

5.3.22.1 Health Care Litigation Support eDiscovery and Litigation Hold

(a) Policy

California Correctional Health Care Services (CCHCS) shall protect and preserve electronically stored information (ESI) under health care (medical, mental health, and dental) for litigation and California Public Records Act (PRA) purposes. ESI is discoverable under the California Code of Civil Procedure, Sections 2031.010(a), (e) and 2031.030(a)(2), (c)(1). No data will be disclosed without first being reviewed by the Health Care Litigation Support Section (LSS) and, when needed, CCHCS' Office of Legal Affairs (COLA) to ensure legal necessity, relevance, and removal of all privileged information.

(b) Responsibilities

- (1) The Deputy Director, Policy and Risk Management Services, or designee, has the authority to coordinate the protection and preservation of ESI, release records requested for litigation, investigation, and PRA purposes and shall ensure departmental compliance with this policy.
- (2) The Associate Director (AD), Risk Management Branch (RMB), shall designate a CCHCS Litigation Coordinator and CCHCS PRA Coordinator, or designee, responsible for coordinating the preservation, retention, discovery, and response to all health care-related litigation and PRA requests.
- (3) LSS is responsible for coordinating the preservation, retention, discovery, and production of ESI relevant to health care-related litigation and PRA requests.

(c) Procedure

(1) Litigation Hold

(A) Litigation holds may be placed on ESI including, but not limited to, health records; health care grievances; emails; text messages; voice mail messages; video, audio, and image files; website activity and history; hard drives; state-issued cell phone data; and personnel records for which CCHCS is the custodian of records.

(B) LSS staff shall:

1. Preserve or retain ESI as required when a request or retention letter is received from the Office of Attorney General (OAG), CDCR Office of Legal Affairs (OLA), COLA, contract counsel, or private law office.
2. Conduct preservation or retention in the manner, timeframe and for the specific active and archived ESI as required in the letter of preservation or retention.
3. Follow department data classification procedures when a litigation hold request is made, and if requested, provide a written litigation hold notice to all involved parties with clear instructions on what should be preserved and held.
4. Ensure proper controls for the preservation of ESI are implemented, as it may be subject to legal proceedings.

(C) Litigation holds shall be released upon closure of a lawsuit or dismissal of a defendant.

(2) eDiscovery for Litigation

(A) The eDiscovery process, which includes identifying, obtaining, and exchanging ESI, shall only be used for litigation or investigational purposes to ensure the security of sensitive or pertinent information.

(B) To fulfill litigation or investigation obligations, LSS shall utilize eDiscovery software to:

1. Conduct email searches.
2. Facilitate access to eDiscovery software for the OAG, OLA, COLA.
3. Coordinate with CCHCS and CDCR staff on eDiscovery efforts.
4. Manage necessary storage and production in consultation with the Information Technology Services Division as directed by the OAG, OLA, COLA, or contract counsel.

(3) eDiscovery for Public Records Act Requests

(A) Any member of the public may request email records pursuant to California Government Code, Sections 7920.000-7930.215.

(B) LSS staff shall conduct an eDiscovery search within parameters responsive to the request.

(C) Additional information related to PRA requests is outlined in the Health Care Department Operations Manual, Section 5.1.2, California Public Records Act Requests.

(d) Training and Resources

- (1) LSS staff shall utilize the Health Care Litigation Support Section Operating Standards and resource documents available on the CCHCS Intranet.

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CALIFORNIA CORRECTIONAL HEALTH CARE SERVICES
Health Care Department Operations Manual

(2) LSS shall provide Records Retention and eDiscovery training to appropriate staff.

References

- California Code of Civil Procedure, Part 4, Title 4, Chapter 14, Article 1, Section 2031.010(a), (e) and Section 2031.030(a)(2), (c)(1)
- California Government Code Title 1, Division 10, Chapter 3.5 Inspection of Public Records, Sections 7920.000-7930.215
- Health Care Department Operations Manual, Chapter 5, Article 1, Section 5.1.2, California Public Records Act Requests

Revision History

Effective: 08/02/2023