

Summary of Changes
to
Procedure 200.1-3
Processing Litigation Requests

Revised Version Issued as P 200.1-3C

LM Procedure 200.1-3B, Processing Litigation Requests of 10/24/07, has undergone revisions. The revised procedure includes updated definitions, a reference to Vaughn indexes, and minor formatting adjustments. Please replace LM Procedure 200.1-3B with LM Procedure 200.1-3C.

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U.S. Department of Energy Office of Legacy Management



Procedure: 200.1-3C

Effective: 1/26/09

SUBJECT: PROCESSING LITIGATION REQUESTS

1. PURPOSE. To provide the processing steps necessary to respond to subpoenas and discovery requests for records under the custodianship of the Office of Legacy Management (LM).
2. CANCELLATION. Procedure 200.1-3B, Processing Litigation Requests, dated 10/24/07
3. REFERENCES.
 - a. 10 Code of Federal Regulations (CFR) 1004, Freedom of Information, [U.S. Department of Energy] DOE Guidance
 - b. 10 CFR 1008, Records Maintained on Individuals (Privacy Act), DOE Guidance
 - c. 36 CFR Chapter XII, Subchapter B, Records Management
 - d. DOE Order 243.1, Records Management Program
 - e. DOE Guide 1324.5B, Implementation Guide for 36 CFR Chapter XII – Subchapter B, Records Management
 - f. LM Procedure 200.4, Records Management

4. DEFINITIONS.

- a. Discovery -- Pre-trial device that can be used by one party to obtain facts and information about the case from the other party in order to assist the party's preparation for trial.
- b. Electronic Recordkeeping System (ERKS) -- An electronic information system in which records are collected, organized, and categorized to facilitate their preservation, retrieval, use, and disposition. An ERKS is certified according to Department of Defense (DoD) 5015.02-STD to ensure the records it maintains have sufficient authenticity and reliability to meet the agency's recordkeeping requirements.
- c. LM Personnel -- Federal employees and contractor personnel associated with LM.
- d. Litigation File -- Collection of responsive documents related to a request for information relating to a legal proceeding.
- e. Litigation Point of Contact (POC) -- Individual designated by the Program Records Officer to oversee litigation-related requests.
- f. Office of General Counsel (GC) -- DOE organization responsible for providing legal advice, counsel, and support to the DOE Secretary, Deputy Secretary, and all Departmental elements, except the National Nuclear Security Administration and the Federal Energy Regulatory Commission, and for effectively representing the Department as counsel before Federal, state, and other governmental agencies and courts. GC assures that DOE operates in compliance with all pertinent laws and regulations.
- g. Program Records Official (PRO) -- Individual who ensures that all LM records management practices are properly executed.
- h. Records -- All books, papers, maps, photographs, machine readable materials, 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.
- i. Records Freeze -- A formal notification issued by an agency's central office and instructing appropriate personnel to hold any temporary records relating to a litigation, investigation, or audit. Frozen records, even if they have reached their scheduled disposition period, cannot be destroyed until the freeze is lifted.
- j. Records Liaison Officer (RLO) -- Individual(s) designated by the PRO to oversee the LM records management program in cooperation with the DOE Records Officer.

- k. Records Management Support Staff -- Personnel who provide support and tracking of requests by searching for responsive documents, maintaining request files, and preparing response packages.
- l. Responsible Organization -- Entity having custodianship of the responsive documents or information needed to respond to a request.
- m. Review -- The process of examining documents located in response to a commercial use request to determine whether any portion of any document located is permitted to be withheld.
- n. Subpoena -- A command to appear at a certain time and place to give testimony upon a certain matter. A subpoena for documents (duces tecum) requires production of records, documents, or other information.
- o. Vaughn Index -- An itemization of responsive documents withheld along with an assertion of the privilege or privileges claimed for each document. A Vaughn index includes the following elements: (1) a listing of each document withheld; (2) the statutory exemption claimed for each; and (3) an explanation as to how disclosure would damage the interests protected by the claimed exemption. The information may be presented in one discrete document or in a combination of documents.

5. QUALITY CONTROL. The RLO shall review this procedure annually or as necessary to accommodate changing conditions within LM and to ensure compliance with applicable laws, regulations, and DOE requirements.

6. RESPONSIBILITIES.

- a. GC:
 - Provides guidance to LM concerning response to litigation-related requests. The GC may advise LM personnel concerning the types of information needed to respond properly to a request and may provide a response deadline.
 - Notifies LM representatives of requirements to preserve records potentially related to a litigation or investigation.
- b. The Litigation POC is responsible for:
 - Providing oversight for all litigation-related requests LM receives.
 - Setting a response schedule for each request and ensuring timely response.
 - Analyzing documentation to verify that information in each response package is complete.

- Ensuring the request is tracked.
- c. The Records Management Support Staff is responsible for:
- Performing searches using appropriate finding aids for responsive documents and information.
 - Supporting responsive document search and response activities for litigation-related requests, including copying requests, maintaining request files, and preparing response packages.

7. TRAINING REQUIREMENTS. Personnel responding to litigation requests shall be cognizant of applicable portions of this procedure.

8. DOCUMENT CONTROL. None

9. PROCEDURE.

The procedural steps in this section provide LM personnel handling litigation requests with instructions for responding to a subpoena or discovery request. The steps are designed to help ensure personnel respond with the proper information within the timeframe specified.

Attachment A. illustrates the processes for handling litigation requests.

a. The Litigation POC:

- (1) Reviews the request for information received from GC.
- (2) Informs records and information technology (IT) management and other appropriate LM personnel of any records freeze notices issued by GC. The Litigation POC ensures that freeze-related requirements are enforced until the freeze is lifted.
- (3) Completes a certification upon request. The Litigation POC forwards the document to GC. See Attachment B. for a certification example.
- (4) Identifies the responsible organization and forwards the request to the responsible organization's Records Management Support Staff or other departmental personnel serving as custodian of potentially responsive documents. The Litigation POC includes a response deadline in the request and any necessary instructions for the Records Management Support Staff concerning search and retrieval or the special review, packaging, or indexing of responsive documents.

- b. The Records Management Support Staff:
- (1) Searches for and retrieves responsive documents using the appropriate finding aids. Documents may be contained in both active and inactive collections.
 - (2) Notifies the Litigation POC in writing if responsive documents cannot be supplied within the period specified. This notification should include a summary of efforts to date to locate the responsive documents and an estimate of when the Records Management Support Staff will supply the response package.
 - (3) Coordinates any special reviews of the responsive documents as instructed by the Litigation POC.
 - (4) Copies responsive documents, following any special instructions provided by the Litigation POC. The Records Management Support Staff takes care not to include documents with no information relevant to the request or duplicate documents unless those duplicate documents contain relevant handwritten notes.
 - (5) Assembles the responsive documents into a package according to instructions provided by the Litigation POC and prepares a response transmittal letter. Response instructions may specify the number of hard copy packages or may specify an electronic format (e.g., e-mail attachment, compact disc). The instructions may also specify the creation of a Vaughn index or related special indexing requirements.
 - (6) Places a copy of the responsive documents in the litigation file.
 - (7) Sends the response package to the Litigation POC.
 - (8) Returns any original documents to the appropriate custodians.
- c. The Litigation POC:
- (1) Signs the response package after reviewing it for completeness. The Litigation POC works with the Records Management Support Staff if response package revisions are necessary.
 - (2) Forwards the response package to the requestor.
 - (3) Completes a certification documenting that an appropriate records search was conducted, as required. The Litigation POC forwards the document to GC. See Attachment B. for a certification example.

10. ATTACHMENTS.

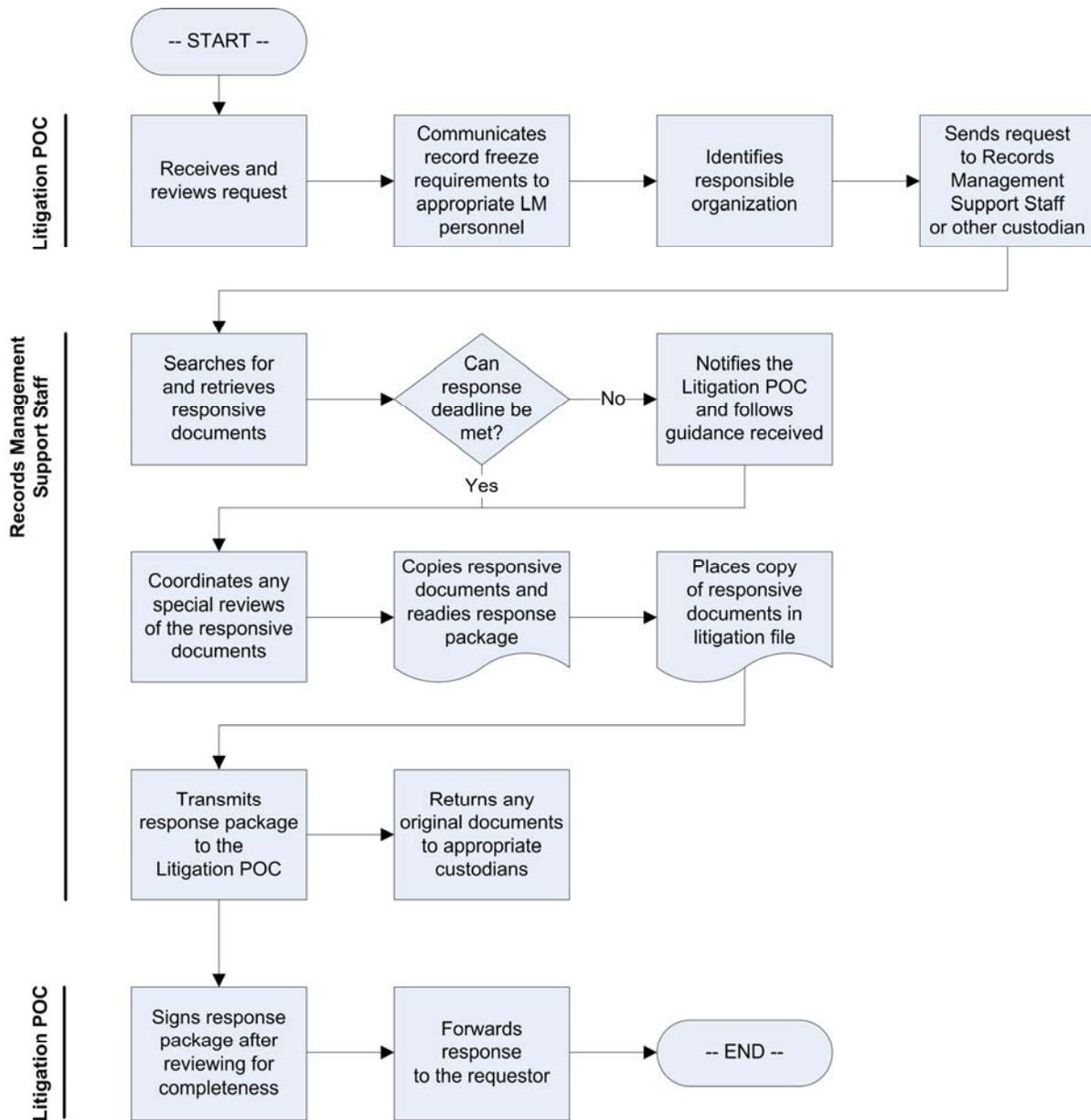
- a. Attachment A. – Litigation Request Flowchart
- b. Attachment B. – Certification Example

Approved: Original signed by Barbara McNeal 1/26/09
Director
Office of Business Operations

Distribution: As required

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Attachment A. – Litigation Request Flowchart



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Attachment B. – Certification Example



U.S. Department of Energy Office of Legacy Management

Certification



Subject: Identification and preservation of documents, other materials, and electronically stored information (ESI) potentially relevant to *[litigation reference]*.

I hereby certify the following:

1. I am the *[title]* for the U.S. Department of Energy Office (DOE) of Legacy Management (LM), in *[location]*.
2. In response to the subject notice, I am directly responsible for the following:
 - a. Reviewing all searches for potentially responsive documents and other materials in the possession, custody, or control of LM, including electronically stored information and e-mails related to the subject request;
 - b. Taking the appropriate steps to ensure the preservation of responsive information in LM's possession, custody, or control.
3. Comprehensive searches were performed on information under the custody of LM and responsive information was identified at the LM *[location]* office, at the Federal Records Center, and in the custody of the LM Project Manager in the LM Washington, DC, office. Search results are attached.
4. All potentially responsive information will be preserved indefinitely. A records freeze has been placed on all potentially responsive records. Responsive ESI documents, e-mails, and images identified by LM on dedicated or shared computer systems have been placed on CD or DVD and will be preserved indefinitely.

I, _____, understood, responded to, and complied with the request to the best of my ability. To the best of my knowledge, information, and belief, the searches conducted under my overall coordination and direction were thorough and complete.

I hereby certify under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge, information, and belief. Executed on *[date]*.

(Signature)