Policy *713.1* Version 2 *01/15/16*

**Policy Change Cover Sheet**

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| **This form must be attached to each policy presented. All areas in red, including the header, must be completed; if not, it will be sent back to you for completion.** |
|  | *I****f the changes you are requesting include housekeeping, please submit those changes to*** ***ndsu.policy.manual@ndsu.edu*** ***first so that a clean policy can be presented to the committees.*** |
| **SECTION**:  | Policy Number and Name **713.1 Litigation Holds** |
| 1. **Effect of policy addition or change (explain the important changes in the policy or effect of this policy). Briefly describe the changes that are being made to the policy and the reasoning behind the requested change(s).**
 |
| * Is this a federal or state mandate? **X** Yes [ ]  No
* Describe change:
* Policy has been updated and rewritten to separate policy from procedures and to accurately reflect current changes in NDSU governance and policy regarding litigation hold.
* Per request and recommendation of Chris Wilson, Chief of Staff. Section III.H was added to the policy.
 |
| 1. **This policy change was originated by (individual, office or committee/organization):**
 |
| * Office/Department/Name and the date submitted Information Security/Records Management, Theresa Semmens, CISO & Director, Records Management, Division of Information Technology
* Email address of the person who should be contacted with revisions: Theresa.Semmens@ndsu.edu
 |
| ***This portion will be completed by Mary Asheim.***Note: Items routed as information by SCC will have date that policy was routed listed below. |
| 1. **This policy has been reviewed/passed by the following (include dates of official action):**
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| **Senate Coordinating Committee:** |  |
| **Faculty Senate:** |  |
| **Staff Senate:** |  |
| **Student Government:** |  |
| **President’s Cabinet:** |  |

The formatting of this policy will be updated on the website once the **content** has final approval. Please do not make formatting changes on this copy. If you have suggestions on formatting, please route them to ndsu.policy.manual@ndsu.edu. All suggestions will be considered, however due to policy format guidelines, they may not be possible. Thank you for your understanding!

**North Dakota State University**

**Policy Manual**

**SECTION 713.1 LITIGATION HOLD**

SOURCE: NDSU President

ND Office of Risk Management

~~A “litigation hold” is the process in which documents, electronic information and other such materials are preserved pending a reasonably foreseeable litigation. A litigation hold is also known as a “preservation order,” where an organization’s document destruction process is suspended to preserve required documents for a pending litigation.~~

~~Potential threats of litigation can be a receipt of a summons or complaint; the filing of an Equal Employment Opportunity Commission (EEOC) charge; formal notice of investigation, the receipt of a subpoena; or even a verbal communication of the intent to sue. Once an employee receives any of the above, they should immediately inform their supervisor and the Attorney assigned to NDSU. The Attorney assigned to NDSU will then determine if the situation warrants a litigation hold for documents, and if so, implement procedures for a pre-litigation hold notice. A pre-litigation hold notice is one where no lawsuit has actually been filed yet, however, the university is preserving documentation in case litigation procedures are started. If litigation has been filed, the Attorney assigned to NDSU will send out a post-filing of litigation notice. Once a litigation hold notice has been issued, no documents pertaining to the litigation shall be destroyed until the litigation hold notice has been released by the Attorney assigned to NDSU.~~

~~Documents pertaining to a litigation hold include, but are not limited to:~~

* ~~Paper originals, drafts, and copies.~~
* ~~Word processing documents.~~
* ~~E-mail and e-mail attachments.~~
* ~~Calendars and planners.~~
* ~~Spreadsheets and databases.~~
* ~~Instant messages.~~
* ~~Network logs.~~
* ~~PowerPoint presentations.~~
* ~~Manuals, publications, bulletins, and pamphlets.~~
* ~~Graphic files.~~
* ~~Voicemail (if a message manager program is available to save voicemails).~~
* ~~Information on the website.~~
* ~~Text messages.~~

~~A notice of litigation hold should:~~

* ~~Identify the person(s) who are likely to have relevant information, and communicate a preservation notice to those persons;~~
* ~~Communicate the preservation notice in a manner that is comprehensible and timely;~~
* ~~Be in written form;~~
* ~~Clearly define what information is to be preserved and how the preservation should be undertaken; and~~
* ~~Be periodically reviewed and, if necessary, reissued in either its original or an amended form.~~

~~Once the litigation hold notice has been implemented, the university employees who have received the notice should then immediately suspend any and all deletion or destruction of electronic or paper documents relevant to the litigation; preserve any new documentation that pertains to the litigation; and preserve existing documentation. If a university employee separates his or her employment from the university during a litigation hold process, the supervisor should then take possession of and retain such records and documents, and notify the Attorney assigned to NDSU of the change in custody.~~

~~Only when the threat of litigation is over will the Attorney assigned to NDSU issue a release of litigation hold on the relevant documents. Such documents are not to be deleted or destroyed until such release is given by the Attorney assigned to NDSU, and at that time any document destruction will be in compliance with NDSU’s records management policy.~~

~~To assist in understanding the legal hold process, refer to the following documents:~~ [~~Anticipation of Litigation and Legal Holds~~](http://www.ndsu.edu/fileadmin/generalcounsel/Litigation_Holds/Anticipation_of_Litigation_and_Legal_Holds.pdf)

[~~Litigation Hold Procedures~~](http://www.ndsu.edu/fileadmin/generalcounsel/Litigation_Holds/Litigation_Hold_Procedures.pdf)

[~~Litigation Holds and Preservation of Evidence~~](http://www.ndsu.edu/fileadmin/generalcounsel/Litigation_Holds/DouglasBahrMemo1-29-07.pdf) [~~Litigation Hold Checklist~~](http://www.ndsu.edu/fileadmin/generalcounsel/Litigation_Holds/Litigation_Hold_Checklist.pdf)

[~~Destruction Hold Notice~~](http://www.ndsu.edu/fileadmin/generalcounsel/Litigation_Holds/ND-DestructionHoldNotice.pdf)

[~~NDSU 713: Records Management~~](http://www.ndsu.edu/fileadmin/policy/713.pdf)

Documents and information related to pending or reasonably foreseeable litigation may not be deleted or destroyed. Once a litigation hold is in place, the documents and information must be kept until the litigation hold has been removed; upon removal, the retention and destruction of documents and information will be in compliance with NDSU Policy 713, Records Management.

1. **Definitions**

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| --- | --- |
| Litigation Hold | A written directive to preserve documents and information for pending or reasonably foreseeable litigation. Litigation is reasonably foreseeable upon receipt of a summons or complaint, the filing of an Equal Employment Opportunity Commission (EEOC) charge, the filing of a complaint with the North Dakota Department of Labor, formal notice of investigation, receipt of a subpoena, receipt of a Notice of Claim filed with the North Dakota Office of Management and Budget, verbal communication of the intent to sue, or any other communication which would lead a reasonable person to believe that litigation was a credible probability. |
| Public Employee N.D.C.C. 44-04-17.1EmployeeN.D.C.C. 54-06-01 | Includes any individual who has applied for employment, is employed, or has been employed by a public entity.Includes all persons whose office or employment is held by virtue of any appointment or employment however made, other than an election by the voters of the state, whether or not such office or employment is created by an act of the legislative assembly. |

1. **Imposition of Sanctions**

Failure to follow and comply with this policy is subject to sanctions that can include, but is not limited to, a formal notice placed in the employee’s personnel file up to termination of employment.

1. **Section 713.1 LITIGATION HOLD PROCEDURE**
2. When an employee is made aware of a threat of litigation or when an employee believes that litigation is reasonably foreseeable, the employee will immediately inform his/her supervisor who will contact the director of records management. The Director of Records Management will contact the attorney assigned to NDSU. The attorney assigned to NDSU will determine if the situation warrants a Litigation Hold.
3. If litigation has been commenced, the attorney assigned to NDSU will issue a Litigation Hold. Once a Litigation Hold has been issued, documents and information pertaining to the litigation or potential litigation shall not be deleted or destroyed.
4. A Litigation Hold will:

	1. Identify the employees who are likely to have documents and information relevant to the litigation or potential litigation;
	2. Be communicated in writing to the identified employees in a comprehensible and timely manner;
	3. Clearly define what information is to be preserved and how the preservation will be undertaken; and
	4. Be reviewed periodically and, if necessary, be reissued or amended.
5. Employees who receive a Litigation Hold will:

	1. Immediately suspend the deletion or destruction of documents and information relevant to the litigation, including any automated processes that may affect the deletion or destruction of documents and information;
	2. Preserve existing records relevant to the litigation or potential litigation;
	3. Preserve new records that pertain to the litigation or potential litigation; and
	4. Provide any additional assistance that may be required to preserve the relevant documents and information.
6. If an employee subject to a Litigation Hold separates employment from NDSU, the employee’s supervisor will take possession of and retain the documents and information subject to the Litigation Hold and notify the Director of Records Management of the change in custody of the documents and information.
7. When the litigation has ended or is no longer foreseeable, the attorney assigned to NDSU will remove the Litigation Hold. Upon removal of the Litigation Hold, the retention and destruction of documents and information will be in compliance with NDSU Policy 713: Records Management.
8. Records subject to a Litigation Hold include, but are not limited to:

Paper originals, drafts and copies
Electronic records
Email and email attachments
Calendars and planners
Instant messages
Network, computer and application logs
Slide presentations
Manuals, publications, bulletins and pamphlets
Graphic files and electronic images
Voicemail
Website information, pages, etc.
Text messages
Video files
Audio files

1. The institution may put a litigation hold in place for situations that may not involve reasonably foreseeable litigation, including without limitation, ensuring compliance with public records requests and subpoenas.

HISTORY:

New January 27, 2011

Housekeeping August 31, 2015