

# EDMONTON

## ADMINISTRATIVE PROCEDURE



### TITLE

**LEGAL HOLDS – PRESERVATION OF RECORDS  
RELATING TO LEGAL ACTION**

### NUMBER

**A1458**

### DEPARTMENT

**CORPORATE SERVICES**

### DELEGATED AUTHORITY

**CITY SOLICITOR, CORPORATE SERVICES  
DEPARTMENT**

### CONTACT

**CITY SOLICITOR 496-7200**

### DEFINITIONS

### DATE

**JULY 4, 2013**

**Legal Action** – Means legal proceedings brought by or against the City of Edmonton and/or its employees including a lawsuit, judicial review, administrative proceedings, alternative dispute resolution process (for example, arbitration or mediation), criminal proceedings, regulatory proceedings, government investigations or audits.

**Legal Hold** – Means the suspension of Record destruction processes and the preservation of relevant Records in their current form.

**Record** – Means “the representation of or a record of any information, data or other thing that is or is capable of being represented or reproduced visually or by sound or both” (Alberta Rules of Court, Definitions). A Record includes paper records, electronic records, sound recordings, visual recordings and may also involve database information.

**Relevant and Material** – Records are “relevant and material” when they are expected “to significantly help determine one or more of the issues raised” in the Legal Action or “to ascertain evidence that could reasonably be expected to significantly help determine one or more of the issues raised” in the Legal Action (Alberta Rules of Court, Rule 5.2).

### PROCEDURES AND GUIDELINES

#### **What to Do When Legal Action Is Commenced or May Be Commenced Against the City**

When a City employee becomes aware that the City or its employees (arising from their employment) **are named in a Legal Action**, they are to advise the City Solicitor for the Law Branch and the Branch Managers of the areas that are directly affected.

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Where City employees become aware that the City **may become involved in a Legal Action but the Legal Action has not been commenced yet:**

1. They are to advise the City Solicitor and the Branch Managers of the areas that are directly affected;
2. Law Branch and/or the Branch Managers of the areas directly affected will determine whether the Legal Action is reasonably anticipated and will advise the others of this decision. Reasonable anticipation of Legal Action arises when there is a credible probability that the City will become involved in Legal Action, seriously contemplates initiating Legal Action, or when it takes specific actions to commence Legal Action.
3. Where it is determined that Legal Action is not reasonably anticipated at that time, the Branch Manager of the area directly affected will keep the Law Branch advised of any new or additional information received that may impact that assessment;
4. If the Legal Action is reasonably anticipated, the Branch Manager will initiate a Legal Hold.

### How to Implement a Legal Hold

Where the City is named in a Legal Action, or where it is determined that a Legal Action is reasonably anticipated, either brought by the City or against the City, a Legal Hold is to be initiated. The Legal Hold is initiated by the Branch Manager. Once initiated, the Legal Hold process is as follows:

1. The Branch Manager determines the City employees who most likely have Records relating to the Legal Action and requests those City employees to implement a Legal Hold. The Branch Manager also sends notice of the Legal Hold to the Manager of Corporate Records (City Clerks Office) who will assist in implementing the Legal Hold as necessary. It is the obligation of the Branch Manager to ensure that Information Technology is also involved if some of the Records will be electronic and assistance will be necessary to preserve the Records in their current form;
2. City employees who receive a request to implement a Legal Hold are to identify the location of Records they are aware of that are or may be relevant to the Legal Action and take steps to ensure that the Records are no longer subject to destruction under a scheduled or automated process or otherwise. City employees must also ensure that Records under their control are not manually destroyed or modified once they become aware of a request to implement a Legal Hold. City employees must then advise the Branch Manager who has requested the Legal Hold of the following:
  - a) list of the types of Records they are aware of relating to the Legal Action and their locations;
  - b) confirm that any scheduled or automated record destruction process has been cancelled and that the Records will be preserved;
  - c) identify any other City employees or others that are not City employees that may have Records relating to the Legal Action;
  - d) advise of any issues or concerns relating to the accessibility of the Records, how Relevant and Material the information in the Records is likely to be, whether preserving the Record in its current state will be difficult, and any exceptional burdens or costs for preserving and gathering the Records;
  - e) If Records are electronic and subject to change over time due to ongoing business requirements, City employees should take a screen shot of the information available as soon as the legal hold is implemented and then immediately seek assistance of Information Technology to see if a “non-erasable point-in-time copy” of the Record can be reasonably obtained;
3. Where it is determined that a former City employee would likely have Records relating to the Legal Action, the Branch Manager is to ensure the steps 2 (a) to (e) above are conducted with respect to Records that were under that employee’s control;

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4. The Branch Manager is to forward to Law Branch the information from 2 (a) to (e) as soon as possible to check that the Records being preserved are the types of Records that will likely be needed for the Legal Action;
5. If the Branch Manager is advised that there are issues or concerns relating to the accessibility of Records, that preserving a Record in its current state will be difficult, or that there are exceptional burdens or costs to preserve and gather the Records, the Branch Manager shall immediately consult the Branch Manager of Information Technology and/or other appropriate City resources to determine possible solutions. The Branch Manager shall then consult Law Branch with respect to whether the solutions are appropriate to undertake based on a balancing of the cost/effort to preserve and gather the Records and their likely probative value in the Legal Action;
6. Where the Branch Manager becomes aware that persons that are not City employees may have Records that are Relevant and Material (for example, contractors, outside vendors), the Branch Manager is to provide this information to Law Branch who will give advice and direction as to whether that person is to be contacted relating to the Legal Action and the implementation of a Legal Hold.

### Maintaining the Legal Hold

Where a Legal Hold has been initiated, the Branch Manager is to schedule reminders to the employees identified as likely having Records relating to the Legal Action to continue to preserve the records and to ensure compliance with the Legal Hold.

The Branch Manager is to provide to the Law Branch, within a reasonable time, updates on the list of City employees that have been contacted to implement a Legal Hold, the information about the Records held by those employees, and advise how often the Branch Manager intends on reminding the City employees of the Legal Hold.

The Branch Manager should also contact the Law Branch on a reasonable schedule to determine whether the Legal Hold continues to be necessary. When the Law Branch advises the Branch Manager that the Legal Hold is no longer necessary, the Branch Manager shall advise all the City employees who have been identified as having Records and the Records may then be included again in the City's applicable automatic or manual record retention schedule and may be destroyed when the schedule permits.

### Gathering and Providing the Records

When requested, the City employees that have Records relating to a Legal Action will assist with the necessary steps to gather and provide those Records to either the Branch Manager who requested the Records, the Manager of Corporate Records, or the Law Branch, as appropriate in the circumstances.

### Preserving Items that are Not Records

If the employee is aware that there are other items in the City's control that are not Records but may be Relevant and Material to the Legal Action (eg. physical objects), they should also take steps to preserve those items and advise the Branch Manager of the information set out in 2 (a) to (e) above with respect to those items.

### COMPLIANCE

Any violations of this Directive or Procedure could result in disciplinary action up to and including termination. Failure to implement a Legal Hold could result in significant negative consequences to the City.

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It could result in the City being unable to prove its legal claim against others, a court may make an adverse inference against the City for failing to produce Records, the City could be subject to the striking of some or all of its claims or defenses, or the City may have to pay costs or other penalties.