



TITLE

LEGAL HOLD

SCOPE

Provincial

DOCUMENT #

1133-04

APPROVAL AUTHORITY

Corporate Services Executive Committee

INITIAL EFFECTIVE DATE

November 26, 2010

SPONSOR

Health Information Management

REVISION EFFECTIVE DATE

October 16, 2019

PARENT DOCUMENT TITLE, TYPE AND NUMBER

Records Management Policy (#1133)

SCHEDULED REVIEW DATE

October 16, 2022

NOTE: The first appearance of terms in bold in the body of this document (except titles) are defined terms – please refer to the Definitions section.

If you have any questions or comments regarding the information in this document, please contact the Policy & Forms Department at policy@ahs.ca. The Policy & Forms website is the official source of current approved policies, procedures, directives, standards, protocols and guidelines.

OBJECTIVES

- To preserve and **secure** Alberta Health Services (AHS) **responsive records** and to minimize the risk of **sanctions** from charges of **spoliation** being applied during litigation.

APPLICABILITY

Compliance with this document is required by all Alberta Health Services employees, members of the medical and midwifery staffs, Students, Volunteers, and other persons acting on behalf of Alberta Health Services (including contracted service providers as necessary).

ELEMENTS

1. Notification and Tracking of Legal Holds

1.1 **Legal holds** shall be initiated by the Legal & Privacy Department:

- when formal notice has been received of legal action against AHS (e.g., a Statement of Claim, Originating Notice, other formal notice of the commencement of legal action);
- when AHS becomes aware of potential or anticipated legal action; or
- in any other circumstances the Legal & Privacy Department deems appropriate (e.g., proceedings before administrative decision-makers, fatality inquiries, and other formal proceedings).

- 1.2 The Legal & Privacy Department shall:
- a) notify in writing the areas of accountability or individuals who may possess AHS responsive records of the initiation of a legal hold and advise which **records** are considered responsive and are subject to the legal hold; and
 - b) maintain a database of all legal holds in place within AHS.
- 1.3 The Health Information Management Department (HIM), or other department responsible for the records, shall either provide the Legal & Privacy Department with written confirmation that the legal hold is in place, or with a copy of the records, if requested.
- 1.4 HIM may also maintain and be responsible for the management of a listing of legal holds related to requests for information made pursuant to the HIA.

2. Preservation of Records

- 2.1 AHS responsive records or responsive **transitory records** shall be preserved for the duration of the legal hold by:
- a) ensuring the original records are in or are moved to a secure location;
 - b) transferring the original or a copy of the responsive records, upon request, to the Legal & Privacy Department; and
 - c) creating a copy for ongoing use.
- 2.2 **Destruction**, deletion, disposal, purging, overwriting, or alteration of AHS responsive records:
- a) shall not take place where there is knowledge of, or notification of a legal hold; and
 - b) if already underway, shall cease immediately on knowledge of, or notification of a legal hold.
- 2.3 The Legal & Privacy Department may contact the Information Technology (IT) Department to ensure the preservation of all AHS responsive records on AHS **IT resources** or on non-AHS-owned computing devices.

3. Access to Records Subject to a Legal Hold

- 3.1 If an individual requires access to records subject to a legal hold (outside of routine operational business of HIM, or the department responsible for the records):

- a) the Legal & Privacy Department shall provide HIM, or the department responsible for the records, with written instructions authorizing access to the records;
 - b) the written instructions shall identify the individual who is authorized to access the records and the terms of the access; and
 - c) no access to the records shall be permitted without written authorization from the Legal & Privacy Department (other than access to copies made for ongoing use, which does not require authorization).
- 3.2 During the duration of the legal hold, HIM, or the department responsible for the records, shall maintain a list of the individuals who:
- a) have received a copy of the records subject to the legal hold;
 - b) are authorized to view the records subject to the legal hold; and
 - c) have accessed the records subject to the legal hold.

4. Removal of Legal Holds

- 4.1 The Legal & Privacy Department shall:
- a) notify areas of accountability or individuals in writing when legal holds can be removed; and
 - b) update the legal hold database when the legal hold has been removed.
- 4.2 Regular retention periods apply once legal holds have been removed (see the *Records Retention Schedule*).
- 4.3 Copies of AHS responsive records or **electronically stored information** made to secure the original records during a legal hold shall be destroyed/deleted as transitory records once the legal hold is removed.
- 4.4 HIM, or the department responsible for the responsive records, shall provide the list of individuals who received copies of the responsive records, were authorized to view the responsive records, and who accessed the responsive records during the legal hold to the Legal & Privacy Department.

DEFINITIONS

Destruction means the disposal of records by incineration, maceration, pulping, granulizing, shredding, or otherwise with the objective of obliteration beyond any possible reconstitution.

Electronically stored information means data that is recorded or stored on any medium in or by a computer system or other similar device and that can be read or perceived by a person or a computer system or other similar device. It includes a display, printout, or other output of that data.

Information technology resource (IT resource) means any AHS-owned or controlled asset used to generate, process, transmit, store, or access AHS information, which includes but is not limited to IT infrastructure, computer facilities, systems, hardware, software, information systems, networks, shared drives, computer equipment and devices, internet, email, databases, applications, mobile wireless devices, and mobile storage devices.

Legal hold means a hold placed on the scheduled destruction of records due to foreseeable or pending litigation, governmental investigation, audit, or special organizational requirements as initiated in accordance with this Procedure.

Record means documents, data or information of any kind, in any medium (e.g., paper, digital, and audio-visual media), and in any format (e.g., documents, spread sheets, databases, emails, blogs, wikis, and website pages) created, received, recorded, and maintained by Alberta Health Services as part of its services or business. This definition includes health records, but does not include computer software or any mechanisms that produce records.

Responsive records means records that may be relevant to a legal proceeding, investigations, audits, or formal inquiries and requests for information, and can include electronically stored information, records that are in inactive storage, or transitory records.

Sanctions means that part of the law which may result in a penalty for its violation. Improper destruction of records may result in fines, penalties, costs, or adverse inferences at trial.

Secure means a condition in which reasonable security measures are in place to protect against risks such as unauthorized access, use, disclosure, modification, and/or destruction of the information.

Spoilation means the alteration or destruction of records that may be relevant to ongoing or anticipated litigation, government investigation, audit or inquiry.

Transitory Record means records that do not need to be retained to meet operational, legal, regulatory, fiscal or other requirements. Transitory records do not document client care, document a decision or transaction, support business activities, provide evidence of compliance with legislative requirement, nor have future business, financial, legal, research or archival value to AHS (See the *Transitory Records Procedure*).

REFERENCES

- Alberta Health Services Governance Documents:
 - *Electronic Records Conversion and Migration Recordkeeping Procedure* (#1133-05)
 - *Official Records Destruction Procedure* (#1133-02)
 - *Records Management Policy* (#1133)
 - *Records Retention Schedule* (#1133-01)
 - *Transitory Records Procedure* (#1133-03)
 - *Privacy Protection and Information Access Policy* (#1177)
- Alberta Health Services Forms:
 - *Legal Hold Notice Form* (#1934)
 - *Records Destruction Authorization Form* (#08939)

- *No Blood Transfusions or Blood Products Form (#18009)*
- Alberta Health Services Resources:
 - Access & Disclosure (Health Information Management): disclosure@ahs.ca
 - Information and Privacy: privacy@ahs.ca
 - Whistleblower Line (Confidential): 1-800-661-9675
- Non-Alberta Health Services Documents:
 - *Freedom of Information and Protection of Privacy Act (Alberta)*
 - *Health Information Act (Alberta)*

VERSION HISTORY

Date	Action Taken
October 16, 2019	Revised
Click here to enter a date	Optional: Choose an item