



ADMINISTRATIVE DIRECTIVE

Title: Litigation/Legal Holds
Issuing Department: Legal
Effective Date: October 12, 2018
Approved: Jamsheed Mehta, Town Manager
Type of Action: Revision

1.0 PURPOSE

Whenever litigation is reasonably anticipated, threatened or pending against the Town, the Town has a duty to undertake reasonable and good faith actions to preserve relevant information and tangible evidence. This duty arises whether the Town is the initiator or the target of the litigation. The duty to preserve evidence requires the Town to identify, locate and maintain information and tangible evidence that is relevant to specific and identifiable litigation

The purpose of this Administrative Directive is to set forth the procedures the Town will use to ensure that evidence relevant to pending or reasonably anticipated litigation is preserved. This directive also sets forth the obligation of all employees and officials to comply with litigation/legal holds.

2.0 ORGANIZATIONS AFFECTED

All Town of Marana departments, employees and appointed and elected officials.

3.0 REFERENCES

- 3.1 Federal Rules of Civil Procedure
- 3.2 Arizona Rules of Civil Procedure
- 3.3 Town of Marana Administrative Directive: Electronic Mail (E-mail) Retention & Storage
- 3.4 Town of Marana Administrative Directive: Offsite Storage and Final Disposition or Destruction of Records
- 3.5 *Zubulake v. UBS Warburg LLC*, 220 F.R.D. 212 (S.D.N.Y. 2003)
- 3.6 THE SEDONA CONFERENCE® COMMENTARY ON LEGAL HOLDS: THE TRIGGER & THE PROCESS, September 2010 Version

4.0 DEFINITIONS

- 4.1 Evidence: All records and other materials, in whatever format, that may be related to a pending claim, complaint or matter including but not limited to all letters, memoranda, agendas, calendars, faxes, notebooks, reports, emails, handwritten notes, presentation materials, audio tapes, and draft documents.
- 4.2 Electronically Stored Information (ESI): Includes but is not limited to e-mail and other electronic communications, word processing files, spreadsheets, databases, calendar and scheduling information, internet usage files, internet history files and preferences, network access information, graphic files (e.g. GIF, JPEG, BMP, etc.), digital recordings, voice mail messages and backup files containing electronic data.
- 4.3 Legal or Litigation Hold: A directive from the Legal Department directing that all relevant evidence in any pending or reasonably anticipated litigation must be preserved and that any routine document retention or destruction policies be suspended with regard to that relevant evidence. The legal or litigation hold may or may not be in writing.

5.0 POLICIES AND PROCEDURES

- 5.1 General. Relevant evidence must be preserved as soon as the Town reasonably anticipates litigation. Determining whether a duty to preserve is triggered, i.e., whether litigation can be reasonably anticipated, is a fact-intensive determination which will be made on a case-by-case basis by the Legal Department.
- 5.2 Notice to Legal Department
 - 5.2.1 To facilitate the Legal Department's determination, all Town of Marana employees and appointed and elected officials shall inform the Legal Department of any information that they possess which leads them to believe that litigation may be reasonably anticipated. Communication to the Legal Department may be by any effective means, including telephone or email.
 - 5.2.2 Employees and appointed and elected officials shall notify the Legal Department when they become aware of any of the following:
 - 5.2.2.1 A notice of claim filed against the Town
 - 5.2.2.2 A lawsuit filed against the Town
 - 5.2.2.3 An administrative action filed against the Town
 - 5.2.2.4 An Equal Employment Opportunity Commission or Arizona Civil Rights Division charge of discrimination filed against the Town
 - 5.2.2.5 Receipt of a discovery request
 - 5.2.2.6 Receipt of a subpoena for records or documentation
 - 5.2.2.7 Any other event which the employee or official reasonably believes will result in litigation by or against the Town
- 5.3 No Duty to Preserve. If the Legal Department determines that no duty to preserve is triggered by an event, the attorney making the determination shall prepare a memorandum to the file explaining the reasons why a litigation hold was not issued.

5.4 Duty to Preserve

- 5.4.1 If the Legal Department determines that a duty to preserve is triggered by an event, the attorney making the determination shall immediately put all key departments, employees and officials on notice that they are under an obligation to preserve relevant records.
- 5.4.2 The Legal Department shall issue a written litigation hold memorandum to the key individuals who might be in possession of relevant evidence. The Town Manager's Office, Technology Services Director, and the Town Clerk will be copied on all litigation hold memoranda.
- 5.4.3 In exigent circumstances, the Legal Department may issue a litigation hold orally; however, in such cases, the Legal Department shall follow up with a written litigation hold memorandum as soon as practicable.

5.5 Contents of Litigation Hold. The litigation hold issued by the Legal Department shall at a minimum provide the following information:

- 5.5.1 A factual description of the litigation or litigation threat or of the discovery request or subpoena
- 5.5.2 A discussion of what constitutes evidence, the types of evidence that must be preserved and the format in which the evidence must be preserved
- 5.5.3 A description of ESI and specific direction to discontinue routine or automatic destruction of ESI, such as routine purging of email

5.6 Litigation Hold Meeting. In addition to distributing the litigation hold memorandum, the Legal Department may also schedule a meeting with the recipients of the memorandum to help determine what evidence may exist, where it may be located and how and where it will be preserved.

5.7 Response to Litigation Hold

- 5.7.1 Upon receipt of the written litigation hold memorandum, the recipient shall sign the certification at the bottom of the memorandum attesting that the recipient has received and read the memorandum and will make arrangements to have the relevant information, documents, files and storage devices preserved. The recipient shall return the signed certification to the Legal Department.
- 5.7.2 In addition to the return of the signed certification, the Legal Department may request a formal response from recipients detailing the steps that were taken to preserve the evidence.
- 5.7.3 Recipients of the litigation hold notice shall gather and maintain documents and other evidence in a secure, easily accessible location. In some instances, the evidence may be turned over to the Legal Department.

5.8 Electronically Stored Information (ESI). For ESI, all sources of potentially relevant electronic data should be searched by the key departments' records liaisons, the Technology Services Department or other designated individual with the appropriate expertise, and any files that constitute evidence should be appropriately stored in a

location determined by the Legal Department in conjunction with the Technology Services Department.

5.9 Reminders and Updates

5.9.1 The Legal Department shall issue written reminders to key employees and officials every three months for each continuing duty to preserve.

5.9.2 The Legal Department shall monitor the pending or threatened litigation and whenever new information is obtained that could affect the scope of the litigation hold, the Legal Department shall review the original litigation hold and revise and reissue as is necessary.

5.10 Termination of Litigation Hold. The Legal Department shall issue a notice of termination of the litigation hold to all recipients of the original litigation hold memorandum when the Legal Department determines that the duty to preserve has ended.

5.11 Mandatory Compliance. Compliance with a litigation hold issued by the Legal Department, whether in writing or orally, is mandatory. Evidence preservation is a continuing obligation. Failure to preserve evidence could subject the Town or its employees or officials to civil or criminal penalties. In addition, employees who fail to comply with a litigation hold may be subject to disciplinary action, up to and including termination of Town employment.

6.0 RESPONSIBILITIES

[Reserved]

7.0 ATTACHMENTS

[Reserved]

REVISION HISTORY

	<i>DESCRIPTION OF CHANGE</i>	<i>DATE</i>
OR	Original Release	9/6/2011 (Resolution No. 2011-86)
REV	Revision (Administratively amended/non-substantive revisions)	10/17/2013
REV	Revision (Administratively amended/non-substantive revisions)	10/12/2018

Caution: A copy of this Administrative Directive is an uncontrolled document. It is your responsibility to ensure you are using the current version. The electronic version is the only acceptable and controlled Administrative Directive.