

KENAI PENINSULA BOROUGH  
Office of the Borough Clerk  
Records Management Division

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## **LITIGATION HOLD PROCEDURES**

**TO:** All Borough and School District Departments

**EFFECTIVE DATE:** December 12, 2018

**NEXT REVIEW DATE:** April 2020

**REVIEWED BY:** Colette Thompson, Borough Attorney  
Stormy Brown, HR Director (former)  
Ben Hanson, IT Director  
Johni Blankenship, Borough Clerk  
Michele Turner, Deputy Borough Clerk/Records Manager

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### **1. Introduction**

This document sets forth the "Litigation Hold" procedures relating to the preservation and handling of records in the event of litigation or threatened litigation and is designed to ensure the preservation of records, including electronic records, for discovery and other litigation purposes in accordance with appropriate measures that are to be implemented at the start of any litigation, or when the Borough determines there to be a reasonable threat of litigation.

### **2. Purpose of Litigation Hold Procedures**

The Litigation Hold Procedures set forth herein are to be implemented at the commencement of any litigation involving the Borough, or, if earlier, as soon as the Borough is notified of threatened litigation or has otherwise determined that there is a reasonable basis to anticipate litigation involving the Borough. If the Legal Department determines that any litigation has been commenced or that there is a reasonable basis to anticipate litigation, it may implement the procedures set forth herein, including but not limited to the issuance of a "Litigation Hold Notice" (Attachment A) to the Records Manager and departments determined by the Borough Legal Department (hereinafter "Legal Department") to be "Key Departments" as defined in this procedure.

### **3. Definitions**

The following definitions apply specifically for the purposes of this procedure:

#### **3.1 "Electronic Records"**

"Electronic Records" means those Borough records (defined below) that are in electronic format, including but not limited to electronic mail; electronic files of all types (Microsoft Word, Excel, Adobe, etc.) transmitted and created via the Borough system for the purpose of conducting Borough business. Electronic records are considered Borough records and, therefore, must be treated in the same manner as hard copies for the purposes of this procedure and are subject to all the same requirements set forth in this procedure for hard copy records.

#### **3.2 "Key Departments"**

"Key Departments" as used in this procedure is defined as Borough departments that may have information and Borough records relating to the circumstances of the litigation or "reasonably anticipated" litigation.

#### **3.3 "Litigation Hold Notice"**

"Litigation Hold Notice" (Attachment A) as used in this procedure means notification from the Legal Department of litigation or of "reasonably anticipated" litigation directing the Records Manager and key departments to identify Borough records pertaining to the matter described requiring that such Borough records be preserved and held in their original form until a written "Notice of Litigation Hold Release" (Attachment B) is received.

#### **3.4 "Borough Personnel"**

"Borough Personnel" as used in this procedure means every employee of the Borough, whether the employee is full-time or part-time, is permanent or temporary, or is an elected official, administration, staff, or volunteer.

#### **3.5 "Borough Records"**

"Borough Records" for the purpose of this Procedure means any documents or data ("records") containing information related to the Borough that are generated, received, or compiled by Borough personnel or by a private contractor in the conduct of Borough business, whether such document or data is in electronic, paper, or some other recorded form.

#### **4. Determination of Relevant Sources of Affected Borough Records**

The Legal Department shall work with the IT Department to attempt to promptly identify all possible sources of relevant electronic records relating to the litigation or reasonably anticipated litigation. The Legal Department shall attempt to address all sources of information and determine the format of such information as well as the accessibility and cost of retrieving the information, locating records, and taking actions necessary to secure and preserve relevant records.

In addition, the Legal Department shall work with the Borough's Records Manager to attempt to promptly identify all possible sources of relevant archived records relating to the litigation or reasonably anticipated litigation. An immediate litigation hold will be placed on all such identified records archived at the Records Center by the Records Manager; both physically noted on the record itself as well as marked in the records management database.

#### **5. Suspension of Normal Document Destruction Timeframes**

Once a Litigation Hold Notice has been issued in accordance with this Litigation Hold Procedure and sources of potentially relevant Borough records, including electronic records, have been identified as being subject to the Litigation Hold, all affected Borough personnel, including Key Departments, shall suspend any normal document destruction procedures (including email deletion) regarding such records that are subject to the Litigation Hold in order to preserve potentially relevant information.

Litigation Hold will apply to the entire box, not just to the subject file(s) contained in the box. This ensures the Borough consistently adheres to the archival process of paper records; retain/destroy at the box level.

#### **6. Issuance of Litigation Hold Notices**

- 6.1 A written Litigation Hold Notice shall be issued to the Records Manager and any Key Departments as identified by the Legal Department. The written notice shall describe the actions to be taken by the department and the requirements of the Litigation Hold.
- 6.2 If the Legal Department determines that it is in the best interests of the Borough or the public not to alert an individual of the implementation of litigation related record preservation measures (for example, an employee is the focus of an ongoing investigation that would be compromised by such notification), the Legal Department may take alternative measures in lieu of the issuance

of a Litigation Hold Notice to ensure the preservation of records.

- 6.3 Once the Records Manager and Key Department(s) receives a Litigation Hold Notice they shall not be permitted, directly or indirectly, to destroy, alter, or delete any information in their care, custody and control pertaining to the described action, and the Records Manager and Key Department(s) shall be obligated to cooperate with the Legal Department in preserving data covered by the Litigation Hold, preserving the information in its original form.

## **7. Ongoing Monitoring of Litigation Holds**

The Legal Department after issuing any *Litigation Hold Notice* shall thereafter continuously monitor the Litigation Hold and the Key Departments' compliance with the requirements of the Litigation Hold. The Litigation Hold shall continue until such time as the Legal Department issues to the Records Manager and key department a written *Litigation Hold Release Form* (Attachment B) terminating the prior written *Litigation Hold Notice*.

Once a *Litigation Hold Release Form* has been issued, the record will return to its regular retention status as determined by the Borough's approved Records Retention Schedule.

## **8. Confidentiality**

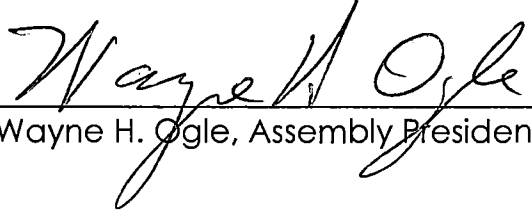
Many records subject to record retention requirements contain confidential information. These records are protected by federal and state legislation, including but not limited to the Health Insurance Portability and Accountability Act (HIPAA), the Family Educational Rights and Privacy Act (FERPA), Children's Online Privacy Protection Act (COPPA) and the Gramm-Leach-Bliley Act (GLBA) as well as various specific policies of the Borough and its code of ordinances.

## **9. Dissemination of Procedure and Enforcement**

- 9.1 This Procedure shall be disseminated by Borough Directors and Supervisors to all Borough personnel with recordkeeping responsibilities.
- 9.2 It is the responsibility of all Borough Administrators, Department Directors and Supervisors to ensure the enforcement of this procedure, within their assigned areas of oversight.
- 9.3 Violations of these requirements may lead to sanctions imposed by the courts, ranging from monetary penalties to default judgments, against the Borough. Therefore, Borough personnel found to have

violated the Litigation Hold Procedures may be subject to disciplinary action.

These procedures supersede any previous procedures issued and approved under KPB 2.52.040.

  
\_\_\_\_\_  
Wayne H. Ogle, Assembly President

  
\_\_\_\_\_  
Date

Attachment A – Litigation Hold Notice

Attachment B – Notice of Litigation Hold Release

**LITIGATION HOLD NOTICE**

**FROM:** \_\_\_\_\_, Legal Department

**NOTICE ISSUED TO:** Michele Turner, Borough Records Manager  
Ben Hanson, IT Director

**KEY DEPARTMENTS:** \_\_\_\_\_  
\_\_\_\_\_

**DATE OF NOTICE:** \_\_\_\_\_

**ANTICIPATED LITIGANTS AND/OR LITIGANTS OF RECORD:** (list all known parties involved)

\_\_\_\_\_

\_\_\_\_\_

**SUBJECT MATTER:** (list what the suit or anticipated suit is regarding)

\_\_\_\_\_

\_\_\_\_\_

NOTICE IS HEREBY GIVEN to preserve and prevent deletion or destruction of Borough records regarding the referenced matter.

The Borough is required to take all reasonable steps to identify all hard copy and digitally maintained filed (i.e. electronic records) that contain documents that may be relevant to the case. Electronic records include, but are not limited to: electronic mail; electronic files of all types (Microsoft Word, Excel, Adobe, etc.).

Failure to do so could result in sanctions being issued by the court that could seriously harm the Legal Department's ability to defend the case. Therefore, it is imperative that all reasonable steps are taken to prevent the automatic, intentional or accidental destruction of this information.

You must IMMEDIATELY HALT all routine housekeeping or deletion efforts that could modify or destroy all electronic records/electronically stored information.

Be further advised that any new hard copy or electronic records received or created after the date of this notice that are relevant to the referenced matter are also subject to this notice and must be preserved.

Please notify the Legal Department of all information in your department records that may be relevant to the litigation within two weeks of this notice.

**This notice remains in effect until a Notice of Litigation Hold Release has been issued.**

**LITIGATION HOLD RELEASE**

**FROM:** \_\_\_\_\_, Legal Department

**NOTICE ISSUED TO:** Michele Turner, Borough Records Manager  
Ben Hanson, IT Director

**KEY DEPARTMENTS:** \_\_\_\_\_  
\_\_\_\_\_

**DATE OF NOTICE:** \_\_\_\_\_

**ANTICIPATED LITIGANTS AND/OR LITIGANTS OF RECORD:** (list all known parties involved)

\_\_\_\_\_  
\_\_\_\_\_

**SUBJECT MATTER:** (list what the suit or anticipated suit is regarding)

\_\_\_\_\_  
\_\_\_\_\_

The Borough is no longer in litigation and/or is anticipating litigation regarding the referenced subject matter.

All Borough records subject to the Litigation Hold Notice issued on \_\_\_\_\_ can now return to their regular retention status, as set forth by the Borough's approved records retention schedule.

This notice is effective immediately.