



Changing Lives...Building Communities

**Title of Policy:** Preservation and Production of Electronic Records

---

Applies to (check all that apply):

Faculty \_\_\_\_\_ Staff \_\_\_\_\_ Students \_\_\_\_\_  
Division/Department \_\_\_\_\_ College X

Topic/Issue:

This policy enforces appropriate measures for preserving and producing electronic information that may be deemed essential in litigation proceedings.

State/Federal Regulatory Requirements (cite if applicable):

This policy is in compliance with the Federal Rules of Civil Procedure (FRCP): Rules 16, 26, 33, 34 & 37, and 45; the Suggested Protocol for Discovery of Electronically Stored Information in the United States District Court of Maryland, and the Maryland State Archives.

For more information, please refer to the following websites:

- <http://www.mdd.uscourts.gov/news/news/ESIProtocol.pdf>
- [http://www.uscourts.gov/rules/EDiscovery\\_w\\_Notes.pdf](http://www.uscourts.gov/rules/EDiscovery_w_Notes.pdf)
- <http://www.msa.md.gov/msa/intromsa/html/reg04.html>

Policy Language:

It is the policy of BCCC to preserve and produce electronic information to support litigation proceedings, and to ensure appropriate handling of electronic documents for the purpose of litigation search and discovery. Electronic information includes traditional documents stored on electronic media, as well as, unstructured documents such as email, instant messages (IM), SMS text messages, Word documents, spread sheets, presentations, etc.

**Proposed Implementation Date:** October 31, 2009

**Approved by Board of Trustees:** October 27, 2009

**Originator/Division:** Computer Information Technology Services

***\*This policy once approved by the Board of Trustees supersedes all other policies.***



**Title of Procedure:** Preservation and Production of Electronic Records

---

Applies to (check all that apply):

Faculty \_\_\_\_\_ Staff \_\_\_\_\_ Students \_\_\_\_\_  
Division/Department \_\_\_\_\_ College  X

Topic/Issue:

This standard operating procedure provides pertinent information and appropriate steps for preserving and producing electronic records to support litigation proceedings.

State/Federal Regulatory Requirements (cite if applicable):

This standard operating procedure is in compliance with the Federal Rules of Civil Procedure (FRCP): Rules 16, 26, 33, 34 & 37, and 45; the Suggested Protocol for Discovery of Electronically Stored Information in the United States District Court of Maryland, and the Maryland State Archives.

For more information, please refer to the following websites:

- <http://www.mdd.uscourts.gov/news/news/ESIProtocol.pdf>
- [http://www.uscourts.gov/rules/EDiscovery\\_w\\_Notes.pdf](http://www.uscourts.gov/rules/EDiscovery_w_Notes.pdf)
- <http://www.msa.md.gov/msa/intromsa/html/reg04.html>

Procedure Language:

It is the procedure of BCCC to protect, preserve, and produce electronic records for the purpose of legal proceedings, pending or anticipated.

A. INTRODUCTION

Court decisions and rules now place substantial obligations on both public and private institutions to: (a) preserve all electronic records that could be relevant in lawsuits and (b) retrieve and produce such records in the course of such litigations. Therefore, Baltimore City Community College complies with the above-mentioned obligations and realizes that failing to meet these obligations may cause the college and the individuals involved to be subject to sanctions and liabilities.

The scope of the preservation and production of electronic records is broad. It applies to all business related electronic information that is stored on the college's workstations, laptops, PDAs, servers, and cell phones. Specific information includes all forms of electronic communications and records such as email, word processing, calendars, voice messages, videos, photographs, and other digital information.

BCCC and its attorney(s) reserve the right to protect legally privileged information, which has been preserved, from being disclosed to the opposing party, unless deemed so by law.

The rules concerning preservation of hard copies of records have not changed. All printed documents under the control of individuals must also be preserved. Also, the new rules do not require that BCCC change any general records retention policies.

## **B. PRESERVATION OF RECORDS**

When a lawsuit is anticipated, BCCC is responsible for taking exceptional precaution to prevent the loss of potentially relevant electronic information. Unless circumstances require a different approach, the following protocol will be followed to comply with the rules, laws, and standards for preserving electronic records.

### **1 Litigation Hold**

When a lawsuit is reasonably anticipated against BCCC, the College's attorney issues a "Litigation Hold" to the Computer Information Technology Services Department (CITS) and individuals presumed to have relevant data. A litigation hold typically includes:

- a. Instructions to preserve relevant electronic records and general information. This may include directing individuals and CITS to avoid any centralized, automatic destruction, or alteration of such records.
- b. Identification of the categories of information to be preserved.
- c. Contact information for the attorney and any other contacts that may be necessary.

### **2. Duties of Persons receiving a Litigation Hold**

Receipt of a litigation hold does not necessarily mean the recipient is directly involved in the matter. Rather, it means the evidence which BCCC is obligated to preserve may be in the person's possession or scope of responsibility and that the person, as an employee of the college, has a duty to preserve such

information effective upon receipt of the litigation hold. Specifically, the person must:

- a. Suspend any college policies or procedures that might call for the routine destruction of electronic records under the recipient's control.
- b. Discontinue personal practices regarding the destruction of electronic records. For example, the deletion of possibly relevant emails, voice mails, documents, and any other pertinent record(s) must be suspended.
- c. Disable any "clean-up" functions, such as the automatic deletion of emails or other electronic records. CITS should be immediately contacted if assistance is required to disable such functions.
- d. Protect and preserve all electronic records in their original electronic form, so that all information is available for inspection.
- e. Protect and preserve any hard-copies of electronic records.
- f. Protect and preserve any new information that is generated or received that may be relevant to the litigation proceedings after receipt of a litigation hold.
- g. Advise the designated attorney of any personal information that may potentially be affected by the litigation hold.
- h. Follow all instructions in the litigation hold.
- i. Consult with the attorney or primary contact person (if designated) regarding any questions involving electronic records.
- j. Submit a report to the attorney or primary contact person (if designated) of all actions that have been taken pursuant to the litigation hold.

### **3. Concluding Preservation Responsibilities**

When the litigation or the threat of litigation, which prompted the litigation hold has ended, the person who initially issued the litigation hold (attorney) will inform the individual(s) who received the notice that they are no longer under any special obligation to preserve the identified categories of materials. At that point, only the college's normal retention schedules will apply to the records. However, if the litigation proceeding advances and a lawsuit is filed, an electronic discovery committee will be formed to facilitate production or discovery of the information that has been preserved.

## C. ELECTRONIC DISCOVERY COMMITTEE

In order to be in compliance with the Federal Rules of Civil Procedure (FRCP), the State of Maryland, Standards for Records Preservation, and the Maryland State Archives, BCCC uses an Electronic Discovery Committee which is comprised of representatives from the:

- Attorney General's Office
- Computer Information Technology Services
- Other Division/Department Executive (based on area of interest)

The Electronic Discovery Committee serves as a resource to help assure that BCCC's approach to protecting, preserving, and producing electronic records is consistent and in compliance with applicable laws and the college's policy. This body may appoint a primary contact(s) to work with the area(s) of interest and gather relevant information for the College's attorney(s).

## D. PRODUCTION OF ELECTRONIC RECORDS FOR DISCOVERY

In most cases, any need to retrieve preserved electronic records will come weeks or months after the preservation has occurred. If a lawsuit has been filed, BCCC will receive a request from an opposing party for the production or "discovery" of electronic records. The Electronic Discovery Committee will determine the best approach to take in order to efficiently produce a complete and accurate response. The response may consist of any or all of the following: (1) supplying the requested information, (2) attempting to obtain a modification of the request, such as narrowing the scope of the request or obtaining agreement as to specific search terms, and (3) declining to provide some or all of the requested information based upon expense of production, or other basis.

### 1. Options for Records Production

Whether some or all of the requested records must be retrieved, reviewed, and potentially disclosed, the following options should be considered to select the best approach to the specific request:

- a. ***Relying on the Computer User:*** In many instances, it is reasonable and sufficient to simply ask the computer user to identify, copy, and provide potential electronic records, and to certify that the appropriate steps will be performed in a timely manner. In this instance, the production of electronic records resembles the typical production of physical documents.
- b. ***Enlisting Technical Support:*** In some instances, the user may be limited based on time, skills, or their ability to identify the varying number of records required, and therefore, they may need a member

of the CITS staff to provide technical expertise in producing the electronic documents. CITS staff has extensive knowledge, skills, and tools for searching and extracting large volumes of electronic records.

- c. **Using Outside Consultants:** Where identification or recovery of records requires technical expertise beyond that readily available from internal resources, an outside contractor may be called upon to render some or all of the work.

## 2. Factors to Consider in Records Production:

- a. **Thoroughness:** The approach in a specific case needs to be reasonably calculated in order to gather all potentially relevant records.
- b. **Operational Efficiencies:** The activities required should be operationally efficient to ensure timely preservation and processing of the data.
- c. **Individual Privacy:** The processes implemented to respond to electronic discovery should take into account personal and privacy concerns.
- d. **Risk of Data Loss:** Reasonable steps will be needed to protect data from loss through inadvertent or intentional deletion of files, or loss of data storage media.
- e. **Individual Disruption:** Supervisors should take into account the significant impact, in terms of time and distraction, for individuals named in a lawsuit or asked to retrieve records for a lawsuit.
- f. **Procedural Consistency:** While the appropriateness of some procedures may vary depending on the circumstances of the case, once a process has been established, it should be consistently followed and executed.

## 3. Post-Production Review

As potential electronic records are gathered, BCCC's attorney(s) will review the retrieved records for legal relevance and privilege or other protected status, and will handle all formal and informal responses to the discovery request(s).

## 4. Post-Production Duties

The duty to preserve and produce electronic records for a lawsuit does not end with an initial production of records. Relevant information and records generated

after the Litigation Hold must be preserved for future retrieval as the lawsuit progresses.

## E. BCCC's ELECTRONIC RECORDS SYSTEMS

### 1. Email Infrastructure

Although BCCC has two campuses and a few off-site locations, the college operates a centralized email server for approximately 800 faculty and staff accounts, inclusive of fulltime and part-time personnel. Faculty and staff have the convenience of sending and receiving email messages from all administrative computers, and from Outlook Web Access (OWA) on all active college computers, including labs. Also, the college operates a separate email server for students. The college serves approximately 6,000 students per semester.

### 2. Other Email Storage Options

Although email comes into BCCC's centralized email server, faculty and staff have the option of storing their messages in folders that can reside on their local computers or on a network drive, preferably their home directory - (normally the "F" drive").

### 3. Typical Email Use Patterns

BCCC's faculty and staff handle their email in the following ways:

- a. Centrally, where email inboxes and other folders are kept on a central college server, which is maintained by CITS staff who performs daily backups.
- b. Centrally, then locally, where the email messages can be stored in personal folders that reside on a local computer or on a network drive.
- c. Offsite, where individual email is received or sent to a non-BCCC service provider, such as MSN, Hotmail, or Google.

### 4. Storage of Other Electronic Records

In addition to emails, BCCC's faculty and staff create and use other forms of electronic information such as word-processing documents, spreadsheets, databases, digital images, audio, video, web pages, instant messages, blogs, calendars, and technical drawings. While many records are stored on network servers that the college can monitor, individual users have the capability of copying, moving, and storing electronic information to their desktops and portable devices, such as laptops.

## 5. Disaster Recovery Systems

In an effort to maintain a well-managed data system, BCCC uses tapes, disks, and other storage media to backup the systems' data from all servers. This process is consistent with best practices in IT to enable the systems and its contents to be restored in the event of an emergency. In many cases, the backup process is performed by recycling the storage media within a very short cycle, normally a week; however, there are some exceptions, as some storage media may be shipped to a remote location and saved for many years. For normal preservation purposes, emergency recovery copies of data are not practically accessible and interrupting their storage cycle would be impractical and expensive. Therefore, systems data that has been stored for the purpose of disaster recovery will be considered outside the scope of a Notice of Records Preservation.

## F. NORMAL RECORDS RETENTION

As required by the State of Maryland, Standards for Records Preservation, BCCC's Internal Auditor oversees the college's retention schedules to ensure that college is in compliance with state and federal laws and regulations relating to the preservation and destruction of electronic and paper information.

The Internal Auditor works with the Department of General Services Records Management Division to establish schedules for how long electronic and paper records and information must be retained. The Auditor works with representatives of each division in the college, via the BCCC's Compliance Committee, to develop Records Retention Schedules that identifies records created or received by the college, and specifies how long those records should be retained.

For more information see the Suggested Protocol for Discovery of Electronically Stored Information in the United States District Court for the District of Maryland at: <http://www.mdd.uscourts.gov/news/news/ESIProtocol.pdf> , and the Amendments to the Federal Rules of Civil Procedure: [http://www.uscourts.gov/rules/EDiscovery\\_w\\_Notes.pdf](http://www.uscourts.gov/rules/EDiscovery_w_Notes.pdf)

# Flow Chart

