



**CAPITAL REGION NORTHEAST WATER SERVICES COMMISSION  
RECORDS MANAGEMENT LEGAL HOLD POLICY 2022-002**

**POLICY:**

**The purpose of this policy is to ensure the Commission preserves information and records (paper and electronic) and related information that is or will potentially be utilized in litigation. To ensure the Commission places relevant records under a legal hold and suspends normal destruction practices to prevent against spoliation.**

**DEFINITIONS:**

Affected CRNWS-C Personnel: means all CRNWS-C personnel who are in possession or control of records, which are the subject of a legal hold.

Legal Hold: means an order to cease destruction and preserve all records, regardless of form, related to the nature or subject of the legal hold.

Evidence: means all records, whether in electronic or paper form, created, received, or maintained in the transaction of CRNWS-C business, whether conducted at home or work. Such evidence may include, but is not limited to, paper records and electronic records stored on servers, desktop or laptop harddrives, tapes, flash drives, memory sticks, DVDs, or CD-ROMs; & multifunction copier hard drives.

Spoliation: the act of ruining or destroying something.

Records refers to:

a.) Information: - Data and content recorded or stored in any way, including facts, events, ideas, processes, or concepts, that are specific and organized for a purpose, an increase understanding within a certain context and timeframe. Includes the submission of all documents of all documents, records, and data under the control of the Commission.

b.) Content: – unstructured information which does not adhere to an approved schema or a format. This is totality of all documents and files, including audio, images, and video, under the control of the Commission, in either electronic or paper format.

c.) Data: – Facts, figures and statistics objectively measured according to a standard or scale such as frequency or volumes or occurrences. The term shall include statistical or factual information about image files and geographical information system data.

CRNWS-C Personnel: means all employees, whether permanent, temporary, full-time or part-time employees.

## **Procedures:**

### **Trigger Events and Application of a Legal Hold**

1. The CRNWSC Manager has the authority to place a legal hold.
2. The Manager will Identify the trigger events that may indicate the potential threat of litigation (such as receipt of a subpoena, unexpected negative care outcome, verbal communication of pending litigation, etc.) and develop the communication process when a trigger event occurs. Examples of trigger events include: any notice of a lawsuit, charge of discrimination, notice of claim, demand letter from a lawyer, meeting at which someone brings a lawyer, challenge to a corrective action (If the employee alleges a violation of state/federal law such as discrimination, harassment, whistleblower, etc.), any person verbally telling the Commission that they intend to sue.
3. Management will evaluate the situation. If there is a reasonable anticipation that litigation will follow, Management will review the potential issue and decide on whether to apply a legal hold to relevant information.
4. Management will develop and define the process and decision-making for deciding when to apply a legal hold. The Sedona Conference Commentary on Legal Holds provides the following list of factors to consider in making a decision: the nature and specificity of the complaint or threat; the party making the claim; the position of the party making the claim; the business relationship between the accused and accusing parties; whether the threat is direct, implied, or inferred; whether the party making the claim is aware of the claim; the strength, scope or value of a potential claim; the likelihood that data relating to a claim will be lost or destroyed; the significance of the data to the known or reasonably anticipated issues; whether the Commission has learned of similar claims; the experience of the industry; whether the relevant records are being retained for some other reason; and press and/or industry coverage of the issue either directly pertaining to the Commission or of complaints brought against someone similarly situated in the industry.
5. Management will document the facts used at the time to decide whether there is a duty to preserve information.
6. If determined that a legal hold is warranted Management will begin the preservation and legal hold processes.

### **Obligation to Identify, Locate, and Maintain Relevant Information**

1. Once litigation or potential litigation is identified, Management must engage appropriate individuals to assist in identifying, locating, and maintaining relevant evidence (IT, Records Manager, and data owners/stewards of potentially relevant information). To assist with this process consider developing a list of applications and the data owner/steward. This will streamline the process of identifying where potential information may be found, who to contact to search relevant databases, and who to contact to interview.
2. Management will meet or communicate with applicable data owners to determine the information available and identify the relevant evidence is preserved (in all sources and formats) including information held by business associates.
3. Management will implement a process to suspend normal destruction and maintain relevant information in conformance with the legal hold notice.

4. Management will preserve relevant evidence. The optimal method of preservation will be determined by the type of data and/or agreements made during a pretrial conference. Examples of preservation methods include making a mirror or image of a hard drive; sequestering or archiving information/records; retain back-up media to prevent destruction; take a "snapshot" of information at a point of time and retain on separate media (documents may be converted to pdf/a's); for e-mail and voicemail files sequester an account and transfer files for a specific span of time; for paper records make photocopy. If originals requested, sequester files to protect from loss, destruction, or alteration.

#### **Preservation/Legal Hold Notice**

1. Once relevant evidence is identified, Management will provide a written notice of a legal hold to the data owner and identify the relevant information.
2. Management will review the legal hold notices in effect and periodically reissue or amend as needed.
3. Management will designate an individual to oversee legal hold notices and answer questions (e.g., someone from legal department).

#### **Monitoring Legal Holds**

1. Management will implement a process to monitor legal holds to track compliance.
2. Management will periodically query data/document owners to ensure they are complying with notice requirements.
3. Data owners will respond to query with confirmation that relevant evidence outlined in the legal hold notice continues to be maintained.
4. Management will periodically audit for compliance with legal hold notice and maintenance of relevant evidence.

#### **Release of a Legal Hold**

1. Once it is determined that the legal hold is no longer necessary, Management will release the legal hold.
2. Management will review other legal holds to ensure there isn't an overlap before notifying the data owners of the release.
3. Management will provide written notice that the legal hold has been lifted and resume normal retention and destruction processes. Management will be included in the notice to the data owners a list of applicable records that were under legal hold and require a sign-off by the data owner.
4. If information was scheduled for destruction during the litigation hold period, Management will proceed with the destruction process.
5. Management will perform an audit to ensure that information is not unnecessarily retained after the legal hold is lifted.