

Form 2A:4 Preservation Letter

{*Letterhead*}

{*Date*}

{*Name of opposing/third-party counsel*}

{*Address*}

{*City, state, zip code*}

Re: Retention Notice for Documents, Electronically Stored Information, and Tangible Things

Dear {*name of attorney, potential adverse party, or third party*}:

{*Name of attorney's client, potential adverse party, or third party*} must immediately suspend retention and destruction policies for documents, electronically stored information, and tangible things and must preserve and retain all documents, electronically stored information, and tangible things relating to occurrences or transactions discussed in this letter. The failure to preserve and retain this information may constitute "spoliation of evidence" and subject {*you/your client*} to legal claims for damages or monetary sanctions.

This letter is to inform you that my client, {*name of client*}, believes that {*you/your client/your company, corporation, organization, etc.*} may possess documents, electronically stored information, and tangible things relating to {*briefly describe occurrence or transaction at issue, e.g., corporation's termination of my client on July 1, 2009*}. Specifically, {*describe potential or current litigation in a manner that sufficiently informs attorney or party about the nature of the client's claim*}.

As part of my client's ongoing {*investigation/litigation*}, {*you/your client*} may be requested to produce responsive documents, electronically stored information, and tangible things. Thus, {*you have/your client has*} an obligation to take reasonable steps to ensure that all relevant documents, electronically stored information, and tangible things are safeguarded and preserved until the resolution of this legal matter.

DEFINITIONS

For purposes of this letter, the terms "document," "electronically stored information," "occurrence or transaction," and "tangible thing" mean the following:

Document. The term "document" means information that is fixed in a tangible medium, such as paper. It includes, but is not limited to, writings, drawings, films, charts, photographs, notices, memoranda, diaries, minutes, correspondence, books, journals, ledgers, reports, worksheets, notes, printed e-mails, letters, abstracts, audits, charts, checks, diagrams, drafts, instructions, lists, logs, resumes, summaries {*continue listing examples as necessary*}.

Electronically stored information. The term "electronically stored information" means electronic information that is stored in a medium from which it can be retrieved and examined.

It includes, but is not limited to, all electronic files that are electronically stored.

“Electronic file” includes, but is not limited to, the following: voicemail messages and files; e-mail messages and files; deleted files; temporary files; system history files; Internet or web-browser-generated information stored in textual, graphical, or audio format, including history files, caches, and cookies; computer activity logs; metadata; {*continue listing examples as necessary*}. Unless otherwise defined, each example used to illustrate the term “electronic file” will have the meaning assigned to it by {*identify source for definitions, e.g., Sedona Conference Glossary: E-Discovery & Digital Information Management (Third Edition) (2010), Webster’s New World Computer Dictionary (10th ed. 2003), Microsoft Computer Dictionary (5th ed. 2002)*}.

“Electronic information system” refers to a computer system or network that contains electronic files and electronic storage. Unless otherwise defined, each example used to illustrate the term “electronic information system” will have the meaning assigned to it by {*identify source for definitions, e.g., Sedona Conference Glossary: E-Discovery & Digital Information Management (Third Edition) (2010), Webster’s New World Computer Dictionary (10th ed. 2003), Microsoft Computer Dictionary (5th ed. 2002)*}.

“Electronic storage” refers to electronic files contained on magnetic, optical, or other storage media, such as hard drives, flash drives, DVDs, CDs, tapes, cartridges, floppy diskettes, smart cards, integrated circuit cards (e.g., SIM cards), {*continue listing examples as necessary*}. Unless otherwise defined, each example used to illustrate the term “electronic storage” will have the meaning assigned to it by {*identify source for definitions, e.g., Sedona Conference Glossary: E-Discovery & Digital Information Management (Third Edition) (2010), Webster’s New World Computer Dictionary (10th ed. 2003), Microsoft Computer Dictionary (5th ed. 2002)*}.

Occurrence or transaction. The term “occurrence or transaction” means {*specifically describe the occurrence or transaction at issue, focusing on key dates, individuals, businesses, jurisdictions, etc.*}.

Tangible thing. The term “tangible thing” means physical objects that are not documents or electronically stored information.

{*Continue listing definitions as necessary.*}

PRESERVATION & RETENTION RESPONSIBILITIES

To preserve and retain documents, electronically stored information, and tangible things {*you/your client*} must immediately suspend certain normal retention and destruction policies, including {*identify all procedures relating to documents and tangible things to be suspended, such as shredding, recycling, etc., and all procedures relating to electronic data to be suspended, such as disk defragmentation, electronic data shredding, server backup tape rotation, recycling or destruction of computer systems or storage devices, etc.*}.

In addition to suspending the policies relating to documents, electronically stored

information, and tangible things, {you/your client} must immediately do the following:

1. Take affirmative steps to prevent anyone with access to documents, electronically stored information, and tangible things relating to the occurrence or transaction from hiding, modifying, or destroying them.
2. Preserve and retain all documents relating to the occurrence or transaction that either are in the possession of or were created, sent, or received by the following: {list names of persons, companies, organizations, etc.}.
3. Preserve and retain all electronically stored information relating to the occurrence or transaction that either is in the possession of or was created, sent, or received by the following: {list names of persons, companies, organizations, etc.}.
4. Preserve and retain all documents, electronically stored information, and computer hardware or software necessary to access, view, and reconstruct electronically stored information relating to the occurrence or transaction.
5. Preserve and retain all tangible things relating to the occurrence or transaction that either are in the possession of or were created, sent, or received by the following: {list names of persons, companies, organizations, etc.}.

{Continue listing responsibilities as appropriate.}

Because {you/your client} may also have to make relevant electronically stored information available for litigation, {you/your client} should consider protecting that electronic data by making a mirror image of it. A “mirror image” is a bit-by-bit copy of electronically stored information (e.g., on a hard drive or flash drive) that ensures the computer system is not altered during the imaging process. The mirror image includes active, hidden, and deleted files, deleted file fragments, directories, and any other data contained on the drive. To alleviate any burden on {you/your client}, my client is prepared to hire a computer forensic expert to properly and noninvasively create mirror images of all media in {your/your client's} possession, custody, or control that may contain electronically stored information related to the occurrence or transaction.

Please contact me if you have any questions about this letter. Thank you for your cooperation in this matter.

{Signature of attorney}