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|  | MARICOPA COUNTY SHERIFF'S OFFICE POLICY AND PROCEDURES | | |
| Subject | Policy Number | | |
| LITIGATION INITIATION, DOCUMENT PRESERVATION, AND DOCUMENT PRODUCTION NOTICES | | | GD-9 |
| Related Information | Supersedes | Effective Date | |
| <i>GC-17, Employee Disciplinary Procedures</i> <i>GH-2, Internal Investigations</i> <i>GM-1, Electronic Communications, Data and Voice Mail</i> | <i>GD-9 (09-15-21)</i> | 10-26-23 | |

PURPOSE

The purpose of this Office Policy is to provide guidance and procedures to employees who are served with a Litigation Initiation Notice arising from work-related actions. This Office Policy also provides directives regarding the required actions of the Office and Office employees upon receipt of a Document Preservation Notice and the required actions when a Document Production Notice is received.

Although this Office Policy refers to employees throughout, this Office Policy also applies with equal force to all volunteers. Volunteers include, but are not limited to, reserve deputies and posse members.

POLICY

It is the policy of the Office to properly manage Litigation Initiation Notices, to ensure that proper steps are taken when Document Preservation Notices are received in order to preserve potentially relevant evidence, and that when Document Production Notices are received, steps are taken to identify and produce those documents. Each notice shall be promptly communicated to all employees who might be required to appear or who might be able to provide responsive records, documents, or electronically stored information. The Office shall ensure that documents are preserved, that thorough and adequate searches for documents are conducted, that documents are produced, and that employees comply with document preservation and document production requirements.

DEFINITIONS

Contractor: A person or company that performs work for the Office, Maricopa County, or other County departments on a contractual basis.

Documents: Recorded forms of information to include paper, electronic, audio and video recordings, computer-based records, e-records/digital records, and any other form of information. Examples of documents (whether electronic, hard copy, or handwritten) include, but are not limited to, letters, correspondence, memoranda, reports, tabulations, calculations, invoices, vouchers, ledgers, journals, external and internal literature, books, notes, schedules, worksheets, plans, minutes, bulletins, brochures, catalogs, notices, press releases, transcripts, body-worn camera recordings, calendars, diaries, charts, and forecasts. This is not limited to formal or final documents.

Document Preservation Notice: A written directive prepared by the Legal Liaison Section advising the Office and Office employees to preserve potentially relevant records, documents, and ESI in anticipation of future litigation. This may also be identified as a “Litigation Hold” or “Preservation of Evidence.” The Document Preservation Notice shall include the Litigation Hold Notice, the Document Preservation Questionnaire, and any other applicable documentation.

Document Production Notice: A formal request prepared by the Legal Liaison Section for the Office and Office employees to produce records which are responsive to a litigated matter. The Document Production Notice shall include the Document Production Acknowledgment and any other applicable documentation.

Electronically Stored Information (ESI): Information that is created, manipulated, communicated, stored, and best utilized in digital form, requiring the use of computer hardware and software. ESI may be stored on and retrieved from many sources, including: computer hard drives, network servers, flash (USB) drives, databases, cloud storage, mobile devices, such as mobile phones and tablet computers, which may include County-issued devices or personal devices, and social media websites. Common examples of ESI include word processing documents, spreadsheets, digital photographs, videos, e-mails and their attachments, text and instant messages, call logs, voicemails, and databases.

Employee: A person currently employed with the Office in a classified, unclassified, contract, or temporary status.

Judicial Subpoena: A directive to testify before a judicial officer of a court in the state of Arizona or face possible contempt of court charges or other sanctions in an administrative forum.

Litigation Hold Notice: A written directive prepared by the Maricopa County Attorney's Office or any other party that requests preservation of relevant records, documents, and ESI in anticipation of future litigation against the Office.

Litigation Initiation Notice: A formal document used to put the Office on notice of possible litigation or other written demand issued by a court. Examples include, but are not limited to, a summons and complaint, notice of claim, or subpoena.

Non-Party: A person or company which may be in possession, custody, or control of potentially relevant records, documents, or ESI. A vendor or contractor may be considered a non-party.

OpenAxes (OA): A program that allows the Legal Liaison Section to search and view all Office network drives (OneDrive for personal file storage, and the on-premises storage solution Qumulo for all shared drives) when searching for records and information based on criteria established by the Document Preservation Notice. This program is used in addition to searches required of Office employees who may have records responsive to the Document Preservation Notice.

Records: All books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, including prints or copies of such items produced or reproduced on film or electronic media, made or received by any governmental agency pursuant to law or in connection with the transaction of public business and preserved, or appropriate for preservation, by the 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 and historical value of data contained in the record, and includes records that are made confidential by statute.

Subpoena Duces Tecum: A directive to bring physical evidence or records before a judicial officer of a court in the state of Arizona or face possible contempt of court charges. This often requires that the requested item be mailed to the requesting party or directly to the court or administrative forum.

Vendor: An individual or company that sells goods or services to the Office, Maricopa County, or to other County departments.

Volunteer: A person who performs hours of service for civic, charitable, or humanitarian reasons, without promise, expectation, or receipt of compensation for services rendered. An employee may not volunteer to perform the same, similar, or related duties for the Office that the employee is normally paid to perform.

PROCEDURES

1. **Acceptance of Service:**
 - A. Employees shall not accept service of formal court papers which name the Office as a plaintiff or defendant. Service of such documents shall be made to the Legal Liaison Section (LLS). The LLS is in the Sheriff's Office Headquarters Building.
 - B. An employee shall only accept service when the employee is listed on the document as being served, by name or serial number. The Office may also be named as a plaintiff or defendant, but the employee shall only accept service for themselves.
 - C. An employee shall not accept service on behalf of an absent or otherwise unavailable employee. The server shall be directed to the LLS for acceptance of service.
 - D. Service shall not be accepted for employees who no longer work for the Office.
 - E. The LLS is authorized to accept service for employees of the Office for any work-related action.
2. **Litigation Initiation Notice:** Employees notified of pending court actions against them, or personally served with a notice of claim, subpoena duces tecum, or a summons and complaint, or subpoenaed by a party to any legal action resulting from their employment with the Office, shall immediately notify the LLS. Due to the time limits involved in replying to litigation notices, prompt notification is crucial.
 - A. Notification of a pending court action or service of a Litigation Initiation Notice shall be directed through e-mail, to the LLS. Employees shall include a scanned copy of the notification with the e-mail or send a faxed copy to the LLS if a scanner is not available. Employees shall include their chain of command in the e-mail.
 - B. Original documents, such as a notice of claim, subpoena duces tecum, and summons and complaint, shall be immediately forwarded to the LLS. The LLS shall provide copies of the original documents to the employee upon request.
 - C. Upon receipt of a Litigation Initiation Notice, the LLS shall forward a copy of the notification to the Maricopa County Attorney's Office (MCAO) and to Maricopa County Risk Management. The LLS shall also forward a copy of the notification to the Professional Standards Bureau and the Early Intervention Unit.
 - D. The LLS shall maintain a file on each Litigation Initiation Notice and coordinate needed action among the Sheriff's Office, the Deputy County Attorney representing the Office, any other attorney representing the Office, and Maricopa County Risk Management.
 - E. Judicial or administrative subpoenas shall constitute an order to appear and shall be honored, whether on behalf of the state, Office, or in action against the employee. Subpoenas shall be forwarded to the Office employee named in the document.

3. **Document Preservation Notice:** Upon receipt of a Litigation Hold Notice, all normal and routine destruction of relevant records, documents, and ESI must be suspended. Present and future records that are involved must be preserved until the Document Preservation Notice is released, as specified in this Office Policy.
- A. LLS Responsibilities: Upon receipt of a Litigation Hold Notice, the LLS shall instruct Office employees to gather and preserve all relevant records, documents, and ESI.
1. A Document Preservation Notice shall be drafted by the LLS upon receipt of a Litigation Hold Notice from the MCAO, any other attorney representing the Office, or from any party that requests preservation pending the initiation of litigation against the Office.
 2. All incoming Litigation Hold Notices shall be stamped with the date of receipt by the LLS and entered into the LLS tracking system. Within five business days, the LLS shall distribute the Document Preservation Notice and Document Preservation Questionnaire (see Attachment B) through OpenAxes (OA) to all pertinent divisions of the Office and all Office employees who might possibly have responsive records, documents, or ESI.
 - a. The LLS, along with the Human Resources Bureau Chief, shall make the determination regarding to whom to send the Document Preservation Notice and Document Preservation Questionnaire. This determination shall be based on a review of the following, but not limited to, sources of information:
 - (1) The original source document (Litigation Hold Notice, Notice of Claim, Summons and Complaint);
 - (2) Incident Reports;
 - (3) Computer Aided Dispatch (CAD) Reports; and
 - (4) Inmate booking information.
 - b. The LLS shall provide on the Document Preservation Notice examples of: electronic devices that must be searched or preserved; types of documents that must be preserved; physical locations that must be searched; relevant incident information that may be used in searching for the documents; and instructions for how and where to preserve records. The following are examples of electronic devices, physical locations, documents, and incident information:
 - (1) Electronic Devices: Electronic devices include, but are not limited to, computer hard drives, network servers, flash (USB) drives, databases, cloud storage, mobile devices, such as mobile phones and tablet computers, which may include County-issued devices or personal devices, and social media websites.
 - (2) Physical Locations: Physical locations include, but are not limited to, personal and shared Office workspaces, administrative and supervisor workspaces, desks, file cabinets, on and off-site storage areas, Office vehicles, personal residence, and personal vehicles.
 - (3) Documents: Documents (whether electronic, hard copy, or handwritten) include, but are not limited to, letters, correspondence, memoranda, reports,

tabulations, calculations, invoices, vouchers, ledgers, journals, external and internal literature, books, notes, schedules, worksheets, plans, minutes, bulletins, brochures, catalogs, notices, press releases, transcripts, body-worn camera recordings, calendars, diaries, charts, and forecasts. This is not limited to formal or final documents.

- (4) Incident Information: Incident information that is provided in the Document Preservation Notice may include key words relevant and specific to the litigation hold. This information may include, but is not limited to, subject names, booking numbers, business names, and addresses.
- c. Employees who have questions or concerns regarding what should be preserved shall contact the LLS Commander or the designated LLS point of contact for guidance.
3. Within five business days, the LLS shall communicate the Document Preservation Notice and Document Preservation Questionnaire to any other division or employee who may be identified upon receipt of additional information.
4. The LLS must contact employees when:
- a. There is an indication that relevant documents may be found in personal devices or other locations that LLS cannot directly access;
 - b. Assistance is needed to identify relevant electronic documents; and
 - c. Assistance is needed removing and providing access to password protected documents.
5. Upon receipt of the Document Preservation Questionnaire identifying the names of employees who may have relevant records, the LLS shall, within five business days, notify the Technology Management Bureau to sequester and preserve the employee's Office 365 account.
6. Vendors and contractors may be considered non-parties to a Document Preservation Notice. The LLS shall contact the MCAO in matters which may involve non-parties that may be in possession or control of relevant documents for guidance on how to proceed with the gathering or preservation of the records.
7. The LLS shall maintain a file for each Document Preservation Notice. This file shall contain the original documents that triggered the Document Preservation Notice, all Document Preservation Questionnaires, and all internal Office communications, including e-mail communications, regarding the Document Preservation Notice. This file may also contain documents that are responsive to the preservation that the LLS may be able to access. This may include, but is not limited to, Incident Reports, Sheriff's Inmate Electronic Data (SHIELD) reports and information, archived Jail Management System (JMS) information, and booking photos.
8. The LLS shall have oversight responsibilities to ensure that division commanders, or their designee, and other employees, perform a thorough and adequate search for documents responsive to the Document Preservation Notice.
- a. The LLS shall track and record Document Preservation matters.

- b. The LLS shall review all Document Preservation cases to ensure that the Document Preservation Questionnaires have been returned, and to evaluate the responses for thoroughness.
 - (1) The LLS shall reject Document Preservation Questionnaires, through OA, when it is determined the response is not sufficiently thorough. Continued insufficient responses or failure to respond shall be addressed with the employee's chain of command. Verbal communications shall be memorialized in a follow-up e-mail for documentation purposes.
 - (2) The LLS shall provide guidance to division commanders, or their designee, and employees when clarifications are necessary. The LLS will consult with the MCAO for additional guidance, as needed.
 - c. Within five business days of receipt, the LLS shall review the Document Preservation Questionnaire, and will contact additional employees who have been listed as potential sources of relevant records. The LLS will provide a copy of the Document Preservation Notice and Document Preservation Questionnaires through OA to all newly identified employees. Newly identified employees will have the same timeframe, 10 business days, to complete Document Preservation Questionnaire.
 - d. The LLS shall determine if there are any other matters that need to be considered, such as contacting other County departments.
 9. The LLS is committed to promptly communicating Document Preservation matters and requesting that an adequate search for documents is conducted within the Office. In the exceptional event that the LLS is not able to meet the deadlines for processing a Document Preservation matter, the LLS Commander will draft a detailed memorandum to document the reason for delay. The LLS Commander will clearly identify in the memorandum who was responsible for the delay and will discuss the reason for the delay with the pertinent party to avoid future delays. If there are repeated delays by an employee, the LLS Commander will document them for appropriate action for failure to comply with this Office Policy.

B. OpenAxes (OA): The LLS shall use OA to send and track all Document Preservation Notices and Document Preservation Questionnaires. When the LLS has determined that an employee may have records responsive to the Document Preservation, the employee will receive questionnaire(s) directly from OA through e-mail.

 1. For each Document Preservation request, the LLS shall create a Document Preservation file in OA.
 2. In the event the OA application is not functioning, the LLS shall distribute the Document Preservation and the Document Preservation Questionnaire to all pertinent divisions of the Office and all Office employees who might possibly have responsive records, documents, or ESI through Microsoft Outlook. Once OA is functional again, the LLS shall input the Document Preservation into OA to conduct the network drive searches.
 3. Once the Document Preservation has been created in OA, the LLS shall conduct a search of the Office network drives for records that may be responsive to the Document Preservation matter.

4. Once the search has been completed, the LLS shall review the records yielded from the search for responsiveness to the Document Preservation matter.
- C. Division Commander Responsibility: When the LLS provides a Document Preservation Notice to an Office division, it is the division commander's or designee's responsibility to perform a thorough and adequate search for documents responsive to the Document Preservation Notice and to ensure that each employee under their command who might possibly be in possession of responsive documents conducts a thorough and adequate search of all relevant physical and electronic documents.

The searches shall be completed within ten business days of receipt of the Document Preservation Notice. A failure by the division commander or designee to meet this deadline shall require written notification to the LLS Commander documenting the reason for the delay. If the delay is the result of an uncooperative subordinate, the division commander or designee shall document the delay in Blue Team as an Internal Complaint for the employee's failure to comply. If the delay was caused by an uncooperative division commander or designee, the LLS Commander shall document the matter in Blue Team as an Internal Complaint for the division commander's or designee's failure to comply. The Internal Complaint shall be evaluated by the Professional Standards Bureau Commander, as specified in Office Policy GH-2, *Internal Investigations*. In either event, the search shall be initiated as soon as possible.

 1. The division commander or designee shall ensure that all documents that have been sent to the records storage warehouse or other off-site storage facility are retrieved by the originating division and preserved at the division location. This may include, but is not limited to: shift rosters not maintained electronically; daily work assignments; and inmate files. This does not include those documents that have permanent storage locations, such as an Incident Report (IR) being stored in the Records and AFIS Division or evidence being stored in the Property Division.
 2. The division commander or designee shall ensure all documents, to include electronic files and data stored on network drives, are preserved at the respective divisions. This may include, but is not limited to: memorandums; reports; e-mail; and invoices. This does not include those documents that have permanent storage locations, such as an Incident Report (IR) being stored in the Records and AFIS Division or evidence being stored in the Property Division. The division commander or designee is responsible for ensuring that retention schedules are suspended during the litigation process. Division commanders, or their designees, are encouraged to contact the Technology Management Bureau with any questions concerning the preservation of electronic records.
 3. The division commander or designee shall ensure that employees under their command adhere to the requirements to preserve all relevant records, documents, and ESI. Failures shall be appropriately documented in Blue Team.
 4. The division commander or designee shall ensure that employees under their command provide copies of all relevant physical and electronic documents and records to be maintained at the division. This may include, but is not limited to: memorandums; reports; e-mail; and invoices. This does not include those documents that have permanent storage locations, such as an Incident Report (IR) being stored in the Records and AFIS Division or evidence being stored in the Property Division. ESI shall be maintained wherever stored (hard drive, network, thumb drive, etc.).
 5. The division commander or designee shall ensure completion of the Document Preservation Questionnaire for all records, documents, and ESI in their possession, to include those records

retrieved from off-site, and that identified employees under their command complete the Document Preservation Questionnaire.

- D. Supervisor Responsibilities: When the LLS notifies an Office employee of a Document Preservation Notice and Document Production Questionnaire, it is the supervisor's responsibility to ensure that each employee under their command who might possibly be in possession of responsive documents conducts a thorough and adequate search of all relevant physical and electronic documents.
1. A direct supervisor of an Office employee who receives a Document Preservation Notice is responsible to notify the LLS if that employee is unavailable and when they are expected to return to work if deadlines will be exceeded.
 - a. If the Office employee is tasked with preserving records on behalf of a division and not in an individual capacity, such as jail security video records, the direct supervisor is responsible for delegating the task to another employee to complete or completing the task themselves if deadlines will otherwise be exceeded.
 - b. If the Office employee was notified to preserve records in an individual capacity and under their direct control, the direct supervisor is responsible for notifying the LLS that the employee is unavailable, and for ensuring the employee completes the Document Preservation Questionnaire upon the employee's return to work.
 2. A direct supervisor shall ensure that employees under their command adhere to the requirements to preserve all relevant records, documents, and ESI. Failures shall be appropriately documented in Blue Team.
- E. Employee Responsibilities: When the LLS, or the division commander or designee, notifies an Office employee of a Document Preservation Notice, it is the employee's responsibility to perform a thorough and adequate search for all relevant physical and electronic records, documents, and ESI responsive to the Document Preservation Notice, unless unique circumstances exist, such as special equipment or skills are required to locate the information. In such cases, it is the employee's responsibility to inform the LLS, and the division commander or designee, so that further action may be taken to address the unique requirements of the search. The search shall be completed within ten business days of receipt of the Document Preservation Notice. All employees are required to comply with the terms of this Office Policy. In the event of an exceptional circumstance wherein an employee cannot meet this deadline, the employee shall provide a written explanation of the delay up their chain of command to their Bureau Commander. The Bureau Commander shall review and sign the memorandum prior to forwarding the memorandum to the LLS Commander for placement in the Document Preservation file. If there are repeated delays by an employee, the LLS Commander will document them for appropriate action for failure to comply with this Office Policy.

Employees shall complete the Document Preservation Questionnaire. Employees shall record on the Document Preservation Questionnaire the steps taken to complete the search for applicable records. Employees must do the following:

1. Review the Document Preservation Notice to determine the following:
 - a. How they were involved in or associated with the incident or subject of the Preservation Notice.

- b. Review and research for any records, documents, and ESI responsive to the Document Production Notice.
 2. Immediately suspend deletion, purging, overwriting, or any other destruction of relevant electronically stored information that is under their control. This includes ESI wherever it is stored. This electronic information must be preserved so that it can be retrieved later, and must be preserved in its original electronic form so that all information contained within it, whether visible or not, is also available for inspection.
 - a. The employee shall follow the guidelines regarding the use of personal devices, as specified in Office Policy GM-1, *Electronic Communications, Data and Voice Mail*.
 - b. The employee shall provide a copy of the electronically stored information found on a personal device to the LLS.
 3. Preserve any new electronic information that is generated after receipt of the Document Preservation Notice that is relevant to the subject of the notice. This shall be done by creating separate files and segregating all future electronically stored information in these separate files.
 4. Preserve hard copies of documents under their control. Steps shall be taken to identify all relevant paper files and to ensure the retention of such files. Employees may make hard copies of ESI; however, the information must be preserved in its original electronic form.
 5. Provide hard copies of documents and records to the division commander or designee to be preserved at the division. ESI shall be maintained wherever stored (hard drive, network, thumb drive, etc.).
 6. Complete the Document Preservation Questionnaire and return it to the LLS. The Questionnaire will be reviewed by the LLS to ensure thoroughness of the employee's search and will be a resource for the LLS for future monitoring and production of documents. Employees who have questions or concerns regarding what should be preserved shall contact the LLS Commander or the designated LLS point of contact for guidance.
- F. The Technology Management Bureau controls all Office 365 accounts. The LLS shall be responsible to notify the Technology Management Bureau to sequester and preserve employee Office 365 accounts. This notification shall include the Document Preservation Notice. The LLS shall be responsible to notify the Technology Management Bureau when a Document Preservation Notice has ended.
- G. Document Preservation Questionnaire: Employees, and division commanders or their designee, who receive a Document Preservation Notice, must complete a Document Preservation Questionnaire. The Questionnaire shall identify the steps taken to complete a search for all records, documents, and ESI, and identify all potentially relevant records, documents, and ESI the employee has in their possession. The Questionnaire shall identify other employees who potentially have relevant records to preserve. The Document Preservation Questionnaire must be completed in OA and copied to the employee's chain of command within ten business days of the date that the Document Preservation Notice was sent to the employee. All employees are required to comply with the terms of this Office Policy. In the event of an exceptional circumstance wherein an employee cannot meet this deadline, the employee shall provide a written explanation of the delay up their chain of command to their Bureau Commander. The Bureau Commander shall review and sign the memorandum prior to forwarding the memorandum to the LLS Commander for placement in the Document Preservation file. If there are repeated delays by

an employee, the LLS Commander will document them for appropriate action for failure to comply with this Office Policy.

- H. Division commanders or their designee, and employees who have responsive records shall ensure that the responses for each Document Preservation Questionnaire are individualized, free of boilerplate language, and must be completed by the employee who conducted the search for records.
- I. Quarterly Reminders: On a quarterly basis, OA will send reminder notifications to division commanders, direct supervisors, and employees regarding their ongoing responsibility to preserve relevant records, documents, and ESI for each active Document Preservation matter. Reminder notices will be sent to employees identified as possessing or controlling responsive documents. The division commander or designee shall review the quarterly notifications and ensure that employees under their command are reminded within five business days of their ongoing responsibility to preserve all relevant records, documents, and ESI.
- J. Release of Document Preservation Notice: All documents subject to a Document Preservation Notice must be maintained in their original state, without destruction or alteration, until the MCAO has notified the Office in writing that a Litigation Hold has been released and documents no longer need to be preserved. Additionally, the LLS will ensure that the Maricopa County Risk Management department has notified the Office that the corresponding Risk Management claims have been closed. The LLS Section Commander shall be responsible for ensuring that the documents are not subject to another Document Preservation Notice prior to informing responsive divisions and employees that a Document Preservation has been released. Upon release of a Document Preservation, the documents shall revert to the applicable retention schedule.

4. Document Production Notice:

- A. The LLS shall draft a Document Production Notice upon request for records, documents, and ESI from the MCAO or other parties.
- B. LLS Responsibilities:
 - 1. All incoming requests for records shall be stamped with the date received by the LLS.
 - 2. Within five business days of receipt, the LLS shall enter all pertinent information regarding the document request for those matters associated with litigation initiation into the LLS tracking system.
 - a. If there are any questions about what is being requested, the LLS shall contact the requesting party for clarifications regarding the request.
 - b. If the requested documents can be sourced in entirety by the LLS, the LLS shall gather the requested records, make any required redactions, and forward the request and the gathered records to assigned LLS staff to write the response correspondence and provide the records.
 - c. If the requested documents must be ordered from another division of the Office, the LLS shall forward the request to the assigned LLS staff to draft the Document Production Notice.

3. Within five business days of the request for records being entered into the tracking database, the LLS shall draft a Document Production Notice and Document Production Acknowledgment, (see Attachment B) and distribute the notices to all pertinent parties. Additional Document Production Notices and Document Production Acknowledgments may be communicated based on the records request from the MCAO or other requesting parties.
 - a. The LLS shall make the determination regarding to whom to send a Document Production Notice and Document Production Acknowledgment. This determination shall be based on a review of the following, but not limited to, sources of information:
 - (1) The Document Preservation Questionnaires;
 - (2) Additional information included in the request for records from the MCAO or other applicable parties;
 - (3) Incident Reports;
 - (4) CAD Reports; and
 - (5) Inmate booking, housing, and movement information.
 - b. The LLS shall draft and communicate a Document Production Notice and Document Production Acknowledgment to the Technology Management Bureau to request Office 365 account records already identified and may request that another search be conducted as needed based on any new information provided by MCAO or applicable parties.
 - c. The LLS shall contact the MCAO in matters which may involve non-parties that may be in possession or control of relevant documents for guidance on how to proceed with gathering the records.
4. The LLS shall ensure document production by:
 - a. Contacting the requesting party if there are questions or clarifications needed regarding the request;
 - b. Communicating any concerns to the County Attorney representing the Office or any other attorney representing the Office regarding the information being requested;
 - c. Gather all responsive records, documents, and ESI;
 - d. Performing any required redactions; and
 - e. Physically producing the document copies.
 - (1) If no documents have been found to respond to a given request, the requestor shall be notified by the LLS in writing.
 - (2) If documents are being withheld, the LLS will state this fact and the nature of the documents withheld in written communications with the requestor.

- (3) Where the Office objects to a request as overbroad when a narrower version of the request would not be in dispute, the documents responsive to the narrower version shall be produced by the LLS without waiting for a resolution of the dispute over the scope of the request.
- f. If responsive documents are discovered after the original production of documents, the LLS shall produce the newly discovered documents.
5. The LLS shall maintain a file for each request for records, documents, or ESI. This file shall contain: the original documents that triggered the Document Production Notices and Document Production Acknowledgments, all records, documents, and ESI provided responsive to a request, and all internal Office communications, including e-mail communications, regarding the Document Production Notice.
6. The LLS shall have oversight responsibilities to ensure that division commanders and other employees produce documents responsive to the Document Production Notice. The LLS shall review all Document Production files to evaluate the responses and provided records for thoroughness.
- a. The LLS shall reject Document Production Acknowledgments when it is determined that the response is not sufficiently thorough. Continued insufficient responses or failure to respond shall be addressed with the employee's chain of command. Verbal communications shall be memorialized in a follow-up e-mail for documentation purposes.
- b. The LLS shall provide guidance when clarifications are necessary. The LLS will consult with the MCAO Civil Services Division for additional guidance, as needed.
7. Within five business days of receipt, the LLS shall initiate a review of the Document Production Acknowledgment and will contact additional employees who have been listed as potential sources of relevant records.
8. The LLS is committed to promptly communicating Document Production requests, ensuring that all files, including ESI are produced, and that an adequate search for documents is conducted within the Office. In the exceptional event that LLS is not able to meet the deadlines for processing a Document Production matter, the LLS Commander will draft a detailed memorandum to document the reason for delay. The LLS will clearly identify in the memorandum who was responsible for the delay and will discuss with the pertinent party to avoid future delays. If there are repeated delays by an employee, the LLS will document them for appropriate action for failure to comply with Office Policy.
- C. Division Commander Responsibility: When the LLS provides a Document Production Notice and Document Production Acknowledgment to an Office division, it is the division commander or designee's responsibility, to ensure that records, documents, and ESI responsive to the Document Production Notice are provided and to ensure that each employee under their command in possession of responsive documents provided the requested records, documents, and ESI. The Document Production Acknowledgement and relevant records, documents, and/or EIS shall be returned to the LLS within 10 business days of receipt of the Document Production Notice.
1. Division commanders or their designee shall ensure that potentially responsive documents are not deleted prior to production and evaluation for thoroughness by the LLS. The LLS shall

provide guidance to division commanders, or their designee, when clarifications are necessary. The LLS shall consult with the MCAO Civil Services Division for additional guidance, as needed.

2. Division commanders or their designee shall ensure that all documents retrieved from the storage warehouse or off-site storage location are copied and provided to the LLS.
 3. Division commanders or their designee shall ensure all responsive documents stored at the division, to include electronic files and data stored on network drives, are copied and provided to the LLS. The division commander or designee shall ensure that an itemized list of the documents and the Document Production Acknowledgment are forwarded to the LLS. This list and Acknowledgment will be reviewed by the LLS to ensure thoroughness of the document search and production.
 4. Division commanders or their designee shall ensure that communication is clearly given to direct that ESI is maintained wherever stored (hard drive, network, thumb drive, etc.), and all responsive copies are provided to the LLS.
 5. A failure by the division commander or designee to meet this deadline shall require written notification to the LLS Commander documenting the reason for the delay. If the delay is the result of an uncooperative subordinate, the division commander or designee shall document the delay in Blue Team as an Internal Complaint for the employee's failure to comply. If the delay was caused by an uncooperative division commander or designee, the LLS Commander shall document the matter in Blue Team as an Internal Complaint for the division commander or designee's failure to comply. The Internal Complaint shall be evaluated by the Professional Standards Bureau Commander as specified in Office Policy GH-2, *Internal Investigations*. In either event, the search shall be initiated as soon as possible.
- D. Supervisor Responsibilities: When the LLS notifies an Office employee of a Document Production Notice and Document Production Acknowledgment, it is the supervisor's responsibility to ensure that each employee under their command who might possibly be in possession of responsive documents conducts a thorough and adequate search of all relevant physical and electronic documents.
1. A direct supervisor of an Office employee who receives a Document Production Notice is responsible to notify the LLS if that employee is unavailable and when they are expected to return to work if deadlines will be exceeded.
 - a. If an Office employee is tasked with producing records on behalf of a division, such as jail security video records, the direct supervisor is responsible for delegating the task to another employee to complete or completing the task themselves, if deadlines will otherwise be exceeded.
 - b. If an Office employee was notified to produce records in an individual capacity and under their direct control, the direct supervisor is responsible for notifying the LLS that the employee is unavailable, and for ensuring the employee completes the Document Production Acknowledgment upon the employee's return to work.
 2. A direct supervisor shall ensure that employees under their command adhere to the requirements to search for and produce all relevant records, documents, and ESI. Failures shall be appropriately documented in Blue Team.

- E Employee Responsibilities: When the LLS notifies an Office employee of a Document Production Notice and Document Production Acknowledgment, it is the employee's responsibility to provide all relevant physical and electronic records, documents, and ESI responsive to the Document Production Notice that is under their control. Completion of the Document Production Acknowledgment and the production of relevant records, document, and/or ESI shall be provided within 10 business days of receipt of the Document Production Notice. Employees must do the following:
1. Provide copies of ESI to the LLS.
 2. Employees shall provide the responsive records, documents, and ESI to the LLS, along with an itemized list of the documents and the Document Production Acknowledgment. The employee shall notify their chain of command through e-mail when they have provided the information to the LLS. The list and Acknowledgment will be reviewed by the LLS to ensure thoroughness of the document search and production.
 3. Employees who have questions or concerns regarding what should be provided in response to a Document Production Notice may contact either the LLS employee who sent the Document Production Notice or the LLS Section Commander.
 4. All employees are required to comply with the terms of this Office Policy. In the event of an exceptional circumstance wherein an employee cannot meet this deadline, the employee shall provide a written explanation of the delay up their chain of command to their Bureau Commander. The Bureau Commander shall review and sign the memorandum prior to forwarding the memorandum to the LLS Commander for placement in the Document Production file. If there are repeated delays by an employee, the LLS Commander will document them for appropriate action for failure to comply with this Office policy.
 5. Employees shall follow the guidelines regarding the use of personal devices, as specified in Office Policy GM-1, *Electronic Communications, Data and Voice Mail*.
- F. Division commanders or their designee, and employees who have responsive records shall ensure that the responses for each Document Production Acknowledgment are individualized, free of boilerplate language, and must be completed by the employee who produced the records.
5. **Failure to Preserve or Produce Records:** All employees shall promptly comply with Document Preservation and Production requirements. Employees who fail to preserve or produce documents in their possession shall be subject to disciplinary action, up to and including dismissal from employment, as specified in Office Policy GC-17, *Employee Disciplinary Procedures*.

Attachment A

**Document Preservation Questionnaire
Preservation Subject Name, LLS #
[Date]**

Employee Name _____

Employee Serial Number _____

Division/Section _____

Date of Receipt of Document Preservation Notice _____

I have received a Document Preservation Notice and must preserve relevant records, documents or ESI records.

Definitions:

Records: All books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, including prints or copies of such items produced or reproduced on film or electronic media, made or received by any governmental agency pursuant to law or in connection with the transaction of public business and preserved, or appropriate for preservation, by the 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 and historical value of data contained in the record, and includes records that are made confidential by statute.

Documents: Recorded forms of information to include paper, electronic, audio and video recordings, computer-based records, e-records/digital records, and any other form of information. Examples of documents (whether electronic, hard copy, or handwritten) include, but are not limited to, letters, correspondence, memoranda, reports, tabulations, calculations, invoices, vouchers, ledgers, journals, external and internal literature, books, notes, schedules, worksheets, plans, minutes, bulletins, brochures, catalogs, notices, press releases, transcripts, body-worn camera recordings, calendars, diaries, charts, and forecasts. This is not limited to formal or final documents.

Electronically Stored Information (ESI): Information that is created, manipulated, communicated, stored, and best utilized in digital form, requiring the use of computer hardware and software. ESI may be stored on and retrieved from many sources, including: computer hard drives, network servers, flash (USB) drives, databases, cloud storage, mobile devices, such as mobile phones and tablet computers, which may include County-issued mobile devices and personal devices, and social media websites. Common examples of ESI include word processing documents, spreadsheets, digital photographs, videos, e-mails and their attachments, text and instant messages, call logs, voicemails, and databases.

Questions 1-3 are mandatory.

1. Steps Taken to Search for Records/Documents/ESI:

The following steps were taken to complete a search of all my physical and electronic records, documents, and ESI that may be responsive to the Document Preservation Notice: *For example: I searched electronic records and email using the following key terms: LIST KEY TERMS. I reviewed Incident Report YY-123456 and video to determine if other records are maintained; I reviewed all my documents regarding this topic to include supervisor notes, Blue Team entries, and memorandums.*

2. Personal Devices That Contain Potentially Relevant Records:

I have determined that the following personal devices under my control may contain potentially relevant records. This question DOES NOT apply to Office-issued devices or Office email maintained on your Office 365/Outlook account. *For example, 16GB personal thumb drive; personal smartphone (602)-555-5555; emails sent to personal email account; and work product created or stored on personal computer/laptop.*

3. Outcome of Search:

- I do not have records, documents and/or ESI relevant to the Document Preservation Notice. If this box is selected, you are also required to complete Question 4 and the Acknowledgment.
- I do have records, documents and/or ESI relevant to the Document Preservation Notice. If this box is selected, you are required to complete all remaining questions and the Acknowledgment.

3.1. Records/Documents/ESI that will be Preserved:

After a search, I have determined that the physical objects and hard-copy files under my control are as follows (list all): *For example: Memorandum written by Name, Serial Number on mmddyy; personal notes regarding Incident Report YY-123456; Inmate Request from inmate Name, Booking Number dated mmddyy; digital camera asset #45678.*

3.2. After a search, I have determined that the files and/or computer systems under my control which may have potentially relevant records are as follows (list all): *For example: One thumb drive 16GB, Word document "Rosters" in OneDrive folder; Work email "Critical Incident" dated mmddyy.*

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3.3. I anticipate receiving the following records, documents, or ESI in the future, as follows (list all): *For example: Future housing rosters/telephone logs/visitation logs; Incident Supplements from Officer Names, Serial Numbers.*

4. Other Office employees who may have potentially relevant records are as follows (list all by name, rank, and serial number, if known):

(Additional pages may be attached as needed)

Acknowledgment:

Policy GD-9, *Litigation Initiation, Document Preservation, and Document Production Notices*

Effective Date: 10-26-23

I understand that I have received a Document Preservation Questionnaire. I understand that I am responsible for completing the Document Preservation Questionnaire and returning it to the Legal Liaison Section within 10 business days and for providing a copy to my chain of command. I understand that I am responsible for ensuring that the identified records, documents, and ESI are preserved and that any additional information that is discovered in the future within my control shall be immediately reported to the LLS and preserved. I understand that I must identify other employees with potentially relevant records, documents and ESI. I understand that I have an ongoing duty to preserve relevant information. I understand I am responsible for providing hard copies of documents and records to the division commander or designee to be preserved at the division. ESI shall be maintained wherever stored (hard drive, network, thumb drive, etc.). I understand that failure to preserve relevant records, documents, or EIS shall be grounds for discipline, up to and including dismissal from employment, as specified in Office Policy GC-17, *Employee Disciplinary Procedures*.

Employee Signature/Serial Number _____

(Required)

Date _____

(Required)

Attachment B

Document Production Acknowledgment

Production Subject Name, LLS #

[Date]

Employee Name _____

Employee Serial Number _____

Division/Section _____

Date of Receipt of Document Production Notice _____

Definitions:

Records: All books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, including prints or copies of such items produced or reproduced on film or electronic media, made or received by any governmental agency pursuant to law or in connection with the transaction of public business and preserved, or appropriate for preservation, by the 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 and historical value of data contained in the record, and includes records that are made confidential by statute.

Documents: Recorded forms of information to include paper, electronic, audio and video recordings, computer-based records, e-records/digital records, and any other form of information. Examples of documents (whether in electronic or hard copy or handwritten) include, but are not limited to, letters, correspondence, memoranda, reports, tabulations, calculations, invoices, vouchers, ledgers, journals, external and internal literature, books, notes, schedules, worksheets, plans, minutes, bulletins, brochures, catalogs, notices, press releases, transcripts, body-worn camera recordings, calendars, diaries, charts, and forecasts. This is not limited to formal or final documents.

Electronically Stored Information (ESI): Information that is created, manipulated, communicated, stored, and best utilized in digital form, requiring the use of computer hardware and software. ESI may be stored on and retrieved from many sources, including: computer hard drives, network servers, flash (USB) drives, databases, cloud storage, mobile devices, such as mobile phones and tablet computers, which may include County-issued mobile devices and personal devices, and social media websites. Common examples of ESI include word processing documents, spreadsheets, digital photographs, videos, e-mails and their attachments, text and instant messages, call logs, voicemails, and databases.

Questions 1 and 2 are mandatory.

1. Steps Taken to Search for Records/Documents/ESI:

The following steps were taken to complete a search of all of my physical and electronic records, documents, and ESI that may be responsive to the Document Production Notice: *For example: I reviewed the applicable IR and video to determine if other records are maintained; I reviewed all my documents regarding this topic to include supervisor notes, Blue Team entries, and memorandums; I searched my email using key terms (listing what the key terms were).*

2. Document Production:

I do not have records, documents and/or ESI relevant to the Document Production Notice. If this box is selected, you are also required to complete Question 7 and the Acknowledgment.

I do have records, documents and/or ESI relevant to Documents Production Notice. If this box is selected, you are required to complete all remaining questions and the Acknowledgment.

3. Records/Documents/ESI to be Produced:

After a search, I have provided relevant records, documents, and ESI as follows (list all): *For example: memo written by Name, Serial Number on mmddyy; personal notes regarding Incident Report YY-123456; inmate request from inmate Name, Booking Number dated mmddyy; digital camera asset #45678.*

4. After a search, I have provided copies of the files under my control which have potentially relevant information and are as follows (list all): *For example: one DVD containing jail security videos 1 through 25,*

5. I provided the following potentially relevant records that were maintained on a personal device. This does not include Office-issued devices or Office email maintained on my Office 365/Outlook account. *For example, 16GB personal thumb drive; personal smartphone (602)-555-5555; emails sent to personal email account; and work product created or stored on personal computer/laptop.*

6. I anticipate receiving the following records, documents, or ESI in the future, as follows (list all): *For example: future housing rosters/telephone logs/visitation logs; Incident Supplements from Officer Names, Serial Numbers.*

7. Other Office employees who may have potentially relevant records are as follows (list all by name, rank, and serial number, if known):

(Additional pages may be attached as needed)

Acknowledgment:

I understand that I have received a Document Production Notice, and that I must complete the Acknowledgment and return it to the Legal Liaison Section within 10 business days, along with copies of all relevant records, documents, or ESI. I understand I shall notify my chain of command when I have provided the information to the LLS. If I am not physically able to produce any portion of the relevant records, documents, or ESI, within 10 business days, I must provide to the LLS a reason I am not able to produce the information and projected date when I will be able to produce the information. I understand that failure to provide copies of all relevant records, documents, or ESI shall be grounds

**Policy GD-9, *Litigation Initiation, Document Preservation,
and Document Production Notices***

Effective Date: 10-26-23

for discipline, up to and including dismissal from employment, as specified in Office Policy GC-17, *Employee Disciplinary Procedures*.

Employee Signature/Serial Number _____

(Required)

Date _____

(Required)