



Policy Name:	Records Retention and Disposition Policy		
Associated Form(s):	1. School or Department Records Manager 2. Document Destruction List	Policy Number:	2022-6
Approval Authority:	President <i>Timothy L. Hall</i>	Adopted:	April 4, 2022
Reviewed:	Non-Academic Policy Review Committee	Approved:	April 4, 2022
Responsible Executive(s):	General Counsel	Revised:	Records Retention and Disposition Policy, Policy # 2007-5.
Responsible Office:	Office of the General Counsel	Contact:	Associate General Counsel

I. Purpose

This Policy and Procedures provide for the systematic review, retention and destruction of documents received or created in the transaction of Mercy University (“University”) business. The policy is designed to ensure compliance with federal and state laws and regulations, to eliminate accidental or innocent document destruction of records and to facilitate University operations by promoting efficiency and reducing unnecessary storage of documents.

The retention periods set forth in the attached Records Retention and Disposal Schedule are the minimum retention periods required by the University. At the conclusion of the retention period, the Records should be properly disposed of under this Policy. Requests to deviate from or modify this Policy or these retention periods must be made to the General Counsel.

II. Scope

This Policy and Procedures apply to all University employees, including full-time and part-time faculty and staff.

III. Definitions

- A. Record** – Any information, regardless of physical form or characteristics, made or received in connection with the transaction of official business and/or in accordance with law or regulation. A record may include correspondence, reports, studies, data, maps, drawings, photographs, e-mail, recordings, whether in paper, electronic or other form.
- B. Active Records** – Records that are needed to support the current business activity of an office or division.
- C. Inactive Records** – Records for which the active period has passed and which are being held for the balance of the specified retention period.
- D. Permanent Records** – Records that have long-term or permanent value to the University.
- E. Records Manager** – An individual appointed by the Responsible Official to oversee the administration of records management systems for an established business process.
- F. Records Retention and Disposition Schedule** – An internal document that sets forth how records should be handled after the period of their active use.

- G. Responsible Official** – A senior member of management who has supervisory authority over a particular business practice, and, in that capacity, who has responsibility for ensuring effective implementation of this policy in their area of authority, known on the Retention Schedule as the **Responsible Office**.
- H. Retention Period** – The minimum required length of time for which a University school or department is responsible for maintaining records.
- I. Records Destruction** – The physical or electronic destruction of a record after it has become obsolete or otherwise in accordance with this Policy.
- J. Disposition of Records** – The terminal treatment of records, either through destruction or permanent storage.
- K. Archive Folders** – Folders that permit the long-term management of electronic records.
- L. Litigation Hold** – A communication issued as the result of current or anticipated litigation, audit, government investigation or other similar matter that suspends the normal process regarding the retention and disposition of University records.

IV. Policy

A. Overview

It is the policy of the University to ensure that its records are retained for the periods of time necessary to satisfy the University's business and legal obligations and are disposed of in accordance with an established records retention and disposition schedule. Certain records are permanent records and may never be destroyed. The records retention and disposition schedules applicable to different categories of University documents are attached to this Policy as **Exhibit A**.

B. Management of Records

Each school or department of the University has primary legal and operational responsibility for the proper care and management of its records. In addition, the individuals listed below are designated with having specific responsibilities in connection with this Policy.

1. Responsible Officer – Each supervisor in a particular school or department has the responsibility for designating in writing a records manager in their office,

school or department and ensuring that the records manager understands and is following with the records retention requirements applicable to that particular school or department. The Responsible Officer is also required to sign off on any destruction of documents at the conclusion of the retention period for those documents.

2. Records Manager – The Records Manager has day-to-day responsibility for ensuring the preservation of relevant documents in their office or division. These responsibilities include organization of files, implementation of retention and disposition schedules, overseeing storage of inactive records, and records disposition at the conclusion of the retention period.
3. General Counsel – The General Counsel is responsible for notifying all relevant members of the University community where a litigation hold is being implemented. The General Counsel will, in consultation with the relevant members of the University community, determine the scope of the hold, will determine when the hold is no longer required, and will communicate the lifting of the hold on an as needed basis to members of the University community.

C. Accessibility and Safekeeping of Records

1. Records, especially financial records, must be easily retrievable for examination by authorized individuals, including auditors. Access to electronic records is subject to University rules regarding information security. Records Managers should work with the IT department to ensure that electronic documents are maintained in a format that preserves accessibility.
2. The Records Manager is responsible for ensuring that active and inactive records are secured in a way to provide appropriate confidentiality and protection from unauthorized inspection, theft and/or physical damage.

D. Disposition of Records

1. The Records Manager is responsible for periodically determining which University records in their particular school or department have reached the end of their retention period and should therefore be destroyed.
2. The Responsible Officer is required to sign off on the destruction of documents.
3. Non-confidential paper records may be placed in containers for recycling. Confidential paper records must be shredded or other arrangements must be made for the documents to be destroyed.

4. The Records Manager should consult with the IT department regarding the destruction of electronic documents.

V. Retention of Email

E-mail sent or received over the University's computer system may constitute a form of University record. While not all e-mails are business records, all University e-mails are property of the University and are subject to discovery in the event of litigation against the University or any of its faculty, staff or students. Consequently, the administration has the ability and the right to view the e-mail of all members of the University community for these purposes. See the *Acceptable Use of University Resources and Technology* for further details.

Faculty and staff of University are not obligated to retain all e-mails indefinitely; such a policy would clearly impose an impossible burden both on the University community and on the University's computer system. Rather, individual staff and faculty members are expected to exercise judgment regarding the content and purpose of the e-mail in determining whether it needs to be retained as a University record, and, if so, the length of the retention period.

Retention periods applicable to e-mail messages are as follows:

1. Ordinary e-mails, including routine communications, internal meeting notices, and cover letters or transmittal memoranda, need be retained only so long as is necessary to complete the action or resolve the issue that is the subject of the e-mail.
2. Administrative documents – To the extent that e-mail is being used to document, either internally or outside the University community, the formulation, planning, implementation, interpretation or modification of a University program, policy or service, any such e-mail constitutes a University record and should be retained in accordance with the retention periods set forth in the record retention and disposition schedule attached.

E-mails can be retained in the following ways:

1. E-mails can be printed out and filed and saved as paper documents;
2. E-mails can be saved into electronic archive folders, which permit the long-term management of e-mails; or
3. E-mails can be saved on removable disks or thumb drives.

Regardless of the format in which the e-mails are saved, the Records Manager for each office or division has an obligation to preserve and safeguard the information in the e-mail as if it were a

paper document. Once the e-mail is saved in another format, however, there is no obligation additionally to retain the e-mail in an active mail folder.

VI. Litigation Holds

Where the University has actual notice of litigation or of a government investigation or audit, or has reason to believe that such events are likely to occur, it has the obligation to take steps to preserve documents that might be implicated in such litigation or investigation. In such event, the University will take steps to identify all paper and digitally maintained files that may contain documents relevant to the case, including e-mails, and will notify members of the University community to preserve such documents indefinitely. If an employee or faculty member receives such a preservation notice, it does not necessarily mean that they are involved in the litigation or investigation. Rather, it means that the evidence that the University is required to preserve may be in the employee or faculty member's possession or control, and that the employee or faculty member has an obligation to preserve such information effective immediately.

In the event of a litigation hold, all policies for the disposition of documents must be suspended with respect to those matters that are the subject of the hold. Electronic information should be preserved in its original electronic form on the media on which it is stored. Electronic information should not be transferred from the media on which it is stored to a different media for the duration of the litigation hold **unless** such transfer is necessary to preserve the integrity of the information for the duration of the hold, and such transfers should be made only after consultation with the IT department to preserve the integrity of the electronic data. In addition, the employee and/or faculty member that receives the notice should similarly preserve any new information that is generated that may be relevant to the litigation or investigation by saving it in a segregated file.

An employee or faculty member's failure to preserve documents after having received a preservation notice can have extremely serious consequences for the University. Accordingly, a failure to comply with a litigation hold may subject employees to discipline as set forth in Section IX below.

VII. Drafts and Working Papers

Drafts must be discarded when no longer needed for the purposes for which they were created. This should be done at the earliest opportunity following approval of the final version. This policy applies to drafts in all formats, including word processing files, spreadsheet files, and other computer files.

Working papers, including notes, may be developed during the transaction of Mercy University business or during the preparation of Mercy records. Most working papers, such as notes taken at

a meeting or annotations on a draft record that is ultimately superseded by a final version, have no legal, operational, or research value that warrants retaining them beyond their moment of immediate usefulness. These records should be discarded at the earliest opportunity, generally within one (1) year after the purpose for which they were created has been fulfilled. This policy applies to working papers in all formats, including word processing files, spreadsheet files, and other computer files.

VIII. Additional Retention Requirement for Licensed Health Professionals Other Than Physicians

The State Education Department's Office of the Professions oversees the professional conduct of licensed health professionals other than physicians. Paragraph 3 of subdivision a of Section 29.2 of *8NYCRR* (Regulations of the Commissioner of Education) states that "unprofessional conduct" includes "failing to maintain records for each patient which accurately reflects the evaluation and treatment of the patient" and that, unless otherwise provided by law, records of minor patients must be retained for at least six years, and until one year after the patient reaches the age of 21 years.

Several health-related items on this Schedule contain minimum legal retention periods that permit disposition of records after a minor attains age 21. In these instances, certain records pertaining to minors must also be retained for an additional year if the records are subject to the Section 29.2 requirements for health professionals other than physicians, if these professionals are employed by or associated with the University.

IX. Audits

Program and fiscal audits and other needs of state and federal agencies are taken into account when retention periods are established in this Schedule. However, in some instances agencies with audit responsibility and authority may formally request that certain records be kept beyond the retention periods. If such a request is made, these records must be retained beyond the retention periods until the University receives the audit report or until the need is satisfied.

X. Records Not Listed on This Schedule and Non-Existent Records

This Schedule covers the vast majority of all records of the University. For any record not listed, the custodian of the records should contact the General Counsel. If the record is not covered by an item on this Schedule, it must be retained until a revised edition of or addendum to this Schedule is issued containing an item covering the record in question and providing a minimum legal retention period for it.

XI. Discipline

Failure to follow this Policy could subject employees to discipline up to and including suspension, demotion or termination of employment, in accordance with applicable University rules, procedures, Collective Bargaining Agreements, and the Faculty Handbook.