burden for you and I am prepared to discuss with you any questions or concerns that you may have. I appreciate your cooperation in this matter.

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I ACKNOWLEDGE RECEIPT OF THIS LITIGATION HOLD NOTICE AND I UNDERSTAND THAT I HAVE AN AFFIRMATIVE OBLIGATION TO COMPLY WITH THE DIRECTIVES SET FORTH HEREIN.

\_\_\_\_\_  
Employee Name (Print)

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date