

# Preservation of Electronically Stored Information

## Rollins College Policy for the Preservation of Electronically Stored Information

### Policy Description

#### Purpose

Parties to a lawsuit have always been required to preserve and produce “evidence” that was relevant to the claims in that lawsuit. In the past, such requirements meant that paper documents were to be maintained. Now, courts recognize that evidence also includes “electronically stored information” (“ESI”). As a result, when a legal claim is filed against Rollins College, either in court or with an administrative enforcement agency, or when such a claim is reasonably anticipated, the College and its employees are obligated to preserve electronically stored information as well as all other traditionally preserved information that may be relevant to that claim (“information”). Similar obligations arise when the College receives a subpoena for information, even though the College may not be a party to the lawsuit. Failure to preserve such evidence may result in sanctions and liability imposed on both the College and those employees who fail to take appropriate steps to preserve evidence.

Although ESI and other Information must be preserved, it will not be produced to an opposing party without first being reviewed by College counsel to determine relevance and to remove legally privileged information.

The purpose of this policy is to assist College employees in fulfilling their responsibilities to preserve and produce relevant evidence.

#### Scope

This is a College-wide policy and commonly referred to as the “E-discovery policy.”

#### Policy

1. When a lawsuit is filed against the College, only the Office of Human Resources and Risk Management is authorized to accept receipt of the summons and complaint.
2. Upon receipt of summons and complaint or otherwise learning that a lawsuit or a charge with a state or federal administrative enforcement agency has been filed against the College, or that one is reasonably anticipated to be filed, the AVP of Human Resources and Risk Management (AVP) shall notify the Director of Information Technology (“IT”).
3. The AVP shall send a Document Preservation Notice to IT and all relevant College employees notifying them of their legal obligation to preserve and not delete, destroy, alter or modify ESI and other information, pertinent to the case.
4. Document Preservation Notices are confidential and may only be discussed by the recipient with other employees on a need to know basis.

5. Upon receipt of the Document Preservation Notice, immediate review and retention of all ESI and other information held or maintained by a College employee is required by law and pursuant to this College policy. Any employee who receives a Document Preservation Notice is required to follow the specific instructions in the Notice. Failure to do so may result in discipline and expose the employee to court imposed sanctions.
6. ESI and other Information include hard copy documents, audio recordings, videotape, e-mail, instant messages, word processing documents, spreadsheets, databases, calendars, telephone logs, contact manager information, Internet usage files, attendant data for each file that may not be visible and all other electronic information maintained created, received, and/or maintained by the employee or the College on computer systems.
7. Sources for ESI and other Information include all hard copy files, computer hard drives, removeable media (e.g., CDs and DVDs), laptop computers, PDAs, Blackberry devices and any other locations where hard copy and electronic data is stored.
8. Sources for ESI and other Information may include personal computers an employee uses or has access to at home or at other locations.
9. Sources may also include inaccessible storage media, such as back-up tapes, which may contain relevant electronic information that does not exist in any other form.
10. Upon receipt of a Document Preservation Notice and in order to comply with his/her legal obligations, an employee must suspend deletion, overwriting or any other possible destruction of relevant ESI and other Information, including the disabling of any "janitorial" functions such as automatic deletion of e-mails. For relevant ESI and other Information, personal practices such as the deletion of e-mails, voice mail, drafts of documents and similar practices must be suspended.
11. Relevant ESI must be preserved in its original electronic form on the media which it is stored, regardless of whether it has been reduced to hard-copy or whether a hard-copy already exists. ESI must not be transferred from the media on which it is then stored to any other type of media.
12. Hard copies of ESI must also be preserved.
13. Any new ESI and other Information created after receipt of the Document Preservation Notice must also be protected and preserved if relevant to the case.
14. Upon receipt of a Document Preservation Notice, IT shall address it according to divisional and/or departmental policy.
15. The obligation to preserve ESI and other Information also arises when the College "reasonably anticipates" litigation. For purposes of this policy, "litigation" includes the pursuit of a charge with any state or federal administrative enforcement agency. The mere possibility of litigation does not necessarily mean that litigation should be "reasonably anticipated." The duty to preserve is created when credible facts and circumstances indicate that a specific, predictable and identifiable litigation is likely.
16. Factors that should be considered in evaluating whether litigation is "reasonably anticipated" include, among other things:
  - a. Attorney statements or letters on behalf of any employee, student or outside party regarding a dispute with the College. Such attorney letters should immediately be referred to one's supervisor and AVP. Any other inquiries by such attorneys, whether by telephone or in person, should immediately be referred to AVP.
  - b. Statements regarding the potential or prospect for litigation.
  - c. Complaints or grievances filed internally with the College.
  - d. Initiation of dispute resolution procedures by employees, students or outside vendors.
  - e. Termination of employment.
  - f. Dismissal of a student from the College.
  - g. Significance or consequence of a dispute.
  - h. Event reported in the press.

17. Any employee who believes that litigation is “reasonably anticipated” should notify his/her supervisor, with notification continuing through all supervisory levels, until notice is provided to the appropriate Vice President. At any time, an employee may alternatively notify the AVP. If, however, a supervisor is the employee from whom the litigation is “reasonably anticipated,” notice should be provided to the next level supervisor.
18. Upon transfer, reassignment or promotion within the College, retirement or any other separation from the College, each employee is obligated to place all preserved ESI and other Information under the control of his/her supervisor, unless that supervisor is the employee from whom the litigation is “reasonably anticipated,” in which instance the preserved ESI and other Information shall be placed under the control of the next-level supervisor. The supervisor shall notify the Director of IT for further instruction.
19. Upon an employee’s transfer, reassignment, promotion, retirement or any other separation from the College, Human Resources shall notify IT.
20. In all such instances, IT shall manage the preservation of ESI and other Information and the reassignment, if any, of the employee’s IT equipment. If any such employee is assigned new IT equipment, the original IT equipment containing any ESI or other Information shall be preserved until IT authorizes its release and reassignment.
21. When the need for preservation of ESI and other Information has expired, AVP shall notify those employees who originally received a Document Preservation Notice and IT. Retention shall then be governed by applicable College policies.
22. As of April 14, 2011, all email received or sent by faculty and staff is being archived. Each individual has access to their archive and may restore emails from the archive. Restoration moves a copy of the email back to the individual’s Inbox, but the original email remains in the archive. E-mail records will be maintained for one year from the date an employee terminates employment.

#### Reasonable Offices

AVP Human Resources & Risk Management

#### Information Technology

Compliance

#### Related University Policies

Record Retention Policy