

Lois Day, Director of Child Welfare Programs

Authorized Signature

Number: AR-14-002

Issue Date: 10/15/14

Topic: Lawsuits, Tort Claims, Petitions for Judicial Review

Due Date: Upon request

Subject: DOJ Concerning Lawsuits, Tort Claims, and Petitions for Judicial Review
Expectations for Litigation Holds and Responding to the DHS Legal Unit and

Applies to (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> All DHS employees | <input type="checkbox"/> County Mental Health Directors |
| <input type="checkbox"/> Area Agencies on Aging | <input type="checkbox"/> Health Services |
| <input type="checkbox"/> Aging and People with Disabilities | <input type="checkbox"/> Office of Developmental |
| <input checked="" type="checkbox"/> Child Welfare Programs | Disabilities Services(ODDS) |
| <input type="checkbox"/> County DD Program Managers | <input type="checkbox"/> Other (please specify): |

Action Required:

- A. Once you are notified about a lawsuit, tort claim, or petition for judicial review:
1. Take immediate action to prevent routine destruction of documents and electronically-stored information related to the lawsuit, tort claim, or petition for judicial review. This includes all information contained or stored in any location, whether on paper or electronically, such as emails, information stored on the hard drive of the employee computer, flash drives, thumb drives, shared drives, mobile phones, OR-KIDS, TRACS, all physical /original case files, drop files, notes, photos, and recordings. Read the lawsuit, tort claim, or petition for judicial review to determine in a very broad way what needs to be preserved.
 2. Suspend compliance with any scheduled or routine destruction date in the record retention schedule for all information related to the lawsuit, tort claim, or petition for judicial review.
 3. Do not discard, delete, overwrite, alter, or destroy documents or electronically-stored information related to the case.
 4. Do not discuss the matter outside of DHS other than with DOJ Trial Division

and DAS Risk Management. Within DHS, discussion should only be on a need to know basis.

5. Provide requested documents and information to the DHS Legal Unit within the timelines requested.
6. For lawsuits and petitions for judicial review, primary caseworkers, certifiers, and supervisors will need to meet with DOJ Trial Division and cooperate fully with DOJ attorneys assigned to defend DHS.
7. Establish a separate privileged attorney-client communications file for retaining all communications from DOJ Trial Division (dated both before and after the filing of the litigation) rather than filing those privileged materials in existing general files that could potentially be seen by the plaintiff.

B. When notified about a lawsuit, tort claim, or petition for judicial review, District and Program Managers should relay (or assure the relay of) notifications from the DHS Legal Unit about these matters to staff within their Districts (line supervisors, primary caseworkers, records clerks, certifiers and their supervisors) as necessary to implement the litigation holds and to locate the requested documents.

C. When contacted about a lawsuit, tort claim, or petition for judicial review, please carefully read the accompanying email from the DHS Legal Unit as the email will often contain a unique request for documents. However, the Legal Unit will frequently ask for the following items to be sent to them:

For a lawsuit or petition for judicial review

All original case files and certification files.

- Original drop files and/or caseworker working files that exist separately from the official case files. This may include Certification, LAW, Ongoing/Permanency files.
- Sensitive case staffing as to the foster parents (if applicable).
- Sensitive issue reports and 3-Day Fatality Staffing Reports (if applicable).
- An electronic copy of all files on the shared, "K", and "H" drives as well as any archived emails and saved text messages regarding the above files or matter.
- The local office personnel file when an employee is named as a defendant. The official HR file will be obtained from HR directly by the Legal Unit.

For a tort claim

- Case records that document the incident, anything that led up to the incident, how it was handled and the outcome.

- Cover memo that narrates a brief chronology of events and that indicates what is supported by the documents you have attached. Mark the cover memo as “Confidential Memo Prepared in Anticipation of Litigation” in bold caps at the top of the document.
- Contact names of employees and witnesses and their relation to the claim allegations.
- Policies or rules to support DHS actions. If DHS did not follow policy in one or more aspects, it is very important to note that and state why in the confidential cover memo. If the policies that were used are no longer in effect, please let the Legal Unit know and whether assistance is needed to retrieve them.

Reason for Action: Changes in tort claim limits and judicial review standards have increased legal actions against DHS. DHS is subject to strict federal and state requirements to preserve documents in these matters and is subject to potentially substantial sanctions for non-compliance. Attorneys from DOJ represent DHS in these matters and need to be fully informed about facts and documents in order to provide appropriate legal advice and to defend the DHS actions as merited. DOJ Trial Division attorneys will make final decisions about documents that are to be released.

Field/Stakeholder review: X Yes

If yes, reviewed by: District and Program Managers

If you have any questions about this action request, contact:

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