

**DMA Policy: #3-0006**  
**Name: DMA Legal Hold Policy**

**Approval Signature:** 

**Effective Date: September 28, 2017**



The purpose of this policy is to establish the authority and process for initiating, implementing, monitoring and releasing Legal Holds.

A Legal Hold will be issued and enforced when circumstances, usually pending or threatened litigation, required the Department and its employees to (a) suspend the normal and routine destruction of Records Related to the litigation and (b) cooperate in cataloging and maintaining all Related Records.

This policy applies to all Department of Military Affairs (DMA) personnel and covers all records, regardless of location or form, made or received in the transaction of Department business.

### **Definitions**

The terms below shall have the following meanings;

**Directors Office:** DMA Director, Deputy Director or HR Officer.

**Legal Counsel:** Department of Administration, Agency Legal Services or other counsel who acts in a legal manner or with legal authority on behalf of DMA.

**Legal Hold:** (also known as a "litigation hold") A process the DMA will use to preserve all forms of relevant information when litigation is reasonably anticipated.

**Department Personnel:** Includes all current and former Department employees, whether permanent, temporary, full-time or part-time employees. The term also includes contractors, consultants, vendors or other related third parties. This will not dictate what contractors will be required by statute.

**Affected Department Personnel:** Means all Department Personnel who are in possession or control of Department records that are related to the subject of a Legal Hold.

**Related Records or Records Related:** Includes all information and communications, whether in electronic or hard copy form, created, received, or maintained in the transaction of Department business which pertain to or are related in any way to the subject of the Legal Hold.

**Electronic records:** Include all forms of electronic information, documents, photographs, plans, notes and communications, including but not limited to, information and communications stored on hard drives, state owned and personal electronic devices such as desktop computers, laptop computers, tablets or other personal computer devices, flash drives, CD or DVD ROM,

memory sticks, tapes, zip discs, diskettes, PDAs, smart phones or other mobile devices, e-mail, work processing documents, calendars, spreadsheets, voice messages, videos, photographs and/or text messages.

**Records:** Means all information, documents, photographs, plans, notes, and communications, whether in electronic or hard copy form, created, received, or maintained in the transaction of Department business.

**Point of Contact:** DMA Human Resources or Deputy Director are the only positions to communicate placement or release a Legal Hold for DMA.

### **Procedures**

- A. A Legal Hold will be initiated when either (a) an official discovery order is served on the Department requesting the production in the judgement of State Legal Services upon the Department or (b) pending or threatened litigation is concerning enough for legal counsel to recommend maintaining all related records. A Legal Hold means that Records Related to the Legal Hold must be preserved and may not be destroyed, even if otherwise permitted under the Department's document retention and disposition schedule, until officially released from the Legal Hold through communication from the DMA Directors Office.
- B. Any Department Personnel who become aware of any Department-related litigation, threat of litigation, claim, administrative action, other legal action, or an investigation by any administrative, civil or criminal authority (such as through the receipt of notification or other information identifying the possibility of legal action) must immediately notify DMA Director's Office. The DMA Director's Office will seek legal counsel whether to initiate a Legal Hold.
- C. The Director's Office will notify DMA IT Administrator and Affected Department Personnel that a Legal hold has been initiated. The notice will inform IT Administrator and Affected Department Personnel of the obligation to identify and preserve all Related Records that may be relevant to the Legal Hold.
- D. Upon notice of a Legal Hold, the IT Administrator and Affected Department Personnel are required to do the following:
1. Immediately suspend deletion, alteration, overriding or any other destruction of Electronic Records under their control that are related to the Legal Hold. This includes Electronic Records wherever stored, including, but not limited to, on hard drives of work station desktops, laptops, tablets, or flash drives, CE-ROMS, memory sticks, tapes, zip disks, diskettes, or PDAs or other mobile devices, regardless of location or whether the storage devices are owned by the Department or by Department Personnel, or by any other person or entity. Related Electronic Records must be preserved in a way that they can be retrieved at a later time, and the Related Electronic Records must be preserved in their original electronic form. It is not sufficient to make a hard copy. Affected