

- 1  **Permanent Records Issues Series No. 2.**
An Explanation of Legal Holds and Frozen Records as they Pertain to Permanent Records.
- 2  **Why Are We Here?**
- 3  **Keywords You Should Know. How is a freeze different than a litigation hold or moratorium on destruction? Litigation refers to any legal action involving your agency. Because of ongoing litigation, issued by the agency through the General Counsel's Office, may periodically issue litigation holds or a moratoriums on destruction for certain records, because they believe they may be potentially responsive or helpful in ongoing or pending litigation (lawsuits).**
- 4  **Keywords You Should Know. Records "holds" are simply the implementation of the litigation hold issued by the agency through the General Counsel's Office. When received, the records officer suspends the normal disposition cycle of the records mentioned in the hold notice to prevent their early or premature disposal. Holds are placed on the records that are in your agency's physical custody.**
- 5  **Keywords You Should Know. Frozen records – *"these are records whose scheduled disposition has been temporarily suspended by the National Archives because of special circumstances that alter the administrative, legal, or fiscal value of the records."***
- 6  **Show of Hands. Everybody join in!**
- 7  **How are records frozen? Records may be "frozen" and, therefore, not eligible for destruction, in the following circumstances:
One. The agency has requested a change in the retention period for the records in accordance with 36 CFR 1228.5.
Two. The agency notifies the particular records center that the records are needed for up to one year beyond the date they are eligible for disposal, in accordance with 36 CFR 1228.54(a)(2).**
- 8  **How are records frozen continued? Three. naara approves an agency's written request to extend the retention period for a series or system of records in accordance with 44 U.S.C. 2909.

Four. naara may apply a blanket freeze covering record series across several agencies – for example, Tobacco litigation freeze, Hurricane Katrina records.**
- 9  **Hold Scenario. Bob Jones, whose supervisor just left for six months maternity leave, was told to send 40 cubic feet of permanent records to an FRC immediately. As part of his normal business process Bob checks with his *program manager, Foia officer* and *General Counsel*. The agency's General Counsel said that the records can't be transferred to an FRC because of a legal hold. Bob is torn between doing what his supervisor told him and listening to General Counsel.
What Should Bob Do?**
- 10  **The Steps to Inform naara of an Agency's Legal Hold and Request a Freeze.
One. The Agency notifies naara of a legal hold, requests a freeze on its records, and sends this letter to the Director of naara's Federal Records Center Program (FRCP).**

Two. The FRCP Director reviews and forwards the agency's request to the FRC Transfer and Disposition (T&D) Coordinator.

Three. After performing its internal procedures, naara's FRCP Director notifies the agency that their request has been implemented and T&D makes the changes in the are kiss database.

- 11  **Frozen Scenario. Kathleen has 200 cubic feet of permanent records at an FRC. These records are ready for accessioning by the National Archives. However, the records have a freeze attached to them. Trying to reduce budget costs, she wants to transfer them but she is not sure because they are frozen. Is Kathleen allowed to transfer these records into the legal custody of naara?**

- 12  **Examples of Past or Current Freezes.**

One. Tobacco Litigation freeze.

Two. DuPont.

Three. Asbestos.

Four. Cobell Freeze.

Five. Katrina.

- 13  **The Steps for Lifting a Freeze.**

The Agency (General Counsel and Agency Records Officer) should send a freeze lift request letter or email to David Weinberg, Director of FRCP. Include the following information:

- one. Name or description of the Freeze.
- two. Justification for Lifting the Freeze.
- three. Agency's Record Group number.
- four. Archives Accession or FRC Transfer numbers.
- five. The full series number, description and Disposition Statement from the Records Control Schedule and or General Records Schedule.
- six. A statement of the current location of the records (specify which FRC or Archives has the records).

- 14  **Hold Scenario. Matt, an agency records officer, wants to make a Direct Offer to the National Archives of 300 cubic feet of permanent records. The records have been under a hold for 30 years and have been physically located at the agency. Can Matt do this?**

- 15  **Best Practices.**

One. Know your records and schedule. Know which are Temporary and Permanent. Know which are affected by the litigation hold and disposition freeze.

Two. Stay on top of your records holds, so that you know what is currently in place and what has been lifted. Stay in touch with your General Council

Three. If your General Council is not going to be using these records actively for many months, consider sending them to the FRC to free up office space. Be sure to prepare a detailed box list. You can always call these records back when litigation preparation gets going.

Four. Permanent records may have better storage conditions and security if you store them in the FRC until they are actually needed for litigation preparation.

- 16  **Best Practices, continued.**

Five. Creating Box Lists with detailed descriptions of the records will be helpful in finding records needed during litigation and requests and helpful in the thawing of records.

Six. Good practice to have an internal policy or process to lift freezes. Included in the policy should be Standard Operating Procedures that link to consultations with the General Counsel's Office.

Seven. Finally a good practice is to always check with General Counsel.

- 17  **Questions and Answers.**

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For More Information.

Contact your local Federal records Center Director at <http://www.archives.gov/frc/directors.html> for more specific questions regarding your agency current holdings in their facility.

Or contact, Michael Baimbridge, Permanent Records Capture, PRC

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