



DEPARTMENT OF THE NAVY  
COMMANDER, NAVY INSTALLATIONS COMMAND  
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WASHINGTON NAVY YARD, DC 20374-5140

CNICINST 5891.1  
N00J

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CNIC INSTRUCTION 5891.1

From: Commander, Navy Installations Command

Subj: LITIGATION HOLD POLICY

Ref: (a) SECNAVINST 5210.8D  
(b) SECNAV M-5210.1  
(c) Navy Telecommunications Directive (NTD) 03-07 192000Z  
MAR 07

Encl: (1) Definitions  
(2) Sample E-Mail Litigation Hold Notice to CNIC Employees  
(3) Sample Supplemental Litigation Hold Memorandum Notice to CNIC Employees  
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(5) Sample Certification of Inventory of Records and Files  
(6) Sample Questionnaire Concerning Files  
(7) Sample Litigation Hold Interview Checklist  
(8) Sample Litigation Hold Notice to Director for Navy Records  
(9) Sample Directions for Employees Performing Searches for Relevant Documents  
(10) Sample Client Declarations  
(11) Sample Discovery Instructions Memorandum to Client  
(12) Sample E-Mail Litigation Hold Notice to Employees

1. Purpose. This instruction establishes Commander, Navy Installations Command (CNIC) policy, responsibilities, and procedures for implementation and management of litigation holds (records retention). The instruction also informs CNIC personnel of the requirements to preserve Navy records, including email and other electronic records, and electronically stored information (ESI) upon receipt of a litigation hold notice.

2. Policy

a. This policy requires that all CNIC personnel comply with litigation holds issued by higher authority, as delegated

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by CNIC Counsel, Regional Counsel, Force Judge Advocate (FJA), other CNIC personnel assigned third party litigation and/or their designee. A litigation hold overrides the DoN records retention and disposition policy in reference (b), which may have otherwise called for the transfer, disposal or destruction of relevant documents, until the party that instituted the hold releases it via a release letter or memorandum.

b. This policy applies overseas, to the maximum extent possible, consistent with bilateral agreements, applicable host nation law, U.S. State Department, DOD & Navy country specific policy and rules of procedures in foreign courts.

c. All CNIC personnel who receive a litigation hold notice must take immediate action to comply with the terms and requirements of that litigation hold. CNIC personnel who have received a litigation hold notice must not alter or delete an electronic record that falls within the scope of that hold. If there is any question about whether information should be preserved pursuant to a litigation hold, CNIC policy requires the individual to preserve and retain the records and then contact the Office of Counsel, Regional Counsel, FJA, third party representatives or their designee.

3. Background. Department of Navy (DON) records are organized, managed, retained, and disposed of in accordance with references (a) and (b). Reference (b) contains guidelines for the creation, maintenance, use, and disposition of all DON records, including electronic records and electronic mail (email). Reference (b) also states that an electronic record means "[a]ny information created, received, transmitted, maintained, or managed as an organization record that can be read by using a computer or any other electronic device. Most information today is created, received, stored, and maintained electronically. Paragraph 17.a of reference (b) also states that "in regards to disposition, there is no difference between managing electronic and paper records."

a. Importance of a Litigation Hold (records retention):

The need to preserve information often occurs before a party files a lawsuit, therefore, it is critical for the Navy to take early action and issue a "litigation hold" to preserve potentially relevant information. The "triggering event" for a litigation hold can arise from many different sources including the anticipation of a lawsuit, administrative proceedings such as an Equal Employment Opportunity (EEO) Commission complaint, prior lawsuits, the filing of a complaint, discovery requests or orders, etc. The facts of a particular situation dictate when

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the "triggering event" occurs thus it is important to contact the Office of Counsel, Regional Counsel, FJA, third party representatives when in doubt.

b. Documents and electronic evidence (including classified materials) MUST be preserved as soon as a party reasonably anticipates litigation, to minimize the risk that potentially relevant evidence is inadvertently or intentionally destroyed and to avoid court sanctions. Questions regarding the preservation of classified materials should be directed to Counsel, FJA, and/or third party representatives and the appropriate security manager.

c. A litigation hold protects the Navy's interests and preserves claims or defenses in litigation. Failure to comply with a litigation hold may result in severe monetary or other court-imposed sanctions for failure to preserve relevant information.

d. Federal Case Law: "Once a party reasonably anticipates litigation, it must suspend its routine document retention/destruction policy and put in place a 'litigation hold' to ensure the preservation of relevant documents." Zubulake v. UBS Warburg LLC, 220 F.R.D. 212, 218 (S.D.N.Y. 2003). "The duty to preserve material evidence arises not only during litigation but also extends to that period before the litigation when a party reasonably should know that the evidence may be relevant to anticipated litigation." Silvestri v. Gen. Motors Corp., 271 F.3d 583, 591 (4<sup>th</sup> Cir. 2001).

e. Federal Rules of Civil Procedure: The advisory committee note to Federal Rule of Civil Procedure 37(f) also addresses the legal duty to preserve potentially relevant evidence, as follows: "When a party is under a duty to preserve information because of pending or reasonably anticipated litigation, intervention in the routine operation of an information system is one aspect of what is often called a 'litigation hold.'"

f. Exceptions to DON Records Retention Standards: While Navy records are to be retained and disposed of in accordance with the records disposition schedule contained in reference (b), there are several exceptions to the Navy's record retention standards. Paragraph 3 of reference (b) sets forth these exceptions as follows:

g. Exceptions to Standards when Litigation Investigations, and Exceptions are Pending. Regardless of the retention standards established by this instruction, records pertaining to:

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(a) unsettled claims for or against the Government; (b) current or pending litigation; (c) incomplete investigations; or (d) exceptions taken by the General Accounting Office or internal auditors will not be destroyed, but retained, until the litigation is settled, the investigation is completed, or the exception is cleared. Segregate and retain records directly pertinent to the litigation, investigation, or exception until all actions are completed.

h. Extent of or Duration of Hold: Reference (c) further defines Navy policy concerning disposition of a user's email upon departure from a command, and likewise recognizes that certain exceptions, when applicable, require Navy records be retained regardless of DON retention standards. Paragraph 4.e. of reference (c) outlines the exceptions when naval records need to be retained regardless of DoN retention standards as follows:

(1) Regardless of the retention standards in reference (b), all documents, whether or not they constitute federal records, pertaining to unsettled claims for or against the government, current, pending, or reasonably foreseeable litigation (including criminal cases), incomplete investigations, or exceptions taken by the general accounting office or internal auditors shall be retained until the litigation is finally resolved, the investigation is completed, or the exception is cleared. All documents directly pertinent to the litigation, investigation, or exception shall be segregated and retained until all actions are completed. Commands shall review the status of the litigation, investigation, or exception at least once every 30 days to determine if indefinite data retention is still required.

i. Discovery of Records and Electronically Stored Information (ESI): On December 1, 2006, the United States Supreme Court amended the Federal Rules of Civil Procedure (FRCP) to provide for discovery of ESI. During the course of a lawsuit, a party suing the Navy may use the discovery process to obtain Navy records and information, including email records and other ESI. ESI includes correspondence including, but not limited to, emails, voice-mail, instant messages, content contained on Blackberries, word processing documents, spreadsheets, and computer databases.

4. Scope. This instruction applies to all CNIC commands, activities, and personnel.

5. Definitions. Definitions used in this instruction are contained in enclosure(1).

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## 6. Responsibilities

a. CNIC Headquarters, Region and Installation Commanding Officers: In order to comply with references (b) and (c), and with litigation holds when issued, all CNIC Headquarters, Region and Installation Commanding Officers shall:

(1) Ensure that Information Technology personnel and other command records managers seek the assistance of their regional/local counsel, FJA, or other persons having knowledge of significant command issues, such as pending litigation or criminal investigations, to identify user accounts which may contain email data and electronic files that must be preserved in order to ensure important records are not inadvertently deleted.

(2) Establish check-out procedures for departing personnel that comply with the standards in reference (c) for the disposition of a user's email data and any electronic files stored on network file storage or on the user's computer hard drive(s) upon the user's permanent departure from a command.

(3) Ensure the command includes on its check-out sheet for departing command personnel, sections that ask whether such personnel have received a litigation hold notice while assigned to the command and whether such personnel have provided all relevant documents and ESI to the assigned third party representative.

(4) Ensure that any command personnel who previously received notice of a litigation hold, before completing the command check-out process, contact the Office of Counsel, FJA and/or third party representative to ensure important records related to the subject of the litigation hold are not inadvertently deleted or destroyed.

(5) Ensure that email and accounts of separated command personnel that have been placed on litigation hold status are maintained until the hold is released.

b. Counsel and Third Party Representatives: When the Navy is under a duty to preserve information because of current, pending or reasonably anticipated litigation, CNIC attorneys and third party representatives are responsible for issuing a litigation hold notice. For questions regarding the proper application of this policy overseas, Counsel, third party

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representatives and FJA's should consult the appropriate U.S. Department of Justice Office.

c. CNIC attorneys and third party representatives have an obligation to assist DoN employees and record custodians with identifying and preserving potentially relevant material related to the subject litigation, and must ensure compliance with the litigation hold. Heads of each Counsel's office and/or third party representatives are responsible for the implementation and management of litigation holds under the cognizant Office of Counsel within CNIC. Counsel and third party representatives shall:

(1) Issue a litigation hold to specified personnel when counsel or a third party representative determines that the Navy and/or CNIC is under a duty to preserve information because of current, pending or reasonably anticipated litigation.

(2) Use enclosures (2) through (11) to implement and manage litigation holds issued to CNIC personnel.

(3) Coordinate with the appropriate CNIC OGC Counsel or FJA before issuing litigation holds in a matter that falls within JAG and OGC common areas of practice.

(4) Coordinate with the Human Resources Office:

(a) to ensure that HRO third party representatives issue litigation holds in CNIC civilian personnel cases when the Navy has a duty to preserve information because of current, pending, or reasonably anticipated litigation; and

(b) to inform HRO that a litigation hold has been issued and that they should maintain relevant records.

(5) Coordinate with CNIC's HQ, Region and/or Installation Information Technology, Chief Information Officer (ITC/CIO) to ensure that routine document destruction practices (including routine deletion of ESI) are modified as needed so that potentially relevant material is not inadvertently destroyed. With the assistance of CNIC's HQ, Region and/or Installation IT/CIO, arrange for the preservation of potentially relevant material subject to the litigation hold, including securing the relevant ESI of former personnel who received a litigation hold notice and possess relevant information subject to the hold.

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(6) Review the status of all litigation hold notices at least once every 30 days to determine if indefinite data retention is still required.

(7) Reissue litigation hold notices or reminders on a quarterly basis to personnel who received the original litigation hold notice.

(8) Monitor compliance with litigation holds.

(9) Retain copies of all litigation holds issued by Counsel or third party representatives to personnel.

(10) For record keeping purposes all third party representatives must forward copies of all litigation holds to CNIC OGC, Region Counsel or FJAs.

(11) Lift or Termination: A written statement approving a lift or termination of the litigation hold shall be forwarded to all appropriate personnel retaining holds or who had been given holds when the need for the litigation hold no longer exists. A litigation hold will remain in effect and will not be terminated until a matter is ultimately concluded. A matter is ultimately concluded when a final settlement agreement and release has been signed by all parties; a dismissal with prejudice has been entered as to all parties; or the deadline for any further appeals has run and the entered judgment has become final.

(a) FJA. The FJA shall issue litigation hold notices for matters under the cognizance of the FJA. The FJA will coordinate with Counsel when issuing a litigation hold regarding matters in JAG and OGC common practice areas. The FJA has the same responsibilities as Counsel for implementation and management of litigation holds that are issued by the Region FJA.

(b) CNIC's HQ, Regional and/or Installation IT/CIO:

(1) Designate a POC for HQ's and each region for processing the litigation hold.

(2) Ensure sufficient IT support is available, when requested, to arrange for the preservation of potentially relevant ESI.

(3) In coordination with the Office of Counsel, FJA, or third party representative determine which software and hardware formats and procedures should be used to best preserve

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ESI, including metadata, and that allow for easy exchange of ESI with other parties.

(4) As necessary, determine the costs of preserving ESI, as well as the costs of retrieving and searching such information, particularly if it is stored on legacy systems, backup tapes, or similar media.

(5) Secure former personnel ESI subject to a litigation hold. Ensure that email and accounts of separated command personnel that have been placed on litigation hold status are maintained until the hold is released.

(6) Provide IT support to CNIC and subordinate commands to ensure compliance with the standards in reference (c) for the disposition of a user's email data and any electronic files stored on personal network file storage or on the user's computer hard drive(s) upon the user's permanent departure from a command.

## 7. Check-Out Procedures

a. Military Check Out Procedures: The Program Manager responsible for military personnel at HQ, each Region or at an Installation shall:

(1) Create check-out procedures, including a CNIC HQ check-out sheet, that note whether officers and enlisted members have received a litigation hold.

(2) Refer officers and enlisted members who received a litigation hold to the Office of Counsel and/or the FJA for check-out before the member departs CNIC.

b. Civilian Check-Out Procedures: The Program Director responsible for civilian personnel at HQ, each Region or at the Installation shall:

(1) Oversee CNIC civilian employee check-out procedures, including development of a CNIC civilian employee check-out sheet to be provided to the supervisor of a CNIC civilian employee who is departing. If a CNIC civilian employee has received a litigation hold notice, check-out procedures will include contacting the Office of Counsel and/or the FJA as part of the check-out.

(2) Ensure that the Deputy EEO Officer provides notice to the Office of Counsel of EEO cases that require issuance of a

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litigation hold. Any questions about whether a litigation hold should be issued in an EEO case will be determined by the Office of Counsel.

c. CNIC Supervisors of Military and Civilian Personnel.  
CNIC supervisors will ensure that all departing military and civilian employee personnel who are under their direct supervision properly complete CNIC check-out procedures before departure from the command.

8. Action. This instruction is effective immediately.



M. D. PATTON  
Captain, U. S. Navy  
Chief of Staff

Distribution:

Electronic only, via CNIC Gateway

<https://cnicgateway.cnic.navy.mil/HQ/N00/CAPM/DIRPR/Directives/Forms/AllItems.aspx>

DEFINITIONS

1. Disposition. Disposition means those actions taken regarding records no longer needed for the conduct of the regular current business of the agency. (36 CFR § 1220.14)
2. Electronic Mail Message (Email). Electronic mail message is a document created or received on an electronic mail system including brief notes, more formal or substantive narrative documents, and any attachments, such as word processing and other electronic documents, which may be transmitted with the message. (36 CFR § 1234.2)
3. Electronic Record. Electronic record means any information that is recorded in a form that only a computer can process and that satisfies the definition of a Federal record in 44 U.S.C. § 3301. (36 CFR § 1234.2). Based on reference (b), an electronic record also means "[a]ny information created, received, transmitted, maintained, or managed as an organization record that can be read by using a computer or any other electronic device, that satisfies the definition of a Federal record, shall be considered an electronic record. This includes, but is not limited to, records stored in digital or analog form, regardless of medium. Simply put, a "record" consists of information, regardless of medium, detailing the transaction of business. Electronic documents are records the same as paper documents. In regards to disposition, there is no difference between managing electronic and paper records."
4. Electronically Stored Information (ESI). Electronically stored information is any type of information that is stored electronically, and it covers all current types of computer-based information as well as any that might occur as a result of future changes and technological developments. Examples of ESI include email messages, word processing files, voice mail messages, content contained on Blackberries, databases, instant messaging, spreadsheet programs, presentation programs, outlook calendars, etc.
5. Litigation Hold. A litigation hold is a directive to individuals to preserve documents, electronic data or other information in their possession, custody or control pertaining to the litigation.
6. Records. Records include all books, papers, maps, photographs, machine readable materials, personal notes or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United

States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference and stocks of publications and of processed documents are not included. (44 U.S.C. § 3301)

7. Third Party Representative. A third party representative is a DoN employee who is a non-OGC attorney that serves as Agency representative in administrative proceedings such as proceedings before the EEOC and the MSPB.

SAMPLE E-MAIL LITIGATION HOLD NOTICE TO CNIC EMPLOYEES

Dear \_\_\_\_\_

On (date), (name of litigant) filed a complaint against the Department of the Navy. This matter is proceeding before the (EEOC/MSPB). (Name of litigant) alleges (enter a description of the claim/appeal in as much detail as possible). The Department of the Navy is legally and ethically required to take immediate concrete steps to make certain that the Department retains all paper and electronic records that could conceivably be relevant to the litigation. Failure to take such steps could open both the Department of the Navy and various individuals to significant sanctions.

Upon the start of litigation, the Secretary of the Navy Instruction 5212.5D, Paragraph 3, Part II, directs that all records in any way related to the litigation cannot be destroyed. You should take all steps to ensure that you identify all potential records custodians and notify them in writing and via e-mail of the requirement to retain all records. The records custodian for the Department of the Navy is Charley Barth, who can be reached via e-mail at Charley.Barth@navy.mil and by phone at 202-433-2434 for any question regarding a litigation records hold. There may also be a records custodian for your command who should also be contacted for a litigation records hold. Additionally you should also apprise all clients/customers who may possess potentially relevant records of these requirements both via e-mail and via memorandum. All recipients of the memorandum should respond in writing when they comply fully with these requirements. They should advise you immediately if any records destruction has already taken place, including deletion of potentially relevant e-mails.

The records that you and your clients or customers must preserve generally include all files including e mails relating to: (If an employment case, merit promotion files, recruitment files, position descriptions, etc.). Please note that this list is not necessarily all-inclusive and any other files or records, including e-mails concerning the issues raised in the complaint must be retained.

Records that you and your clients/customers must retain include both paper and electronic records, such as e-mails, word processing documents, and databases, photographic (including microfilm and microfiche), optical, and magnetic. Such records include formal files and informal files such as notebooks and

Enclosure (2)

calendars, whether you maintain them in a formal system of records or not. Records responsive to this request may include data that is on an employee's home computer, on legacy computer systems, on back up tapes, and on the hard drives of computers of departing employees. This request also includes any records that you or your client may have sent to a Federal Records Center. The records custodians should notify the Federal Records Center, in writing and by accession number, of any such records, so that the Records Center will exempt them from the Center's automatic destruction schedule.

You must direct anyone who may have any responsive records to conduct a thorough search of working and storage spaces for any records included in the above paragraph, including any computerized records as described above. If you uncover any material that might relate in any way to the case, including any material at the Federal Records Center, please notify me immediately at (phone number).

To demonstrate to a tribunal that the Department of the Navy has taken steps to preserve potentially relevant materials relating to this matter, please provide me in writing the names of the records custodians and other clients provided with this directive as well as the manner in which you notified them of the requirements contained herein. If you believe that I should forward this request to any other Department of the Navy organization or office, please notify me immediately.

If you have any questions concerning this request, please feel free to contact me. I appreciate your cooperation.

Sincerely,

SAMPLE SUPPLEMENTAL MEMORANDUM IMPOSING RECORDS HOLD

1. This memorandum may be sent by Counsel/Third Party Representative or his/her designee after sending e-mail notification of a litigation hold. This memorandum also imposes a records hold on a recipient who has identified that he/she has records or information relevant to current, pending or reasonably foreseeable litigation. This litigation records hold memorandum may be signed and sent by e-mail to the recipient.

5800  
Ser OGC/  
[date]

From: Counsel/Third Party Representative  
To: [Name of Recipient]

Subj: [NAME OF CASE OR DESCRIPTION OF THE SUBJECT MATTER IN WHICH LITIGATION IS REASONABLY FORESEEABLE]

Ref: (a) E-Mail Message, Litigation Hold of [date]

1. Purpose. The purpose of this memorandum is to provide you with instruction for retaining all your electronic and paper records that may be relevant to [name of current case or description of subject matter of anticipated litigation].

2. Background. On [date], I forwarded to you an e-mail, reference (a), imposing a litigation hold on all of your records, both electronic and paper, and things (e.g., CD-ROM's, backup tapes, etc.) relevant to the above-referenced case/matter. This is to confirm and repeat the directions I provided you in that e-mail.

a. Preservation Obligation. As described in the e-mail, this case/matter involves [describe relevant issues]. The Department of the Navy is legally and ethically required to take immediate concrete steps to make certain that the Department retains all paper and electronic records that could conceivably be relevant to the litigation. Failure to take such steps could open both the Department of the Navy, and various individuals, to significant sanctions.

b. Suspension of Records Destruction Schedule. When litigation has started, the Department of the Navy Records Management Manual, SECNAV M-5210.1, Paragraph 3, Part II, of 31 December 2005, directs that all records in any way related to the litigation can no longer be destroyed. You should take all

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steps to ensure that you identify all potential records custodians and notify them in writing and via e-mail of the requirement to retain all records. Additionally, you should also advise me of any additional personnel who may possess potentially relevant records.

3. What Records and Things You Must Retain. The records that you must retain include all files including e-mails relating to: *(If a contract case, insert contract no., description of product being produced, or service provided; FAR/DFAR clauses and various versions; and any other contracts related too the issues; DCASMA & DCAA documents etc. If an environmental case, the location of the facility involved; historical data; studies; etc. If an employment case, merit promotion files, recruitment files, position descriptions, etc.)*. Please note that this list is not necessarily all-inclusive and any other files or records; including e-mails concerning the issues raised by this matter or in the complaint must be retained.

Records that you must retain are those in your possession that include both paper and electronic records, such as e-mails, word processing documents, and databases, photographic (including microfilm and microfiche) optical and magnetic. Such records include formal and informal files such as notebooks and calendars, whether you maintain them in a formal system of records or not. Records responsive to this request may include data that is on the employee's home computer, on legacy computer systems, on back-up tapes, and on the hard drives of computers of departing employees. This request also includes any records that you may have sent to a Federal Records Center. The records custodians should notify the Federal Records Center, in writing and by accession number, of any such records, so that the Records Center will exempt them from the Center's automatic destruction schedule.

4. Scope of Search and Copying Records. You must conduct a thorough search of working and storage spaces for any records included in the above paragraph, and this includes any computerized records as described above. If you uncover any material that might relate in any way to the case, including any material at the Federal Records Center, please notify me immediately at [phone number].

You may retain electronic records by copying them on CDs or floppy disks or other media, or by moving them into an area of our shared drive marked [description], or \_\_\_\_\_. [Name of person] will be meeting with you to discuss this e-mail in more detail.

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5. Communication. Please notify me in writing when you comply fully with these requirements. Additionally, advise if any records destruction has already taken place, including deletion of potentially relevant e-mails.

If you believe I should forward this request to any other Department of the Navy organization or office, or any other organization or office, please notify me immediately. If you have any questions concerning this request, please feel free to contact me. I appreciate your cooperation.

COUNSEL/Third Party Representative

Copy to: (by email):  
(Navy Litoff)  
(NMCI Counsel)  
(CNIC Counsel)]

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SAMPLE E-MAIL FOLLOW-UP TO LITIGATION HOLD NOTICE

LITIGATION HOLD NOTICE # [NUMBER] RE: [NAME OF CASE  
OR DESCRIPTION OF SUBJECT MATTER IN WHICH LITIGATION IS  
REASONABLY FORESEEABLE]

Dear [     ],

On the \_\_\_ day of \_\_\_\_\_, [year], I forwarded Litigation Hold  
Notice # \_\_\_\_\_ relating to the litigation identified below. This  
follow-up notification is provided to serve as a reminder of the  
Litigation Hold Notice and to ensure your ongoing compliance  
with the previous request.

You are required to maintain any potentially relevant documents  
related to litigation regarding [name of current case or  
description of subject matter of anticipated litigation].

RE: [NAME OF CASE OR DESCRIPTION OF SUBJECT MATTER IN WHICH  
LITIGATION IS REASONABLY FORESEEABLE]

Relevant Issues: [Provide a brief description of relevant  
issues].

As a result of the initial records hold notification, you  
[(did)/(did not)] provide us with individuals and/or computer  
systems that might hold potentially relevant documents. Please  
inform us if there are any other individual and/or computer  
systems you have become aware of that should be added to the  
list.

You will be notified by OGC/JAG/Third Party Representative once  
the Litigation Hold Notice for the specific matter has been  
lifted.

- or -

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PRIVACY ACT SENSITIVE AND/OR ATTORNEY WORK PRODUCT/ATTORNEY CLIENT PRIVILEGED  
Any misuse or unauthorized disclosure of this information may result in both  
criminal and civil penalties.

Enclosure (4)

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Dear [            ],

On [date], I forwarded to you Litigation Hold Notice # [    ] relating to the litigation identified in the below email. This is a follow-up notification to advise you that you have not responded to our previous request. You are required to maintain any potentially relevant documents related to the possible litigation regarding [describe matter]. Please respond to this email no later than [date]. Should you have any questions, I may be contacted at the address and telephone number listed below.

Sincerely,

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SAMPLE CERTIFICATION AND INVENTORY OF RECORDS AND FILES

Certification and Inventory of Records and Files Pertaining to  
 [Current Case or Matter in which Litigation is Reasonably  
 Foreseeable]

**Instructions:** You are to complete the attached inventory of records and files in your possession, custody or control relating to the case or matter [describe subject matter of anticipated litigation]. We will use the answers you provide to determine the volume of materials that we must either produce or account for in response to discovery requests in this case. Because a Court may impose substantial sanctions on the Navy for failing to meet its discovery obligations, you must answer the questions on this form accurately and truthfully, and then sign it and return it to me by [date].

Document Category	Type of Document Searched	Document Sub-category	# of Pages / Boxes Located	# of Computer Files	Preserved Per Hold?	
					Yes	No <sup>1</sup>
Internal Documents						
	E-mail					
		In Box				
		Sent Items				
		Trash				
		Archives, i.e., PSTs				
		Notes				
		Tasks				
		Appointments				
	Electronic Records					
		Voicemail				
		Videotape				
Document Category	Type of Document Searched	Document Sub-category	# of Pages / Boxes Located	# of Computer Files	Preserved Per Hold?	
	Application Files				Yes	No

<sup>1</sup> If "no", please indicate reason in comments section below.

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		Word Processing (Word, WordPerfect)				
		Spreadsheets (Excel)				
		Databases (Access)				
		Legacy Databases				
		Calendars				
		Other				
	Paper Files					
Interagency Records						
Public Materials						
	Court Documents					
Other (Please explain in comments section below)						

I certify that the foregoing was completed on [date] \_\_\_\_\_.

**COMMENTS:**

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 Any misuse or unauthorized disclosure of this information may result in both  
 criminal and civil penalties.

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I certify that the foregoing was completed on [date] \_\_\_\_\_.

**COMMENTS:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name: \_\_\_\_\_ Position: \_\_\_\_\_  
Phone Number: \_\_\_\_\_ E-mail: \_\_\_\_\_

Signature: \_\_\_\_\_

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Any misuse or unauthorized disclosure of this information may result in both  
criminal and civil penalties.

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SAMPLE QUESTIONNAIRE CONCERNING FILES

Questionnaire Concerning Files Pertaining to [*Case/Matter in which Litigation is Reasonably Foreseeable*]

We understand that you may have files concerning [*current case or matter in which litigation is reasonably foreseeable*]. This material needs to be preserved and may be required for litigation. We must therefore get a prompt preliminary understanding about the files under your control.

Please respond to the following questions by [*date*] providing a "yes", "no", or "NA" response. If you answer yes to any part of Question 2, please provide a rough estimate of the amount of data on your computer. You do not need to provide a precise number in your answer just your best estimate. If for any reason you cannot provide an estimate, please state so.

1. Do you have any paper or electronic files concerning this matter?

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If "yes," answer Questions 2 and 3, then sign, date and return this form to: [*designated POC*]

If "no," sign, date, and return this form to: [*designated POC*].

2. Identify each hardware device that you use that contains electronic data relating to [*case/matter in which litigation is reasonably foreseeable*]:

- a. Desktop PC (including "H" drive) \_\_\_\_\_
- b. Laptop \_\_\_\_\_
- c. Home or Personal PC you use for work-related matters \_\_\_\_\_
- d. Blackberry or PDA \_\_\_\_\_
- e. Portable Storage Media \_\_\_\_\_
- f. Any other portable device that stores electronic files \_\_\_\_\_

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3. For each device you identified in response to Question 1, please state whether the device contains any of the following types of electronic data relating to [case/matter in which litigation is reasonably foreseeable]:

a. E-mail and information about e-mail (including message contents, header information, and logs of email usage).

Answer:

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b. Databases (including all records and fields and structural information in such databases).

Answer:

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c. Computer activity logs that may be used to process or store such information.

Answer:

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d. Word processing files.

Answer:

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e. Electronic files created by application programs that process financial, accounting, or billing information.

Answer:

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f. Electronic calendars or scheduling programs.

Answer:

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g. Electronic addresses of contacts.

Answer:

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h. Electronic spreadsheet data created by spreadsheet programs.

Answer:

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i. If electronic data that is not listed above, is on this device, please identify the data along with an estimate of its quantity.

Answer:

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Other Notes:

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SAMPLE LITIGATION HOLD INTERVIEW CHECKLIST

**CONFIDENTIAL - ATTORNEY WORK PRODUCT & PRIVILEGED INFORMATION**

Name of Employee: \_\_\_\_\_

Location: \_\_\_\_\_

Date Interviewed: \_\_\_\_\_

Interviewed by: \_\_\_\_\_

**Greeting:** Hello, my name is \_\_\_\_\_, and I am from OGC/JAG or the Third Party Representative. I am contacting you about a Litigation Hold sent to you recently. The purpose of this call is to ask you whether you have any documents and to ask you a few questions about your document collection efforts.

**Questions:**

1. Did you receive the Litigation Hold? \_\_\_\_\_

2. Do you have any questions about the Litigation Hold?

3. Have you located any paper documents covered by the Litigation Hold?

- If yes, can you describe those documents?

- How many?

- Where are these paper files located?

- Are they separate from your other files?

4. Have you located any electronic or computer files?

- Email?

- Inbox?

- Calendar?

- Sent Items?

- Personal Folders?

- Journal?

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- Archive Folders (PSTs)?
  - Public Folders?
  - Blackberry?
  - Other PDA (Palm Pilot, etc.)?
  - MS Office?
  - Word files?
  - Excel Spreadsheets?
  - PowerPoint Presentations?
  - Other Applications?
  - Hard drive?
5. Did you save these files to the NMCI or One-Net network?
- Are these files still on the NMCI or One-Net Network?
6. Did you create back-ups of your electronic records or files?
- If so, what media did you use:
    - Diskettes?
    - CDs or DVDs?
    - Any other location?
7. Can you think of any other location to look for documents responsive to the Litigation Hold?
8. Please send the documents to [designated POC] or IT will be in touch with you to store the relevant documents and records.
9. Do you know anyone else who may have documents responsive to the Litigation Hold who you believe may not have received the Litigation Hold?
10. Do you have any questions?

**Closing:** Thank you for your time, and if you discover any other documents or need to forward new documents that you have received, please call me or \_\_\_\_\_ at [phone number].



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SAMPLE E-MAIL NOTIFICATION TO DIRECTOR, NAVY RECORDSE-MAIL NOTIFICATION TO DIRECTOR OF NAVY RECORDS  
LITIGATION HOLD NOTICE # [Number]

Notification is hereby given to the Director of Navy Records that litigation has begun (or) we anticipate litigation in the matter described below. Accordingly, we require that document holds be instituted immediately to the commands and/or activities identified.

The Department of the Navy is required to maintain relevant documents related to the following litigation:

RE: Litigation Name [and Case No.]: \_\_\_\_\_

Relevant Issues: [Describe relevant issues in current case or r matter in which litigation is reasonably foreseeable].

Types of Relevant Records: [Describe the types of relevant records that need to be preserved].

Commands/Activities subject to litigation hold: [List the commands or activities that are subject to the litigation hold].

OGC/JAG Attorney or Third Party Representative Assigned to Litigation: [Name of OGC/JAG Attorney/third Party Representative Assigned]

It is requested that the Director of Navy Records respond to the following questions within 5 working days from the date of this e-mail notification:

1. I have read the e-mail notice of (date) and have disseminated the notification to the commands and activities identified above. (See attached).

Yes \_\_\_\_  
No \_\_\_\_

2. I agree to send a quarterly (or every six months) reminder advising of the date of the initial litigation hold and that the hold is still in place.

Yes \_\_\_\_  
No \_\_\_\_

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3. I have been provided an e-mail (or other) verification of receipt of the litigation hold by each of the commands or activities identified.

Yes \_\_\_\_

No \_\_\_\_

4. The notification requested that the command or activity agree to preserve all potentially relevant documents and suspend destruction until OGC/JAG/Third Party Representative communicates that the Hold Notice for the specific matter has been lifted. It is also requested that each command or activity agree to clearly mark the documents (boxes, file cabinets, etc.) to indicate that the documents are subject to a litigation hold and to segregate or otherwise maintain the documents to allow for retrieval as required in the litigation.

Yes \_\_\_\_

No \_\_\_\_

SAMPLE GUIDANCE FOR PERFORMING SEARCHES FOR RELEVANT DOCUMENTS

1. **Search and Gather Documents:** Search your hard drive (C:), external hard drive (if any), and shared drives (H:, S:) for any documents relevant to this litigation hold and submit them for review using the following steps:

a. Select "Start" then "Search" then "For Files or Folders"

b. In the "Look in" block choose "Local Hard drives (C:)"  
In the "Search for files or folders named:" block, paste the following string of search terms: [list the search terms here: (for example - Hurricane Katrina: "hurricane, Katrina, Rita, flooding, JTF, parishes, ward, pelican, Superdome, St. Bernard, convention center, evacuation, SAR, New Orleans, levee, Shelby, tropical storm, Mississippi, Alabama, de-watering") and select "Search Now."

c. When the search is complete, copy all files that could be relevant to this data call into a separate folder.

d. To copy files to the shared drive folders it is recommended that you simultaneously open both the "Search" window and "Windows Explorer" window (showing the contents of your Directorate folder) and arrange them so that the files can be dragged (or copied and pasted) from one location to another. This can also be accomplished by creating desktop or Outlook shortcuts to the shared drive folders and dragging files to the shortcut.

e. Repeat steps b and c for all other file storage locations by appropriately changing the selection in the "Look in" box of the Search window.

2. **Search and Gather Emails:** Search for any email relevant to the government's response to this litigation hold in your inbox, and folders under your mailbox and any personal folders using the steps below:

a. Open MS Outlook, select your "Inbox"

b. Open the "Advanced Find" window ("Tools" -> "Find" -> "Advanced Find" link)

c. Paste the following words into the "Search for the word(s)" block: [For example regarding Hurricane Katrina: Hurricane, Katrina, Rita, flooding, JTF, parishes, ward, pelican, Superdome, St. Bernard, convention center, evacuation, SAR, New

Enclosure (9)

Orleans, levee, Shelby, tropical storm, Mississippi, Alabama, de-watering].

d. Change the "In" block (under the Messages tab) to "subject field and message body"

e. Click on "Find Now"

f. When the search is complete, copy all files that could be relevant to this data call into a folder.

g. Close the "Advanced Find" window. Open one of your personal folders and repeat steps b. through f. Repeat this process for all personal folders.

SAMPLE CLIENT DECLARATIONS

[Court Name]

[Plaintiff's name],	)	Case No.: [Case number]
	)	
Plaintiff,	)	DECLARATION OF [NAME]
	)	
vs.	)	
	)	
[Defendant's name],	)	
	)	
Defendant	)	

Pursuant to Section 1746 of Title 28 of the United States Code, I, \_\_\_\_\_, declare the following:

1. I am/was an employee at the Department of the Navy during the time from [date] to [date].
2. During my employment at the Department of the Navy, I controlled or possessed physical documents, email, and/or electronic data pertaining to the [describe matter].
3. On or about \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I received a copy of the Litigation Hold placed on these matters and began complying with the instructions by [date].
4. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I was interviewed by OGC/JAG counsel or the Third Party Representative and/or his/her designee regarding my possession of such physical documents and/or electronic data.
5. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I relinquished all physical documents, email and electronic data concerning these matters to the Navy OGC/JAC counsel or Third Party Representative, [name], and/or his/her designee.

I declare under penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_  
(Name) (signed)

Executed on this \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in \_\_\_\_\_, \_\_\_\_\_.  
(City) (State)

[Court Name]

1 (0 1 2000)

[Plaintiff's name], ) Case No.: [Case number]  
 )  
 Plaintiff, ) DECLARATION OF [NAME]  
 )  
 vs. )  
 )  
 [Defendant's name], )  
 )  
 Defendant )

DECLARATION OF \_\_\_\_\_

Pursuant to Section 1746 of Title 28 of the United States Code, I, \_\_\_\_\_, declare the following:

1. I am/was an employee at the Department of the Navy/EDS NMCI during the time from [date] to [date].

2. On or about \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I searched the hard drive (or that part of server \_\_\_\_\_) that belonged to [name], a former Department of the Navy employee for any of the attached electronic data file types (identified by Navy OGC/JAG counsel or Third Party Representative) pertaining to the [describe subject matter of litigation].

3. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I relinquished all physical documents, email and electronic data concerning these matters to the Navy OGC/JAG counsel or Third Party Representative, [name], and/or his/her designee.

I declare under penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_  
(Name) (Signed)

Executed on this \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in \_\_\_\_\_, \_\_\_\_\_.  
(City) (State)

[Court Name]

[Plaintiff's name],	)	Case No.: [Case number]
	)	
Plaintiff,	)	DECLARATION OF [NAME]
	)	
vs.	)	
	)	
[Defendant's name],	)	
	)	
Defendant	)	

DECLARATION OF \_\_\_\_\_ IN SUPPORT OF DEFENDANT'S RESPONSE  
FOR PRODUCTION OF DOCUMENTS

Pursuant to Section 1746 of Title 28 of the United States Code,  
I, \_\_\_\_\_, declare the following:

1. I am/was an employee at the Department of the Navy during the time from [date] to [date].
2. My current position is that of Document Custodian and I have held this position since [date].
3. I have reviewed the Plaintiff's Requests for Production of Documents to Defendant of [date].
4. I received documents, which are noted in the attached spreadsheet and are responsive to the Plaintiff's Requests for Production of Documents to Defendant of [date].
5. I have preserved the integrity of those documents received from individuals who conducted searches of the \_\_\_\_\_; in response to the Plaintiff's Requests for Production of Documents to Defendant of [date].

I declare under penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_  
(Name) (Signed)

Executed on this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, in \_\_\_\_\_,  
[Court Name] (City) (State)

[Plaintiff's name],	) Case No.: [Case number]
	)
Plaintiff,	) DECLARATION OF [NAME]
	)
vs.	)
	)
[Defendant's name],	)
	)
Defendant	)
_____	)

DECLARATION OF \_\_\_\_\_ IN SUPPORT OF DEFENDANT'S RESPONSE  
FOR PRODUCTION OF DOCUMENTS

Pursuant to Section 1746 of Title 28 of the United States Code, I, \_\_\_\_\_, declare the following:

1. I am/was an employee at the Department of the Navy during the time from [date] to [date]. My current position is that of \_\_\_\_\_ and I have held this position since [date].

2. I am the individual responsible for coordinating the collection of documents at \_\_\_\_\_ for the \_\_\_\_\_ v. \_\_\_\_\_ lawsuit.

3. I have reviewed the Plaintiff's Requests for Production of Documents to Defendant of [date]. I have conducted a thorough review of the \_\_\_\_\_, for documents requested by Plaintiff's Requests for Production of Documents to Defendant of [date].

4. Document Custodian "A" pulled all [describe records] information from [(her)(his)] own files, as well as those of the individuals who had responsibilities for records regarding \_\_\_\_\_. The [described records] files are kept [(in binders in chronological order) (kept by title)]. A search was conducted of all the [described documents]. This [(command) (activity)] has [described records] which go back [number] years under Document Custodian A's custody, and documents that pre-date [(her)(his)] current position. There were no electronic files that were not already printed from when the files were requested. There are no records kept in the archives. No records have been sent to the Federal Records Center, nor National Archives.

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5. Attached is a list of documents I found which are responsive to the Plaintiff's Requests for Production of Documents to Defendant of [date].

6. I will continue to search for documents requested by the Plaintiff's Requests for Production of Documents to Defendant of [date].

I declare under penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_  
(Name) (Signed)

Executed on this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, in \_\_\_\_\_,  
(City) (State)

SAMPLE DISCOVERY INSTRUCTIONS MEMORANDUM TO CLIENT

**FOR OFFICIAL USE ONLY-LIMITED DISSEMINATION  
ATTORNEY-CLIENT AND ATTORNEY WORK PRODUCT CLIENT PRIVILEGE,  
EXEMPT FROM DISCLOSURE PURSUANT TO SUBPEONA, DISCOVERY, OR UNDER  
FREEDOM OF INFORMATION ACT AND PRIVACY ACT**

[date]

From: [Sender's Name and Job Title]

To: [Name of Recipient]

Subj: [NAME OF CASE]

Ref: (a) Counsel's/JAG/Third Party Representative [(ltr)  
(E-mail)] of [date]

Encl: (1) Plaintiff's Request for Product of Documents of [date]

1. On [date], [name of litigant] filed a lawsuit against the Department of the Navy. This matter is proceeding before [name of court]. [Name of litigant] alleges [enter a description of the litigation in as much detail as possible]. We have now received a Request for Production of Documents in this case from \_\_\_\_\_, which is forwarded to you as enclosure (1). On [date], I forwarded to you an e-mail, reference (a), imposing a litigation hold on all of your records, both electronic and paper, and things (e.g., CD-ROMs, backup tapes, etc.) relevant to the above-referenced case/matter. Your assistance is now needed to fully and completely respond to enclosure (1). Under the Rules of the [identify Court], we are required to provide [name of litigant] with all responsive documents by [date].

2. Document discovery is one of the most critical parts of preparing our case for trial. Cases are frequently won or lost based on the documents. With all responsive documents identified, we are in a better position to determine the facts at issue, to develop effective strategies for responding to [name of litigant's] allegations and to prepare our case for trial. This means that thorough steps must be taken to locate all documents responsive to the discovery request. There are significant sanctions, up to and including a ruling in whole or in part for the other party, which can be levied if documents responsive to this discovery request are either not produced or are destroyed when they should be saved and produced. Indeed, in extreme cases, this could mean the difference between our succeeding and failing in the litigation. Rest assured that the

Enclosure (11)

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burden we are now undertaking is not one sided and we have/will forward discovery on [name of litigant].

3. Please carefully review enclosure (1), including the instructions and definitions and identify all individuals, offices, and places where there may be documents, including electronic documents. The search for documents and related materials must be thorough and include each individual's computer and office space. Office file rooms and storage areas must also be searched so that we can begin to assemble all materials that may be responsive to this request. After you have had an opportunity to review the request, I will meet with you to discuss responding to the request in more detail. However, in preparation for our meeting and to allow you to begin assembling the required materials, the following general guidelines may be helpful.

a. **We must identify, locate and produce all documents responsive to this request.** A failure to do this can mean the difference between success and failure in this matter. This means, I need your help in identifying everyone who may conceivably have documents that are responsive to this discovery request. This includes people who work for the Department of the Navy, for the Department of Defense, and indeed, for the U.S. government as a whole. Do not assume I know everyone who may have documents and have already contacted these people. Immediately forward me the names and contact information for everyone who may have responsive information and I will forward the request to them. This includes everyone who was copied on program e-mails or was otherwise involved in the matter at issue.

b. **I need all the documents.** This instruction may seem rather simple, but we often run into problems. Please understand we must produce ALL documents that are responsive to the request. This means everything - memoranda, spreadsheets, contract drawings, official personnel files, e-mails, word documents, everything. Please do not decide on your own that a particular document is not relevant to the case. I will do this once I have reviewed the documents you give me. I stress, you must provide me with everything. Do not worry about whether the document helps or hurts the case. Right now, I simply need you to give me ALL OF THE DOCUMENTS.

c. **Your personal files must be produced.** You must produce your personal or working files if they contain materials that are responsive to the discovery request. They are not your personal property; the files belong to the United States government.

d. **Electronic documents must be produced.** Documents are not just paper files. Rather, documents include electronic documents such as e-mails, computer spread sheets, word processing documents, etc. The term document can also include databases and other information entered in web-based applications. I recognize that this can be a voluminous amount of material. However, we still need to identify and produce this material. When we meet, I will provide you with specific instructions about search terms that should be used to locate electronic documents, as well as the format we will use to produce this material for the other side. At this stage, please identify everyone who may have responsive electronic material on his/her computer, provide them with a copy of these instructions, and provide me with a list of all such persons.

e. **We need to identify everyone that may have responsive documents, both hard copy and electronic.** We must obtain all of the paper and electronic documents in the possession of the Department of the Navy. I need your assistance in identifying everyone that was involved in this matter. This includes everyone that you copied electronic communications regardless of whether they work in your Command. I will take care of contacting them.

f. **If documents have been archived, they need to be pulled back immediately.** We have an obligation to locate and assemble even those records that have been sent to archives or storage. Please make sure immediate steps are taken to retrieve any such files. Please keep a written record of your efforts to retrieve archived files and let me know when you anticipate that they can be retrieved and returned to you.

g. **We cannot ignore classified documents if they are otherwise responsive to the discovery request.** Classified documents, including highly classified documents must be identified. I have a General Counsel memorandum setting the rules to be followed if highly classified information is requested. If necessary, I will obtain a protective order for these documents from the Court. This will assure that these documents are only disclosed pursuant to security mandates.

h. **Review the discovery request and make sure you understand what the requester is asking for.** Make sure you understand the definitions included in the beginning of the request and pay close attention to time periods requested. Read the request broadly and locate and give me everything that responds to it. When we meet we will discuss the request and

any questions you may have concerning the request. In responding to the request, I will take steps to make sure that all client rights are protected in the response. This means that I will object to any request that is unclear. I will object to producing any material that is subject to a privilege, such as the attorney-client privilege. I will review all of the records before they are produced and will withhold everything that should legally be withheld. At this stage, just gather everything.

**i. Litigation is burdensome.** I recognize that you have other important things to do and that this task is time consuming and burdensome. If I am to discuss your concerns about burden with the other side or with the court, I will need specific information; how much material are we talking about; what will it take to locate and assemble this material as far as manpower is concerned; why can't the material be located and assembled prior to the deadline; when can we locate and assemble this material if it cannot be DoNe by the deadline; and what can you get me within the deadline?

**j. Every effort should be made so that we can comply with the deadline. However, even if you can't get me everything by the deadline, get me something.** It is important that we proceed and behave in a reasonable fashion when responding to discovery demands and deadlines. This means that we must demonstrate that we have made reasonable efforts to comply with the discovery

deadlines in this case. This puts us in a better position when dealing with the other side and when insisting they comply with deadlines. When we ask for additional time without good cause, we are acting from a position of weakness. I would prefer not to do so if at all possible.

**k. Segregate and give me any materials that may not be requested but are otherwise relevant to the case.** You will only want to go through this exercise once. Towards that end, if you find materials that may be relevant to the case, but which have not been requested in this discovery request, please segregate these materials separately and provide them to me.

**l. Segregate and give me any documents that you believe present any significant issues.** In this category are e-mails you may wish hadn't been sent or simply anything you want to be absolutely sure I am aware of. These documents may help or hurt the case, or you may simply want to bring them to my attention. Segregate them from the rest of the documents and separately

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provide them to me, and I will ensure that the issues raised are properly addressed.

m. **All drafts must be produced.** The same goes for all non-identical copies.

n. **Responsive documents must be produced regardless of where they are located and regardless of their format.** This includes documents that you may have, for example, on your home computer, on laptop computers, in palm pilots and/or blackberries, on CDs or DVDs, in digital back-ups, and in calendars and daily planners. In short, we need anything you have in whatever location or format you have it in.

o. **Documents prepared pursuant to a government contract must be produced.** This includes reports, correspondence, analyses, e-mails, spreadsheets, etc. If we paid a contractor to prepare the document, it is our document and must be produced. If there are issues or concerns about this, we will discuss it at our meeting.

p. **Documents subject to other protections.** This discovery request may ask for documents that are subject to other disclosure protections. Examples include documents protected by the Privacy Act or documents that are business or procurement sensitive. If you believe that any documents may fall within these categories, please separate them and provide them to me. I will make sure that they are either properly withheld or otherwise produced only with the appropriate protective orders.

q. **Keep a written record of your search for documents.** The written record should identify the dates and locations searched and a brief identification of what, if anything was located. This will be very important in the event that [name of litigant] challenges the thoroughness of your search for documents.

4. Your efforts are very much appreciated. I will be calling you on [date] to arrange a meeting where we will go over this discovery request and your progress to date in responding. At that time, we will also be discussing our request to [name of litigant] for documents.

COUNSEL/Third Party Representative  
**FOR OFFICIAL USE ONLY-LIMITED DISSEMINATION**  
**ATTORNEY-CLIENT AND ATTORNEY WORK PRODUCT CLIENT PRIVILEGE,**  
**EXEMPT FROM DISCLOSURE PURSUANT TO SUBPEONA, DISCOVERY, OR UNDER**  
**FREEDOM OF INFORMATION ACT AND PRIVACY ACT**

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SAMPLE E-MAIL LITIGATION HOLD NOTICE TO EMPLOYEES

[NOTE: Any litigation hold notice needs to be tailored to the legal requirements of the particular case. The following litigation hold notice is a sample template.]

Subj: E-MAIL LITIGATION HOLD NOTICE # [___] RE: [NAME OF CASE OR DESCRIPTION OF THE SUBJECT MATTER IN WHICH LITIGATION IS REASONABLY FORESEEABLE] RESPONSE NEEDED
---

Dear [name of recipient],

NOTE: E-MAIL RESPONSE NEEDED WITHIN FIVE BUSINESS DAYS

1. The Department of the Navy may be a party in a case involving [name of case or description of the subject matter in which litigation is reasonably foreseeable]. You may have documents, paper, and electronic files or other information relevant to this case. You do NOT have to submit any documents to anyone at this time, but you must immediately start retaining relevant documents and files. This notice provides you with instruction for retaining all of your electronic and paper documents, and things such as CD-ROMs, DVDs, back up tapes, etc. that may be relevant in any way to this [(case)(matter)]. You are required to maintain any potentially relevant documents (hard copy and e-files, including e-mail) related to litigation regarding [describe current case or the anticipated subject matter of litigation].

Relevant Issues: [Provide a brief description of relevant issues].

2. To assist you in retaining e-mails, attached is a search guide [use enclosure (9)] that will assist you in searching for relevant e-records. In addition, here is a link to a helpful document that will assist you is setting up a separate .pst folder for your e-mails subject to this litigation hold, should you need it. Cut and paste this into your browser: <https://www.homeport.navy.mil/support/articles/outlook2003-create-pst/>. We understand that you have limited drive space to store electronic records, e-files and e-mails. If you need additional space, an external hard drive may be your best option for increased data storage. An external drive that holds 200 Gigabytes costs under \$200. An external hard drive may be purchased through your normal IT purchase process and will

Enclosure (12)

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enable you to store your .pst files and folders and other e-documents, provided you need additional storage capability.

3. The following information below describes the litigation hold process and explains what may be required of you with regard to any potentially relevant documents you hold:

a. Determine whether you have documents that are potentially relevant to the Hold Notice for the matter identified above.

If you have, or later receive, potentially relevant documents:

b. You will need to preserve those documents (paper and/or electronic records) and not destroy them until OGC/JAG informs you that the Hold Notice for the specific matter has been lifted. We will make sure you are timely informed when the hold is lifted. Until you receive notice that a litigation hold has been lifted, you need to continue to preserve relevant documents.

c. For any paper documents, the best practice would be to clearly mark the documents (boxes, files cabinets, etc) to indicate that the documents are subject to a litigation hold. Also, during the course of the litigation, it will be necessary to segregate or otherwise maintain the paper documents to allow for retrieval as required in the litigation. OGC/JAG Counsel can assist you in these actions.

d. For electronically stored records, you may need to develop dedicated e-folders as described in paragraph 2, above, or to work with the IT personnel to insure all electronic documents are retained until OGC/JAG notifies you that the Hold Notice for the specific matter has been lifted.

e. If, at a later date, you obtain documents (paper and/or electronic) potentially relevant to the Hold Notice for the matter identified above, you will need to preserve those documents as well. Even if you are just a copy addressee on an e-mail, you need to retain any relevant e-mails or other e-files you receive.

4. The following additional information identifies more specifically what is meant by documents, and also where you need to look for relevant documents.

a. The documents that you must identify and retain include all documents relating to [name of case or description of the subject matter in which litigation is reasonably foreseeable].

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You must retain both paper and electronic records, such as e-mails, word processing documents, databases, photographs, and optical and magnetic documents. Such documents include formal files and informal files such as notebooks, calendars and your "personal files" relating to this matter regardless of whether you maintain them in a formal system of records or not.

b. Documents that are responsive to this request may include data that is on your home computer, on legacy computer systems, on your Blackberry, and on any storage media including your hard drive and network drives. This request also covers any documents that you may have sent to a Federal Records Center. Please coordinate with your records custodian to notify the Federal Records Center in writing and by accession number of any such documents so that they will be exempted for the Center's automatic destruction schedule.

5. In addition to following the process listed above for any relevant documents you have or may receive, we also need to "know what you know."

a. If you are aware of any other individuals within the DoN that may have information or documents relating to the matter identified above, please inform us of their names, commands and any other relevant information you have, such as computer systems and servers.

b. We also need this information for any individuals outside the DoN that may have information or documents relating to the matter identified above. This includes other DoD agencies, other Federal Agencies, Retirees, or Contractors.

c. Also, if you are aware of any document destruction that has already taken place, including deletion of any potentially relevant e-mail, please contact us immediately.

d. Finally, if you believe that this litigation hold notice should be forwarded to any other DoN organization, office, or personnel or any other organization, office or personnel, please advise me or my paralegal at once.

6. We are required by law to take immediate action to implement this litigation hold. Therefore, please respond to this email within five (5) working days from the date of this e-mail notification.

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**By responding to this e-mail, you are indicating to me that you understand and will comply with the requirement to retain any potentially relevant documents (paper documents and electronic records, including e-files and e-mails) related to above-identified litigation. If you have questions, please advise me at once and I will ensure you get the information you need to effectively comply.**

7. Thank you for your attention to this very important legal requirement. Your effective compliance and cooperation will serve to protect the Navy's interests in this litigation matter by ensuring the preservation of potentially relevant records. Again, if you have any questions of any kind, please advise me or my paralegal. My contact information is as follows: phone: (number); (DSN (number)); e-mail: (e-mail address).

[Signature Block]

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