

Warren County Board of Supervisors

RESOLUTION NO. 482 OF 2014

Resolution introduced by Supervisors Taylor, McDevitt, Frasier, Vanselow, Wood, Brock and Seeber

APPROVING THE WARREN COUNTY POLICY ON PRESERVATION OF INSTITUTIONAL INFORMATION

WHEREAS, the Warren County Attorney is proposing a uniform policy and procedure applicable to all Warren County Officials, Warren County Departments and employees with respect to preservation of institutional information maintained by the County, and

WHEREAS, the policy would be operative whenever the County reasonably anticipates litigation or has direct notice of litigation or the likelihood of litigation and requires the preservation and maintenance of all documents and records that could be considered relevant and material to the potential or actual litigation, now, therefore, be it

RESOLVED, that the Warren County Board of Supervisors hereby approve the Warren County Policy on Preservation of Institutional Information, a copy of which shall be kept on file with the Clerk of the Board of Supervisors, and be it further

RESOLVED, that the policy shall be effective immediately.

WARREN COUNTY POLICY

PRESERVATION OF INSTITUTIONAL INFORMATION

ADOPTED BY RESOLUTION NO. _____ OF 2014

EFFECTIVE DATE: _____, 2014

I. PURPOSE:

The purpose of this policy is to establish a uniform policy and procedure applicable to all Warren County Officials, Warren County Departments and employees with respect to preservation of institutional information maintained by the County. For purposes of this policy, institutional information is generally any document, material or record created by the County, received by the County or maintained by the County whether such institutional information is stored electronically or maintained in a tangible format. Courts have ruled that parties to litigation have an obligation to preserve institutional information and can be sanctioned for failing to do so. This policy institutes safeguards for preservation of institutional information which will ensure the County meets legal requirements to preserve institutional information.

II. APPLICATION/PROCESS/RESPONSIBILITIES:

Upon the effective date of this policy each County Official, Department Head or employee who is notified of litigation either directly or through the County Attorney shall preserve and maintain relevant or material information. The failure to comply with this policy could result in serious adverse consequences to the County.

This policy becomes operative when the County reasonably anticipates litigation or has been notified of the likelihood or probability of a legal proceeding against the County through a Notice of Claim, Summons and Complaint, Notice of Petition, Petition, any other means of notifying or instituting legal proceedings and any administrative proceeding involving the County or any legal proceeding commenced by the County (collectively "litigation"). This policy requires the preservation of all institutional information which may be considered material, admissible or relevant in litigation, which may be stored in County's computer systems, removable electronic media or stored at other locations and any and all tangible institutional information.

This policy shall not be viewed as superceding or replacing applicable New York State

Records Retention Laws or regulations applicable to public entities, the Freedom of Information, Warren County Policy and Rules regarding retention, archiving and storing of County records or any other applicable federal or state laws or regulations. However, when litigation is reasonably anticipated or when the likelihood or probability of litigation has been identified, the County's routine document retention/destruction policy shall be placed on hold to ensure the preservation of relevant documents.

Typically, the County Attorney receives or issues direct notice of litigation. Upon review of the litigation documents the County Attorney will notify all potential Departments within Warren County that may be involved in the litigation or have an interest in the litigation. In all instances, notification of the litigation by the County Attorney will include notification to the County's Information Technology Department ("IT Department"). Whenever a County Official or Department Head is notified of litigation before the County Attorney notifies the County Official or Department Head of litigation, the County Official or Department Head shall immediately notify the County Attorney and present copies of all papers received or served to the County Attorney. In all instances, the County Attorney will review this policy with County Officials or Department Heads to ensure its proper application.

It will be the responsibility of the County Official or Department Head to share this policy with employees within the Department who may possess institutional information particular to the litigation. Moreover, the County Official or Department Head is responsible for informing and reminding employees within their Department of the need to comply with this policy.

Questions concerning the application or interpretation of this policy shall be referred to the County Attorney. Upon completion of such referral, the County Attorney shall furnish the County Official or Department Head an opinion and any recommendations associated therewith. Notwithstanding the foregoing, where there is uncertainty whether a document or record constitutes institutional information, the uncertainty shall be resolved in favor of preservation of the document or information.

III. PRESERVATION OBLIGATIONS:

- A. General: Each County Official, Department Head or employee (sometimes referred to herein as "You") shall comply with the following institutional information

preservation objectives:

- Maintain and preserve all relevant tangible and/or hard documents, materials and information;
- Discontinue all data destruction and backup tape recycling policies or practices that could affect relevant information;
- Preserve (do not dispose of) relevant hardware unless an exact replica of the file (a mirror image) is made;
- Maintain all other pertinent information and tools needed to access, review, and reconstruct all requested or potentially relevant electronic data.

B. Electronic Files: You have an obligation to preserve all digital or analog electronic files in electronic format, regardless of whether hard copies of the information also exists. This includes preserving:

- Active data (i.e., data immediately and easily accessible on the County's systems today);
- Archived data (i.e., data residing on backup tapes or other storage media);
- Deleted data (i.e., data that has been deleted from a computer hard drive but is recovered through computer forensic techniques);
- Legacy data (i.e., data created on old or obsolete hardware or software);
- Word-processed files, including drafts and revisions;
- Spreadsheets, including drafts and revisions;
- Databases;
- CAD (computer-aided design) files, including drafts and revisions;
- Presentation data or slide shows produced by presentation software (such as Microsoft PowerPoint);
- Graphs, charts, and other data produced by project management

software (such as Microsoft Project);

- Animations, images, audio, video, and audiovisual recordings, MP3 players, and voicemails files;
 - Data generated by calendaring, task management, and personal information management (PIM) software (such as Microsoft Outlook or Lotus Notes);
 - Data created with the use of personal data assistants (PDAs), such as Blackberry, Treo, PalmPilot, HP Jornada, Cassiopeia, or other Windows CE-based, smart phones, tablets or any other Pocket PC devices;
 - Data created with the use of document management software;
 - Data created with the use of paper and electronic mail logging and routing software;
 - Magnetic, optical, or other storage media, including the hard drives or floppy disks used by County computers;
 - Backup media (i.e., other hard drives, backup tapes, floppies, Jaz cartridges, CD-ROMs) and the software necessary to reconstruct the data contained on the media; and
 - Archived media should be preserved by creating a mirror image copy of any media no longer in service but potentially related to the litigation.
- C. Emails: You have an obligation to preserve all potentially relevant internal and external emails that were sent or received. Email must be preserved in electronic format, regardless of whether hard copies of the information exist. Discontinue any automatic deletion of e-mails.
- D. Internet Web Activity: You have an obligation to preserve all potentially relevant records of internet and Web-browser generated files in electronic format, regardless of whether hard copies of the information exists. This includes Internet and Web-browser generated history files, caches, and “cookies” files stored on backup media.

IV. HARDWARE:

The County has an obligation to preserve all electronic processing systems that may contain relevant information, even if they are replaced. This includes computer servers, stand-alone personal computers, hard drives, laptops, PDAs, and other electronic processing devices. To the extent practicable, the County will retain copies of any hardware no longer in service.

V. RECORDS/DOCUMENTS:

This policy does not require the creation of any summaries or new documents relating to litigation in any way. Therefore, you should not create any summaries or new documents unless directed to do so by the County Attorney. For example, do not make any notes to yourself or anyone else regarding the litigation.

VI. QUESTIONS:

If this policy in any respect is unclear or if you have any questions concerning this policy, please contact the County Attorney immediately.

Thank you for your cooperation.