



REED COLLEGE
eDISCOVERY GUIDELINES
FOR
PRESERVATION AND COLLECTION
OF ELECTRONIC RECORDS

Revised 03/04/2020

© 2018 by Reed College. Reed gratefully acknowledges draft wording on eDiscovery procedures developed by the University of Washington. Reed College is solely responsible for the content of the guidelines found herein.

Introduction - Court decisions regarding eDiscovery rules place substantial obligations on organizations to preserve all electronic and paper materials that could be relevant to anticipated or actual lawsuits and to collect and produce such materials during litigation proceedings. These obligations apply to Reed College. Failure to meet them may subject the college and the individuals involved to sanctions and liability.

The scope of these preservation and disclosure duties applies to business-related digital materials wherever they are stored – on a desktop computer, on a mobile device, in the cloud and under certain circumstances at an employee’s home. Information that is potentially relevant may include email, word processing documents, calendars, voice messages, text messages, images, videos, and other types of digital information.

Although legal duties require that information relevant to a matter must be preserved, the information will not be disclosed to opposing counsel without first being reviewed by Reed’s legal counsel to ensure that legally privileged information is protected.

While these guidelines focus on preservation of digital materials, equally strong obligations apply to paper materials or materials stored in any other medium.

Preservation of Digital Materials - When a lawsuit is filed – or reasonably anticipated – the college has a duty to take specific measures to prevent the loss or alteration of potentially-relevant electronic data. These measures include:

- identifying all materials relevant to the matter;
- identifying the custodians (individuals and offices) of those materials;
- identifying the media and methods by which those materials are stored;
- suspending any regular deletion processes relevant to those materials;
- preventing alteration of the contents or metadata of those materials;
- securing those materials against unauthorized access and accidental loss.

Specific measures for preserving digital materials depend on the nature of the storage media (i.e., desktop computers, mobile devices, cloud services, etc.) and must be determined on a case by case basis by CIS staff in consultation with legal counsel and data custodians.

Some digital materials will be preserved by CIS staff. The preservation of other materials are the responsibility of individuals or administrative offices. Discussion of materials that fall into each of these categories is provided below.

Collection of digital materials – In the event that a case proceeds to litigation, it may be necessary to *collect* and turn over preserved electronic and paper records. However, such a requirement will come weeks or months after preservation has occurred. When the college receives a request from opposing counsel to turn over electronic and paper records, college counsel will determine the best approach to achieve a complete and accurate response.

Steps to be taken by the Vice President/Treasurer - The Vice President/Treasurer's Office is responsible for overseeing all measures related to eDiscovery. When legal action is initiated or reasonably anticipated, the Vice President/Treasurer, in consultation with legal counsel, will:

1. determine the parameters (timeframe and data categories) of digital materials subject to preservation;
2. work with CIS to identify the offices and individuals responsible for preserving these materials;
3. identify a point person in each office to serve as contact for the matter;
4. issue a *preservation notice* to individuals and/or offices with a list of materials to be preserved;
5. record compliance with the preservation notice, noting any problems.

Steps to be taken by CIS - When the Vice President/Treasurer notifies the CIO of litigation or anticipated litigation, the CIO and relevant CIS staff will:

1. review the parameters (timeframe and data categories) of digital materials subject to preservation;
2. work with the Vice President/Treasurer to identify the offices and individuals responsible for preserving these materials;
3. identify the means and media (hardware, software, online services) by which these materials are stored;
4. determine the list of materials to be preserved by CIS and the list of materials to be preserved by individuals and administrative offices;
5. immediately halt any deletion processes of systems controlled by CIS that could affect relevant materials;
6. assist individuals and administrative offices with preservation processes;
7. record and report preservation compliance to the Vice President/Treasurer.

Steps to be taken by Preservation Notice Recipients - Receipt of a preservation notice does not necessarily mean the recipient is directly involved in the matter. Rather, it means the evidence which the college is obliged 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 immediately. When an individual or an administrative office receives a preservation notice letter from the Vice President/Treasurer, it is necessary to:

1. review the letter and the list of preservation materials to confirm that the digital materials are within one's purview (and identify any materials that are not);
2. immediately halt any standard deletion processes that could affect items in the preservation list (consulting with CIS for assistance as needed);
3. take appropriate steps to preserve the specified digital materials without altering them in any way (consulting with CIS for assistance as needed);
4. notify CIS of any potentially relevant digital materials stored on personally owned devices or personal cloud service accounts;

5. remit copies of any specified digital materials being preserved on personally owned devices or personal cloud services to the college;
6. preserve any paper copies of relevant materials, regardless of whether or not they are also in digital form and if these paper materials are not currently contained within a records repository managed by the college, they must be turned over to the college for the duration of the hold, to be returned when the hold is lifted;
7. preserve any new digital materials that are generated or received after receipt of the preservation notice that may be relevant to the case;
8. report preservation compliance status to the Vice President/Treasurer's Office using the form enclosed with the Preservation Notice..

Ending Preservation Responsibilities - When the litigation or the threat of litigation has ended, the Vice President/Treasurer will inform those who received the preservation notice that they are no longer under any special obligations to preserve the identified materials. At that point, the college's normal retention and deletion schedules will apply to those materials unless otherwise directed. Personal materials (papers and removable media) collected during the preservation notice period that fall outside the college's records management purview will be returned to the individual. Copies of digital materials collected from individuals during the preservation notice period will be destroyed.

Division of Materials Preservation Responsibility Between CIS and Users - When a preservation notice is issued, some categories of materials will be preserved by CIS staff, some categories by individuals and/or administrative offices, and some will need to be decided on an ad hoc basis by consultation between CIS and individuals or administrative offices.

Digital materials sources for which CIS staff are responsible include:

- | | |
|--|--|
| <input type="checkbox"/> Crashplan user file backups | <input type="checkbox"/> SASSI |
| <input type="checkbox"/> CMSs | <input type="checkbox"/> Title IX database |
| <input type="checkbox"/> G Suite Core Apps (Gmail, Drive, Hangouts Chat) | |

Digital materials sources that may fall either to individuals, offices, or CIS staff, depending upon circumstances, include:

- | | |
|--|--|
| <input type="checkbox"/> AFS | <input type="checkbox"/> Administrative Fileshares |
| <input type="checkbox"/> Banner | <input type="checkbox"/> Moodle |
| <input type="checkbox"/> Document Mgt. (Nolij/eTrieve) | |
-

Digital materials sources that fall to individuals or offices include (liaisons noted):

*All Microsoft Office application files (Word, Excel, etc) stored outside of CIS managed storage.
All G Suite apps other than Gmail, Drive, Calendar and Hangouts Chat (includes additional services such as Voice, YouTube, Blogger, etc.).*

Admission - Kat Buckspan

Slate, Royal, Fire Engine Red, Slack, Basecamp, MailChimp, Evernote, Access, Twitter, Tumblr, Instagram, Facebook, Reddit

Business Office - Rob Tust

TMS, Blackboard, UAS

College Relations Information Systems (CRIS) - Betsy Cooper

EMS, Handshake, Basecamp, Localist, Bluefin, GiveCampus, Guidebook, Facebook, BoardEffect, Switchboard, MailChimp, Request Tracker

Community Safety - Gary Granger

ARMS, Blackboard, Equature, RAVE, Traka, Video Surveillance System

Computing & Information Services - Marty Ringle

Evernote, Filemaker, Slack, Request Tracker, Library H3lp, Facebook, Twitter, Reed Git

Dean of Faculty Office - Jolina Kwong Caputo

Interfolio, Qualtrics, Word

Vice President for Student Life and Student Life Office - Kelsey Wirtzfeld

Filemaker, Evernote, SugarSync, Facebook, Twitter

Disability Services - Theresa Lowrie

AIM

Financial Aid - Kat Buckspan

Slate, PowerPoint

Health & Counseling Center - Timmie Rochon

Medicat, notes on laptops/desktops

Human Resources - Michelle Valintis

Fishfootman, Interfolio, Lawroom, Facebook, LinkedIn

Institutional Diversity - Jessika Chi

DHSM database

Institutional Research - Mike Tamada
Qualtrics, Stata, SASI, AIM

Library - David Isaak
ExLibris, Library H3lp

President's Office - Dawn Thompson
Basecamp, BoardEffect, Dropbox, Localist

Registrar - Nora McLaughlin
Dropbox, Scantron, Facebook

Student and Campus Life - Amy Schuckman
Interfolio, StarRez, Evernote, Wonderlist, Basecamp, Google Chat

Adjudicating Boards - Keith Karoly, Nora McLaughlin
Case files stored in AFS

Personally Owned Devices or Cloud Services

Reed College employees should conduct college business using only those technology resources (hardware, software, and online services) provided by the college.

If a personally owned device or personal cloud service is used to store digital materials potentially relevant to a case, the employee may be asked to provide the college or its legal counsel with access to those materials. Should the employee choose to deny access: (a) a subpoena may be issued directly to the employee to obtain those materials; (b) the college may not be able to include the employee within the scope of its legal defense; and (c) the employee may therefore need to retain separate legal counsel.

During the preservation process, individuals will have the opportunity to indicate whether or not potentially relevant digital materials are stored on personally owned devices or personal cloud services and if they are willing to grant the college access to such materials.

VP Treasurer will download, edit, and distribute to relevant individuals and offices

PRESERVATION NOTICE

Date: <date>

From: Lorraine Arvin, Vice President/Treasurer

cc: Marty Ringle, Chief Information Officer

To: <name(s)>

Re: Preservation of Relevant Digital Materials and Paper Documents in the matter of:
< identifier of the matter e.g., “John Doe case”>

<Optional: Brief statement identifying or providing context for the matter>

This *Preservation Notice* is intended to serve as a reminder of the college’s obligations to preserve potentially relevant paper and electronic documents related to this matter. These obligations are continuing and ongoing. Please note that this is a confidential legal matter that should not be discussed with anyone other than me, <insert other names as appropriate> or Marty Ringle.”

If a claim is filed in this matter, the college may be required to make certain of its paper files and electronically stored information available to our attorneys and the claimant’s attorneys. **It is crucial that you preserve both paper documents and electronically stored information that are potentially relevant to this matter and that are in your custody or control.** The failure to preserve these materials could be detrimental to our position and could result in penalties imposed upon the college and/or you by a court. We require you to take steps to preserve, without alteration, digital materials stored on all devices, media, or cloud services, whether college-provided or personally-owned, that may be relevant to this matter. In addition, you must not destroy or alter any paper documents, such as notes, forms or paper files related to this matter. **At this time, your only obligation is to ensure that any records, documents or information that may be relevant are saved and not altered.** We will follow up as needed with more information as this matter proceeds, including advising you if the college needs to collect additional digital materials or paper documents from you.

It is important that all potentially relevant documents in your possession and in the possession of the college be preserved in the original format if possible. You are required to suspend any scheduled destruction, archiving, or deletion of documents related to this matter until you specifically have been advised that you are authorized to do so. In addition, if you are aware of other documents that may be relevant but which you do not currently have access to, please inform my office.

If you believe that any digital materials related to this matter are stored on your personally-owned devices, personal email, or personal cloud services, please notify this office and the Chief Information Officer so we can advise you of your rights and responsibilities with regard to those materials. **You should preserve those materials and not alter them.**

Since it is early in this matter, it is difficult to determine what information may or may not be relevant. However, at a minimum, you should preserve all paper and electronic materials that you have in your possession, <created or amended during <specify the time period>> that:

- refer to <insert name or list of names> by name, title, or description
- were sent to or from <insert name or list of names>
- relate to any student or employee involved in the matter as an actor, witness, or in another capacity
- relate to any employees in <insert name or list of names>'s department and/or discuss their duties and performance
- relate in any manner to <insert name or list of names>'s performance or termination, including to any event in which <insert name or list of names>'s was investigated, disciplined or counseled <add other matters pertinent to case as needed>.

If you have any doubt as to whether a document might be relevant, preserve it. Do not delete or dispose of it. You should retain the documents in a place where they can be easily located upon request.

Marty Ringle, Reed's Chief Information Officer, has been notified of this preservation notice and is involved in ensuring that electronic records stored on college computing resources are preserved. If you have any questions or need assistance with preserving relevant digital materials, please contact me or Marty.

<As appropriate: Insert name of individual coordinating preservation of paper materials.>

VP Treasurer will distribute this form with each Preservation Notice

THIS DOCUMENT IS PROVIDED UNDER ATTORNEY-CLIENT PRIVILEGE AND SHOULD BE CONSIDERED CONFIDENTIAL

Personally Owned Devices and/or Cloud Services

Reed employees should not use personally-owned devices or cloud service accounts for college business if at all possible. However, there may be times when such use occurs. If you believe that digital materials related to this matter have been stored on your personal devices, personal email account, or personal cloud service(s) please check the appropriate box below, provide requested information as appropriate, sign, and return this form to the Office of the Vice President and Treasurer.

With regard to the matter identified as:

<insert name or description of case>

I believe there may be digital materials relevant to this matter that are stored on one or more of my personally owned devices or personal cloud service accounts and **I grant permission** to the college, its legal counsel, or other representatives to access these devices and/or services as listed below:

I believe there may be digital materials relevant to this matter that are stored on one or more of my personally owned devices or personal cloud service accounts but I **Do Not** grant permission to the college, its legal counsel, or other representatives to access these devices and/or services.

No.	Device or Cloud Service		Location of Use Home, office, travel, all?
1			
2			
3			
4			
5			
6			
7			
8			

Employee Signature and Date _____

VP Treasurer will download and distribute this form with each Preservation Notice

**THIS DOCUMENT IS PROVIDED UNDER ATTORNEY-CLIENT PRIVILEGE AND SHOULD BE
CONSIDERED CONFIDENTIAL**

RECORD OF COMPLIANCE

I was assigned responsibility by Reed College to search for and preserve specified documents related to the matter of

<insert case name or identifying description>

In accordance with instructions, procedures, and directions received from the representative(s) of the Vice President and Treasurer and the Chief Information Officer, I conducted a diligent and good faith search of the electronic and paper files and records within my purview and/or directed others to do the same.

To the best of my knowledge, all existing documents maintained in college or personal files that are responsive to the preservation notice have been provided to the Vice President and Treasurer, the Chief Information Officer, or their appointed representative(s). I am aware of no materials within my purview that are responsive that have not been thus provided, and I have no reason to believe that any such documents exist.

Signature

Date

Printed Name, Title/Office

Files For Which I Was Assigned Preservation Responsibility

<insert description of materials or specific list of documents>

FREQUENTLY ASKED QUESTIONS

What do “electronic discovery” and “records preservation” mean?

“Discovery” is the process by which relevant information is gathered by the parties in a lawsuit. One of the ways a party to a lawsuit can obtain “discovery” of relevant information is by asking other individuals or entities to produce documents. Federal and state courts have long recognized that the term “documents” includes digital materials and that digital materials are thus subject to the same discovery rules as other evidence relevant to a lawsuit. The issue has received substantial national attention, however, because of a series of court rulings resulting in the imposition of huge sanctions on parties for their failure to preserve digital materials and because of amendments to the Federal Rules of Civil Procedure that took effect on December 1, 2006. Upon notice that a lawsuit has been commenced against the College (or a charge filed with an administrative agency), *or if it is reasonably anticipated that a lawsuit may be brought (or a charge filed)*, the college and all of its faculty, staff members, and agents are under a legal duty to preserve all evidence, whether hard copy or electronic, that might be relevant to the dispute.

What digital materials need to be preserved?

Federal and state rules require a party to suspend routine or intentional purging, overwriting, reusing, deleting, or any other destruction of digital materials relevant to a lawsuit or anticipated litigation, wherever they are stored – on college computers, laptops, cell phones or other mobile device, in the cloud, or at an employee’s home. It includes all forms of electronic communications, e.g., email, word processing documents, calendars, voice messages, text messages, spreadsheets, videos or photographs. This electronic information must be preserved so that it can be retrieved – if necessary – at a later time. The information must be preserved in its original electronic form, so that all information contained within it, whether visible or not, is also available for inspection – i.e., it is not always sufficient to make a hard copy of electronic communication.

What will I have to do?

You will be notified of the duty to preserve digital and paper records through a communication called a *preservation notice*. You will then be asked to cooperate with college counsel, the Chief Information Officer, CIS staff, the Human Resources Office, or others to ensure that we identify and preserve all potential sources of relevant materials in your possession or under your control. You may be asked to complete and return a questionnaire identifying all potential sources of digital and paper materials. If so, it is critical that you complete and return the questionnaire without delay. You may also be asked to complete a signed statement confirming that you have completed the required search and retention as requested. Until CIS staff have taken steps to preserve your digital materials, you should be particularly careful not to delete, destroy, purge, overwrite, or otherwise modify existing materials.

Litigation: Actual or “Reasonably Anticipated”

The obligation to preserve digital materials arises most commonly when a lawsuit has already been filed. However, the obligation can also arise when one knows—or should know—that future litigation is “likely.” Determining when facts or circumstances are reasonably likely to lead to litigation requires a case-by-case understanding of the facts and the application of experience and professional judgment by college legal counsel. The mere possibility of litigation does not necessarily mean it should be “reasonably anticipated.” Rather, a duty to preserve is triggered *only* when credible facts and circumstances indicate that a specific, predictable, and identifiable instance of litigation is *likely*.

How long will this go on?

The Vice President/Treasurer or Chief Information Officer will advise you when you are no longer obligated to retain the preserved digital materials. When the duty to preserve evidence ends, the preserved digital materials will be returned to you or destroyed. If at any time you question whether to continue retaining the records, you need to contact the appropriate contact person listed in the preservation notice before destroying or altering any documents.

Do I need to also preserve data on my home computer?

The same rules apply to any computer that stores information potentially relevant to a matter involving the college. Thus, if you use a personally owned computer or personal online service account for college-related business you must preserve relevant digital materials stored in those media.

Can I take personal or sensitive material that isn't relevant to the case off my computer?

You may remove digital materials from your computer (or segregate it from digital materials that will be preserved) if you are absolutely certain that it is unrelated to the claim (e.g., correspondence entirely unrelated to college employees or college business, such as personal income tax returns, your music library, etc.). However, it is difficult at the beginning of a lawsuit to be certain about what might later turn out to be relevant. So you should examine each and every file you are considering deleting – i.e., do not undertake wholesale deletion of digital materials. You may be questioned under oath at a later date by an attorney representing the opposing party about what digital materials you may have destroyed.

I previously deleted something that might be relevant – should I be concerned about that?

The duty to preserve information arises only when there is a reasonable anticipation of litigation. Digital materials deleted before that time pursuant to retention policies, should not create a problem. In some instances, deleted digital materials may be retrieved through archiving systems or other forensic means.

What if I am involved in an ongoing matter relating to the person who is suing the college?

You must preserve any new electronic or paper information generated after receipt of a preservation notice that may be relevant to the case.

Who will be looking at my college data?

This depends on the reason for the preservation notice. If the matter involves a complaint or claim that requires investigation, college counsel and appropriate college staff from Human Resources and perhaps other offices may be reviewing your records in the course of the investigation. In other cases, it may be that no one will initially review your records until and unless there is a lawsuit filed with discovery requests made.

Who decides what data will be turned over to the opposing party?

The college, as owner of the data, will make these decisions based on advice from its attorneys. Before any materials are turned over to the opposing party, the college's attorneys will review them for relevance and confirm they are not otherwise protected or privileged. In some instances, a Court may order the parties to produce records even if they are protected in some way.

What if I don't want to disclose my college data?

The college and its employees have a legal duty to preserve, and subject to the rules governing discovery, turn over electronically stored information as well as paper records. In short, the law does not offer us a choice and it is an expectation of your employment or association with the college to comply. Failure to abide by the law may result in judicially imposed monetary (or other) sanctions against the college and/or you individually. We will take steps to protect your privacy and to ensure that protected/privileged information is not disclosed, but ultimately the Court will be the arbiter of whether sensitive information must be disclosed.

What about student employees or students who serve on bodies such as the Judicial Board (J-Board)?

Student employees and students acting on behalf of the college in roles such as J-Board membership are subject to the same eDiscovery rules as faculty, staff, or other college employees. Special email accounts and data repositories have been established for all Adjudication Boards and should at be used exclusively to conduct the business of those groups.

What if I have additional questions?

Consult with the Vice President and Treasurer's Office, the Chief Information Officer, or others as directed by the Vice President and Treasurer.