

Litigation Response and Information Discovery Directive

Data and Content Management Division, Enterprise Content Management Branch

Version: 1.2

Approved by: Alberta Records Management Committee	Owner: Executive Director, Enterprise Content Management Branch	
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Directive Statement

Litigation response and information discovery activities initiated by Alberta Justice must be managed in alignment with Government of Alberta content management requirements.

The implementation of this directive is supported by the [Litigation Response and Information Discovery Guideline](#) and the [Content Management Policy](#).

Authority

This directive is issued under the authority of the [Government Organization Act](#) and the [Records Management Regulation](#).

Under the Records Management Regulation, Technology and Innovation has the authority to establish, maintain, and promote the enterprise policies, standards, and procedures for the creation, handling, control, organization, retention, maintenance, security, preservation, disposition, alienation, and destruction of records in the custody and/or under the control of a Government of Alberta department or departments.

Application

This directive applies to all departments defined under section 14 of Schedule 11 of the *Government Organization Act* and agencies, boards, and commissions as defined in schedule 1 of the [Freedom of Information and Protection of Privacy Regulation](#) except those that do not make use of Government of Alberta computing services.

Agencies, boards, and commissions that are not contained within schedule 1 of the Freedom of Information and Protection of Privacy Regulation are encouraged to align with this directive.

Directive Description

This directive details the content management obligations for all Government of Alberta staff (which includes, but is not limited to, contractors, volunteers, appointees, interns, and students working with a public body) when responding to litigation holds and engaging in information discovery activities.

Directive Specification

1. Litigation hold parameters and specifications for the litigation response and discovery of information are determined by Alberta Justice Legal Counsel (Legal Counsel).
 - 1.1 Communication between Government of Alberta staff and Legal Counsel related to the litigation must be marked "Privileged and Confidential".
2. Legal Counsel is responsible for initiating and terminating litigation holds.
 - 2.1 Legal Counsel must notify affected departments in writing about litigation hold implementation, scope adjustment, and termination of litigation holds.
 - 2.2 When written legal hold implementation, adjustment or release notice is received, the affected business areas need to take hold implementation, adjustment or release action in collaboration with the eDiscovery Services Team (eDST); eDST will notify IM programs when necessary.

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3. After receipt of a litigation hold notification, all responsive records are subject to a litigation hold. All activities related to the record must be halted.
 - 3.1 Exemptions to this can only be authorized by:
 - 3.1.1 Legal Counsel, in writing; or
 - 3.1.2 by the Assistant Deputy Minister of the affected division in consultation with Legal Counsel and eDST.
 - 3.2 Departments are still able to use and access responsive records for business purposes, so long as the records are not altered, destroyed, etc. (see specification 5).
 - 3.3 Departments must consult Legal Counsel assigned to the case and eDST before responding to or acting on an external legal counsel's collection request. If external legal counsel is acting for the opposing party, Alberta Justice Legal Counsel must be consulted before any response or action is taken.
4. Litigation holds apply regardless of all other controls placed on a record (e.g., information access requests made under the [Freedom of Information and Protection of Privacy Act](#), handling requirements dictated by the applied security classification, etc.).
5. All staff must adhere to the preservation obligation for records on litigation hold:
 - 5.1 Records cannot be modified or destroyed;
 - 5.1.1 In addition, digital records must not be moved;
 - 5.2 All metadata pertaining to the record must be preserved;
 - 5.3 Chain-of-custody of the records must be maintained;
 - 5.4 Transfer of custodianship must be appropriately documented.
6. Original physical records produced for Legal Counsel must be returned to the originating departments (or the department responsible for the function the records pertain to if a re-organization has occurred) and/or eDST once the litigation hold has been released.
 - 6.1 Copies of relevant records must be dispositioned in alignment with the relevant records retention and disposition schedule.
7. Records may be responsive to multiple litigation holds simultaneously, and must be produced for each active litigation.

Compliance

Consequences of non-compliance with this directive could result in the loss of content; breach of confidentiality; breach of privileged information; significant impact to GoA's proprietary rights; damage to GoA's reputation; exposure of Albertans to harm; and/or incurrence of unnecessary costs (including, but not limited to, inability to respond appropriately to a claim in court).

Depending on the severity of non-compliance:

- either informal or formal requests and/or follow-ups may be made by the Data and Content Management Division, Corporate Internal Audit Services, Cybersecurity Services, Office of the Information and Privacy Commissioner, Office of the Auditor General and/or Public Service Commission; and
- legislated disciplinary action (i.e., [Public Service Act](#)) may be taken.

Contact

For support, please submit BERNIE request for [eDiscovery Services](#).