

Litigation Response and Information Discovery Directive

Data, Information and Privacy Services Division, Data, Information and Records Services Branch

Version: 1.1

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Approval Date: November 30, 2021	Last Reviewed: November 30, 2021	Review Date: November 1, 2022
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Directive Statement

Litigation response and information discovery activities initiated by Justice and Solicitor General (JSG) must be managed in alignment with Government of Alberta information management requirements.

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

Authority

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

Application and Scope

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 information 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 JSG Legal Counsel (Legal Counsel).
 - 1.1 Communication related to the litigation must be marked “Privileged and Confidential”.
2. Legal Counsel is responsible for initiating and terminating litigation holds.
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, unless approved.
 - 3.1 Departments are still able to use and/or access responsive records for business purposes, so long as the records are not altered, destroyed, etc. (see point 5).
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
 - 5.2 All metadata pertaining to the record must be preserved
 - 5.3 Chain-of-custody of the records must be maintained
 - 5.4 Transfer of custody must be appropriately documented
6. Records may be responsive to multiple litigation holds simultaneously, and must be produced for each active litigation.
7. Physical copies of relevant records produced for Legal Counsel must be returned to the Project and Litigation Support team of the Data, Information and Records Services

LITIGATION RESPONSE AND INFORMATION DISCOVERY

Branch once litigation has been completed and/or the litigation hold has been terminated.

7.1 Copies of relevant records must be dispositioned in alignment with the relevant records retention and disposition schedule.

Compliance

Consequences of non-compliance with this directive could result in the loss of information, damage to Government of Alberta's reputation, exposure of Albertans to harm and/or incurrence of unnecessary costs (including the risk of not being able 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 Data, Information and Privacy Services Division, Corporate Internal Audit Services, Cybersecurity Services, Office of the Auditor General, Office of the Information Privacy Commissioner, and/or Public Service Commission, and
- legislated disciplinary action (i.e., *Public Service Act*) may be taken.

Contact

For information management support, please contact the appropriate [Senior Records Officer](#) or [Data, Information and Records Services Branch, Service Alberta](#).