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**BSF-065      LEGAL ACTIONS AND DOCUMENT RETENTION**

**PURPOSE**

This policy applies to all University employees and sets forth requirements for record retention and preservation when the University has been informed of a potential or current Legal Action (as defined below).

For routine record retention in the ordinary course of business, see University policies on management, retention and disposition of University records.

**DEFINITIONS**

“Legal Action” may include several different events, which would trigger the University’s duty to preserve documents and information. Legal Actions involving the University may include but are not limited to:

- Notification of an investigation and/or audit of the University by any state or federal governmental agency;
- Claim(s) made against the University;
- Commencement of a lawsuit (complaint) against the University;
- Circumstances have arisen where a claim or lawsuit against the University is highly likely to be made;
- Claims filed against the University with an administrative agency;
- A notice of intent to commence a medical malpractice action against the University and/or one of its physicians;
- An charge of discrimination filed with an administrative agency against the University;
- Demand letters sent to the University;
- Preservation letters requesting that the University preserve records; or
- The University is considering, planning, or has commenced an investigation or lawsuit of its own.

“Legal Hold” involves the University’s duty to place a freeze or to stop destruction of all records (paper or electronic) upon notification of a Legal Action.

**POLICY:**

The University has a duty to preserve information relating to Legal Actions. University records may not be destroyed upon notification of a Legal Action, even if the purging of records is otherwise permitted by University policy.

When notification is received by an employee of anything that the employee reasonably believes may constitute Legal Action, as defined by this policy, the employee must contact his/her supervisor. The supervisor must then forward the oral or written notice of the potential Legal action to the General Counsel's Office (GCO). The GCO will then confirm that the notice constitutes Legal Action pursuant to this policy and will instruct the supervisor to take immediate action within their school, division, center or department to preserve records pertinent to the Legal Action. In addition, the GCO (or a GCO designee) shall send a Legal Hold directive to all identified potential record custodians.

When notification is received directly by the GCO, upon confirmation that the notice constitutes Legal Action, as defined by this policy, the GCO (or a GCO designee) will send a Legal Hold directive to all identified potential record custodians.

The Legal Hold directive overrides any records retention or destruction policy that may otherwise require or permit for the transfer, alternation, disposal or destruction of documents and information (whether in electronic or paper format). Once a Legal Hold directive has been issued, documents and information subject to the Legal Hold may not be transferred, altered, disposed, or destroyed until the Legal Hold is formally released by the GCO.

Individuals who have been notified of a Legal Hold may not alter, dispose of, or transfer or destroy any documents or information that falls within the scope of the Legal Hold. Violation of the Legal Hold may subject the individual to disciplinary action, up to and including dismissal, as well as potential legal sanction by the applicable court or law enforcement agency.

## **PROCEDURE**

### **DUTY TO PRESERVE:**

All employees of the University who become aware of a Legal Action or any information that suggests the duty to preserve documents and information may be triggered or otherwise implicated, must promptly inform the GCO.

The ultimate determination as to whether the duty to preserve documents and information has been triggered and whether and to what extent, a Legal Hold directive will be initiated, is a legal judgment, which shall be made at the professional discretion of the GCO.

### **SCOPE OF LEGAL HOLD:**

The GCO (or a GCO designee) will work with the applicable University departments(s) and employee(s) to identify relevant sources of documents and information related to the scope of the Legal Action. Potential sources of documents and information may include but are not limited to:

- (i) Email messages and their attachments in both hard copy and electronic copy, which are stored on University servers, computer hard drives, and/or mobile devices, such as blackberries, iphones, ipads, tablets, PDAs, cellphones, etc. This includes mailboxes stored on the network mail servers, individual archived emails (PST files) and printed hard copies of email messages.

- (ii) User created files such as word processing documents, spreadsheets, powerpoint presentations and image files, which may be stored on the hard drives (“C Drives”) of computers or on network shared drives.
- (iii) Hard copy files;
- (iv) Database systems;
- (v) Other information held or stored in locations as determined by the results of individually conducted information surveys (ex. information stored on a CD-ROM or DVD, thumb drives, removable hard drives, magnetic media, home computers, internet servers, etc.); and
- (vi) Other electronic or hard copy information stored in electronic or hard copy format that are under the custody and control of the University.

All key University record custodians involved in a Legal Hold may be asked to complete an Information Survey to assist in identifying sources of potentially relevant documents and information. All key University record custodians shall provide such information in a timely manner.

## **CONTACT INFORMATION**

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