

Suggested Data Preservation Steps

If you are reasonably assured that a dispute will result in litigation, even before a lawsuit is filed, you should take steps to preserve all relevant electronic and paper data in your custody or control. Indeed, some number of lawsuits are now won or lost not on the merits, but based on what records may have been lost or destroyed.

Once on notice, you should promptly review (and possibly suspend) all routine or automated record destruction or deletion practices to prevent any inadvertent destruction of potentially relevant records, either in paper or electronic form.

We then suggest the following four-step guide to help you determine the breadth and scope of data/records needed to be captured and preserved. It is recommended that these steps are promptly implemented and carefully documented.

Step One Identify the Potential Custodians of Data and Records

- Identify the Custodians: (1) those individuals who have played a material role in the transaction(s) that gave rise to the litigation (the "Players"); and (2) those individuals who may have assisted the Players (e.g., assistants and secretarial staff).
- This process should be performed quickly and the list of Custodians updated as new information becomes available.

Step Two Define the Relevant Time Period

- Interview the Custodians to determine the time period for which the Custodians may likely have records and data relating to the litigation. This will provide a reasonable basis to define the time parameters for record and data retrieval and retention efforts.
- This interview process should be handled by either members of our firm or by in-house counsel to provide: (1) a greater level of independence; and (2) confidentiality protection.
- Make a conservative estimate – the time period can be narrowed at a later date.

Step Three Identify the "Type" and "Location" of Relevant Information

Interview the IT staff and the Custodians.

- Where inside of the IT system do relevant data and records reside?
- Where outside of the IT system do relevant data and records reside?
- Possible **types** of relevant data/records include: e-mails, text messages, word processing documents, spreadsheets, deleted files, electronic file folders, databases, computer-assisted design files, calendars, telephone logs, address books, network access files, and accounting records.
- Possible **locations** of relevant data/records include: servers, local hard drives, internet usage files, removable media drives, personal data assistants, back-up tapes, laptops, home computers, traditional file cabinets, and the work and home offices of the Custodians.

Step Four Implement a Company-Wide "Litigation Hold"

- Circulate a sufficient "Litigation Hold" memorandum to all potential Custodians of relevant records.
- Define the particulars of the litigation and the scope of the preservation effort.
- Instruct all recipients (including IT staff) to preserve, not destroy, all records and data relating to the litigation.
- The "Litigation Hold" memorandum should be updated and re-circulated as new information is revealed.

This Litigation Hold process will likely be disruptive to your business. We are available to make sure that a Litigation Hold process is properly tailored and the disruption to your business is minimized.