

LSUHSC-NEW ORLEANS RECORDS RETENTION AND DISPOSITION POLICY

PURPOSE

The purpose of this document is to establish a policy on records retention and disposition, for records in both electronic and hardcopy formats. This policy will contain instructions on:

- electronic document management,
- a policy on data retention and data deletion, and
- a process for instituting a litigation hold.

These policies and procedures are necessary to comply with all applicable Federal and State laws, including the Federal Rules of Civil Procedure and Louisiana Code of Civil Procedure Articles regarding discovery of electronic information and documents.

SCOPE

This policy shall apply to all records maintained by the LSUHSC-NO campus, including but not limited to: education records, clinical records and patient communications, human resources records, research records, and public records of the University.

POLICY

It is the policy of LSUSHC-NO campus to maintain accurate records for the legally requisite period of time or longer, if circumstances require, in a manner that facilitates easy retrieval.

The Chancellor shall appoint an individual as a custodian of records who will ensure that all records are properly maintained in accordance with Federal and State laws and regulations and University policy.

This individual, the **Records Officer**, will maintain a records retention schedule in accordance with federal and state laws. All records are the property of LSUHSC-NO and no faculty or staff member has any personal or property right to such records regardless of his or her position or the fact that he or she may have developed or compiled them. The unauthorized destruction, removal, or use of LSUHSC-NO records is prohibited. The falsification or inappropriate alteration of any record likewise, is prohibited.

Each Department Records Liaison/Business Manager will work with the Records Officer to identify appropriate record series within said department, determine appropriate retention schedules for such series which comply with department needs and applicable laws, assist in enforcing any litigation holds and oversee the destruction of records when authorized.

RECORDS RETENTION SCHEDULE

The LSUHSC-NO Records Retention and Disposition Schedule has been prepared as a guide to determining the proper method and time of records disposition. It contains a list of records common to the institution and specifies the minimum period of time each record series should be maintained. It also conveys legal authorization for their disposal after the records are of no further use or value.

This is a general schedule and does not identify every record created or collected in every LSUHSC-NO department. All records listed in this schedule are not necessarily kept in every LSUHSC-NO office. Furthermore, records scheduled for destruction after the specified period of time should be retained longer if required for legal actions, audits, or other official administrative action.

Electronic Records (including email):

In order to improve access and disaster recovery, many LSUHSC-NO records are maintained and/or transferred to electronic format. During the transition to electronic records, many paper LSUHSC-NO records are being eliminated when the information has been placed on magnetic tapes, disks, or other data processing media. Data in electronic form should be retained for the same length of time specified in the schedule as for paper records.

Special Considerations:

The records retention schedule is not intended to be rigid and inflexible. There will be times when records scheduled for destruction or transfer are requested for a special audit, need to be retained until a regular audit has been resolved, or are subject to litigation hold or other official action.

There also may be situations in which federal program regulations or retention periods require that records be kept longer than specified in this schedule. In all such instances the longer retention period shall apply.

DISPOSAL OF RECORDS

R.S. 44:411 (A) (2) stipulates that LSUHSC-NO must provide the Division of Archives of the Office of the Secretary of State with a list of records that have satisfied their legal retention requirements and can thus be discarded.

Procedure:

- If the department determines that records are past their retention period, the department records custodian liaison must request approval from the Records Officer and State Archives for permission to destroy the records in accordance with The Louisiana State Archives Records Management Handbook:
<http://www.sos.louisiana.gov/Portals/0/archives/pdf/rm-handbook.pdf>

- Once approval for disposal from the Records Officer and State Archives has been granted, LSUHSC-NO will dispose of records in a manner according to the level of confidentiality the record requires:
 - Paper Records
 - If a records series contains **no information considered confidential in nature**, a department may use any acceptable disposal method including landfill; recycling; shredding; incineration; maceration; and pulverization.
 - If a records series contains **information considered confidential in nature**, a department may use all of the above disposal methods, except landfill and recycling.
 - Electronic Records
 - Records that contain confidential information must be disposed of in accordance with PM-36.

LITIGATION/AUDIT HOLD ON RECORDS

When there is actual or the potential for litigation to arise out of an event (termination of employees, sexual harassment, discrimination, whistleblower claims, etc.) at the University or pursuant to an audit request, a disposal and destruction hold will be placed on any records that arise out of the same transaction or occurrence which is the subject of the litigation or audit.

Procedure:

- Once Department Records Liaison/Business Manager becomes aware that actual or potential litigation or audit may occur due to an incident within the department, the individual should notify the Department Head.
- The Department Head will confer with internal Legal counsel and the Office of Compliance Programs to determine what records need to be flagged and designated on hold for litigation or audit.
- Legal counsel will notify in writing to the Assistant Vice Chancellor of Information Technology that a hold is to be placed on designated electronic records in order to prevent the destruction of those documents relevant to the subject of the litigation or audit in the routine operations.
- Legal counsel will notify in writing to the Records Officer that a hold is to be placed on designated records in order to prevent the destruction of documents relevant to the subject of the litigation or audit.
- The Records Officer will issue a hold notification, in writing, to the effected Department Records Liaisons/Business Managers.

- The Department Records Liaison/Business Manager will instruct department employees to cease destruction of any documents related to the pending matter.
- Once the litigation or audit matter is resolved, Legal counsel will notify the Records Officer and the Assistant Vice Chancellor of Information Technology, in writing, to release the hold on the relevant records.
- The Records Officer will issue a release of hold notification, in writing, to the effected Department Records Liaison/Business Managers.

Failure to place a hold on records relevant to the litigation and those records are subsequently destroyed may cause a presumption in the litigation that those records would have been harmful to LSUHSC-NO's position.

Responsibilities

Chancellor:

- Will designate the individual as the LSUHSC-NO Records Officer

Records Officer:

- Will review the LSUHSC-NO retention schedule to identify changes in the law regarding electronic retention and disposal procedures as well as to identify any record requiring an addition, amendment or deletion to the agency's approved schedule.
- Shall submit an amended records retention schedule to the Division of State Archives of the Secretary of State, if needed.
- The records retention schedule, once approved by State Archives will be valid for five years from the date of approval. Ninety days prior to the five year anniversary of a schedule's approval, LSUSHC-NO shall submit the records schedule for renewal.

Department Head:

- Communicate potential and actual litigation concerns within their department, in writing, to Legal Counsel for review for possible litigation or audit hold.

Department Records Liaison/Business Manager:

- The Department Records Liaison/Business Manager is responsible for:
 - Instructing the Department on the Retention Schedule and ensure compliance with the schedule and this policy.
 - Informing the Records Officer of the records series kept within the department

- Informing the Records Officer of a new records series within the department
- Obtaining approval from the Records Officer and State Archives for destruction of records
- Assisting the Records Officer in preventing the destruction of records when there has been a litigation or audit hold placed on department records by instructing department employees to cease destruction of any documents related to the pending matter.

Information Technology:

- Providing the necessary infrastructure to ensure that electronic records are retained for the period of time required by Federal or State laws.
- Providing support in assuring electronic records are retained and/or cleared for destruction when the appropriate time period has passed.
- Providing in support of a litigation hold assurance that documents flagged are not destroyed in routine operations.
- Provide technical support in:
 - Recovering electronic records accidentally or deliberately deleted or damaged records.
 - Ensuring the complete destruction of confidential electronic records in accordance with PM-36 once such destruction is authorized.
- Providing in support of litigation, in writing:
 - A list of all LSUHSC-NO operating systems, software applications, and hardware formerly and currently in use;
 - An explanation of the flow of data into, within, and out of the LSUHSC-NO;
 - Disk and Tape-labeling conventions, file name customs; and location-saving rules;
 - Current status of enforcement of electronic data retention policies;
 - Policies regarding employees' use of LSUHSC-NO business computers and data;
 - A standardized set of network and data storage protocols;

Legal Counsel:

- Will determine what records need to be designated and placed under a litigation or audit hold
- Will notify, in writing, the Records Officer and the Assistant Vice Chancellor of Information Technology of the records to be placed under a litigation or audit hold

REFERENCES

FRCF Rules 16, 26, 33,34, 37
LCCP Articles 1424, 1460-1462
7 U.S.C.A 1231 *et seq*



20 U.S.C.A. § 1232g, 34 C.F.R. Part 99

21 C.F. R. 50, 56, 312, 600, and 812.66

42 U.S.C.A. 231 *et seq*

45 C.F.R. 46 *et seq*

45 C.F.R. 160 and 164 *et seq*

La. R.S. 40:1299.96

La. R.S. 40:2144

La. R.S. 44 *et seq*

APPENDIX A

DEFINITIONS

A **record** contains information that is generated internally or is received from external sources, which is either utilized in the transaction of University business or related to the University's legal obligations. A *record* documents a transaction or verifies a receipt of information. All records must be tangible and retrievable.

Records can be comprised of various characteristics and can be found on different media. Some examples of media, where records can be stored, are paper, microfiche, microfilm, audio or videotapes and discs, computer hard drives, computer tapes and discs, and electronic messages.

EDUCATION RECORDS mean:

- (i) those records, files, documents, and other materials, which contain information directly related to a student and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

For the purposes of the definition of Education Records, the term does not include:

- (i) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;
- (ii) records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement;
- (iii) in the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose; or
- (iv) records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

(20 U.S.C.A. 1232 g (4) (A) as defined in FERPA)

CLINICAL RECORDS and PATIENT COMMUNICATIONS include but are not limited to:

- the charts, records, reports, documents, and other memoranda prepared by physicians, surgeons, psychiatrists, nurses, and employees in the public hospitals of Louisiana, adult or juvenile correctional institutions, public mental health centers, and public schools for

- the mentally deficient to record or indicate the past or present condition, sickness or disease, physical or mental, of the patients treated in the hospitals. (R.S. 44:7 (A)) and;
- any record which contains information, written, electronic, visual, or any other form, that relates to an individual's past, present, or future physical or mental health status, condition, treatment, service, products purchased, or provision of care, and that reveals the identity of the individual whose health care is the subject of the information, or where there is a reasonable basis to believe such information could be utilized (either alone or with other information that is, or should reasonably be known to be, available to predictable recipients of such information) to reveal the identity of that individual and includes any health or medical information, document, or record designated as confidential by state or federal law. (R.S. 29:762)

HUMAN RESOURCES RECORDS are those maintained by the Human Resources or employee's individual department and which contain any and all personal information about the employee or his/her performance.

PUBLIC RECORDS are defined as:

(a) All books, records, writings, accounts, letters and letter books, maps, drawings, photographs, cards, tapes, recordings, memoranda, and papers, and all copies, duplicates, photographs, including microfilm, or other reproductions thereof, or any other documentary materials, regardless of physical form or characteristics, including information contained in electronic data processing equipment, having been used, being in use, or prepared, possessed, or retained for use in the conduct, transaction, or performance of any business, transaction, work, duty, or function which was conducted, transacted, or performed by or under the authority of the constitution or laws of this state, or by or under the authority of any ordinance, regulation, mandate, or order of any public body or concerning the receipt or payment of any money received or paid by or under the authority of the constitution or the laws of this state, are "public records", except as otherwise provided in R.S. 44 et seq. or the Louisiana State Constitution.

(b) Notwithstanding Subparagraph (a), any documentary material of a security feature of a public body's electronic data processing system, information technology system, telecommunications network, or electronic security system, including hardware or software security, password, or security procedure, process, configuration, software, and code is not a "public record."

(R.S. 44:1)

RESEARCH RECORDS include (but are not limited to) information such as research notes, laboratory notebooks and in other media, such as computer disks and machine printouts; information related to the approval or denial of the IRB application and review process for human subject research, but that are not part of the patient's research-medical records; information related to the approval or denial of IACUC review process; records of scientific research related to animals or food, drugs, and /or devices; any records required to be kept by funding agencies or sponsors; or records required to be maintained under federal and/or state laws and regulations.

APPENDIX B
RECORDS RETENTION SCHEDULE