

Executive Memorandum No. 29

Records Management and Procedure for Issuance of Preservation Notices

Records Management

1. Designation of Records Officers. The Corporation Secretary and the chief business officers of the University of Nebraska at Kearney, the University of Nebraska-Lincoln, the University of Nebraska Medical Center and the University of Nebraska at Omaha shall each designate a person from their respective professional staffs to serve as a records officer.
2. Records Officers' Responsibilities. The records officer for University Administration reporting to the General Counsel shall be responsible for overall coordination of records management activities within the chief governing unit of the University and throughout the University system. The records officer for each campus shall be responsible for overall coordination of records management activities within his or her campus.
3. Compliance with Records Management Laws. Records management activities shall include compliance with the Nebraska Records Management Act (*Neb. Rev. Stat.* §§ 84-1201 through 84-1226) and other state and federal laws concerning the management of records, regardless of physical form or characteristic.
4. Retention of University Records. The retention period for University records shall depend upon their administrative, legal, fiscal, and/or historical value. University Records Retention and Disposition Schedules shall set forth minimum standards for retention. When appropriate, particular records may be retained for a period longer than the mandatory period stated in the retention schedule. University records subject to the requirements of a preservation notice must be retained until the notice is terminated.
5. Protection of University Records. Appropriate measures and standards should be applied to ensure that University records remain secure and confidential.
6. Archival University Records. University records designated by University Records Retention and Disposition Schedules as having archival or historical value should be transferred to the University Archives when they no longer have administrative, legal, or fiscal value to their originating offices.
7. Guidance. The Office of the General Counsel shall provide assistance as needed to each records officer in carrying out his or her records management duties.

Issuance of Preservation Notices

1. Policy. It is the policy of the University of Nebraska to preserve University records or materials that (a) may be relevant to pending or anticipated litigation involving the University, or (b) may be relevant to an audit or investigation conducted by a state, federal or other regulatory agency, or (c) are subject to a subpoena, warrant, or national security letter served upon the University.
2. Issuance of Preservation Notices. Either the University of Nebraska General Counsel's Office or the responsible campus office may issue a notice to preserve relevant University records and materials. The University officer issuing a notice shall provide copies of all notices they issue to (a) the records officer for University Administration, (b) the campus records officer, and (c) as appropriate persons determined to have a need to know. The records officer for University Administration may send a copy of an issued notice to the General Counsel, if necessary.
 - a. Notices by General Counsel. Notices to preserve University records or materials relevant to (i) pending or anticipated lawsuits, or (ii) subpoenas, warrants, or national security letters, shall be issued by the Office of the General Counsel. The Office of the General Counsel may also issue any notices which may be issued by a campus office.
 - b. Notices by Campus Offices. Notices to preserve University records or materials relevant to the following matters should ordinarily be issued by the responsible campus office
 - (i) Administrative charges filed with the Nebraska Equal Opportunity Commission, United States Equal Employment Opportunity Commission, Office of Civil Rights, Office of Federal Contract Compliance Programs, or other local, state or federal agency having jurisdiction over claims of violations of laws for the protection of civil rights or prohibiting discrimination;
 - (ii) Worker's Compensation claims;
 - (iii) Unemployment Compensation claims;
 - (iv) Claims under the Nebraska State Tort Claims Act, Nebraska Contract Claims Act, or Nebraska Miscellaneous Claims Act;
 - (v) University grievance proceedings (including proceedings to address claims of discrimination or harassment);
 - (vi) University bodies established to hear academic freedom and tenure complaints and/or complaints of professional misconduct, student academic or disciplinary cases as provided in the *Bylaws of the Board of Regents of the University of Nebraska*;
 - (vii) University bodies authorized to investigate allegations of research misconduct; or
 - (viii) other campus specific claims, complaints, audits or investigations.
 - c. Modification of Campus Office Notices. The Office of the General Counsel may amend, suspend or vacate any notice issued by a campus office.

- d. Repository of Notices. The records officer for University Administration shall maintain a record of all written notices issued under this Policy.
3. Form of Preservation Notices. Notices to preserve relevant University records or materials under this Policy may be issued verbally, but must be confirmed in writing in such form as shall be specified by the records officer for University Administration. The writing shall identify (a) the University officer issuing the notice, (b) the reason for the notice to preserve, (c) recipient preservation obligations, and (d) the types of materials subject to the notice. The notice should specifically address electronically stored information (“ESI”).
4. Response to Preservation Notices. Recipients of notices are required to comply fully with the notice and shall be expected to make reasonable good faith efforts to preserve relevant University records or materials in the recipient’s custody, control, or care. Recipients of notices are responsible for determining whether further distribution to persons acting at the direction, or under the supervision of the recipient is necessary. Any question a recipient may have relating to the relevance of a particular University record should be resolved in favor of preservation and retention. University records subject to a notice, whether in paper or electronic form, shall not knowingly be altered, disposed of, erased, mutilated, concealed, or falsified. Recipients who make good faith efforts to preserve relevant University records and materials in response to notices are presumptively entitled to legal defense and indemnification by the University under § 6.8 of the *Bylaws of the Board of Regents of the University of Nebraska* for those efforts. A recipient who changes positions within or leaves the University should arrange for the transfer of the recipient’s responsive materials to (a) his or her supervisor, or (b) a person designated by his or her supervisor. The failure of a recipient to comply with a notice may constitute a violation of applicable law, is a violation of University policy, and may result in University disciplinary or legal action for noncompliance.
5. Monitoring Preservation Notices. The University officer issuing a notice shall be responsible for monitoring compliance with the notice.
6. Issuance of Reminder Notices. When a notice has remained active for a designated period of time, the University officer issuing the notice may issue a reminder notice to recipients in such form as shall be specified by the records officer for University Administration.
7. Terminating Preservation Notices. Notices will be reviewed periodically to determine if termination is warranted. When the matter related to a notice has been concluded by (a) agreement or settlement, or (b) final adjudication without possible appeal, the University officer responsible for issuance of the notice shall issue a release notice to recipients in such form as specified by the records officer for University Administration. Relevant University records or materials subject to more than one notice shall be retained until all notices have been terminated.

Reference: April 22, 2011