

CU*ANSWERS LITIGATION HOLD TABLETOP EXERCISE

EVENT DATE(S): MAY 30, 2017

SUMMARY

As part of our Records and Information Management Policy, CU*Answers has a Litigation Hold Procedure. In the event that CU*Answers is notified litigation has commenced or is reasonably anticipated, the Litigation Hold Procedure is designed to assist with the collection of and prevent the destruction of information relevant to the subject matter of the litigation.

This inaugural Litigation Hold Tabletop Exercise was intended to review our Litigation Hold Procedure and determine whether CU*Answers has sufficient preparedness in the event of actual litigation, and to recommend improvements to the procedure. Per our Records and Information Management Policy, our ultimate goals are to:

“Develop a plan for the systematic and orderly collection of all paper and electronic records subject to the litigation hold. A personal meeting with each key employee to confirm that all paper and electronic records have been identified and collected should be conducted and documented. Records subject to the litigation hold should be stored in a central location where they can be cataloged. All key employees should sign a document verifying that to the best of their knowledge they have identified and turned over all paper and electronic records subject to the litigation hold.”

EXERCISE DETAILS

The exercise occurred on May 30, 2017. The scenario reviewed was:

*A credit union calls CU*Answers, very concerned. A member is furious and claiming that their check in the amount of \$250,000 was not returned by the Federal Reserve. The member is threatening to sue “anyone and everyone” involved in the transaction. In this scenario, the credit union would have contracted services with CU*Answers Item Processing.*

Because of the threat of litigation, the employee immediately contacted a member of the Executive Council. After a preliminary investigation, the Executive Council determined that a Litigation Hold is appropriate.

The scenario assumed the Litigation Hold Notice was sent out to all employees by the Internal Audit team in a timely manner.

Participants in the exercise included:

- Marilyn Boyd, Internal Auditor
- Karen Chesbro, VP Item Processing
- Val Haugen Item Processing

- Danielle Caliendo Business Continuity
- Jim Lawrence Business Continuity
- Jim Vickers, Network Services

There were four primary items discussed regarding this scenario:

(1) What applications are used in the normal daily processing related to this incident?

The group identified CU*BASE, FedLine (the Federal Reserve Bank Website) and Check Logic Manager. Item Processing has rolling 30-day storage and then documents are shredded using the appropriate shred bins located in the department. Item Processing generates a report through eDOC Innovations, and there are some archiving features in Check Logic Manager.

Under certain circumstances, we would need to ensure that information relevant to litigation would not be destroyed. For example, we might need to interrupt Item Processing’s 30-day shredding procedure for information relevant to litigation.

(2) Are notifications received or reports generated that confirm the activities were performed?

Item Processing would have to contact FedLine for copies of the Large Dollar Return Items. This information is only kept for one year by FedLine.

(3) How is correspondence with the parties involved in the litigation performed?

Item Processing uses email, fax and phone calls to communicate with the credit union. Phone calls by Item Processing are not recorded, so previous discussions would not be subject to the litigation hold as there is nothing to preserve. In some cases, we might need to discuss when it would be appropriate to retain phone conversations with the credit union (i.e. to record calls). We would need assistance from legal counsel to make that determination.

(4) What are the possible formats of information/data that could fall under the legal hold scope?

Item processing would need to avoid destruction of paper, emails, functional run sheets, images, spreadsheets, documents, and forms that might be related to the subject matter of the lawsuit (non-returned check). Information was likely to reside in physical or virtual servers, data archive servers, the online corporate vault, and file cabinets for paper records.

Information collected would be turned over to the Internal Audit team, who will then determine the best method of storing information related to the hold.

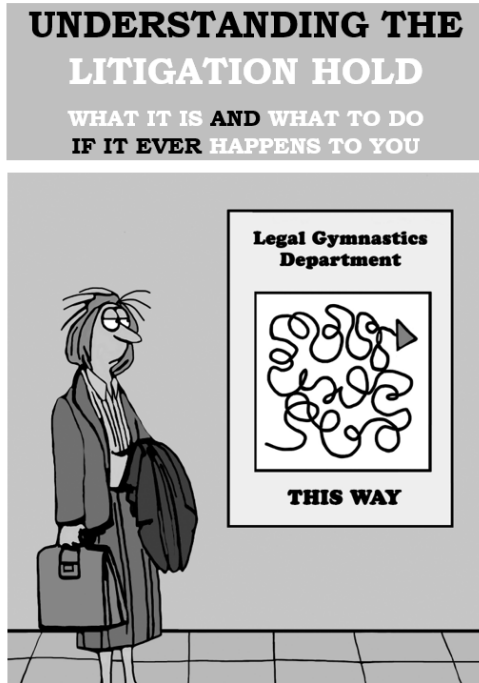
CONTINUING EFFORTS AND RECOMMENDATIONS

Two suggestions were offered by the teams to improve the process during an actual incident:

First, the Internal Audit staff should prepare in advance a list of questions to ask department staff to uncover potential information/documents.

Second, a list of questions should be prepared in advance to ask teams involved in the litigation when determining where the information might reside.

Internal Audit will use the current Record Retention Schedules to help formulate a better process in the event of an actual incident. In addition, to help future teams with Litigation Hold procedures, the Internal Audit team has created a manual, *Understanding the Litigation Hold*. This manual is available to all employees and clients of CU*Answers, and is designed with a lighthearted tone to help reduce fear around the Litigation Hold process.



SCENARIO

FOR THE "RECORD," THIS SCENARIO IS A WORK OF FICTION AND DID NOT ACTUALLY HAPPEN (NO PERSONS WERE HARMED OR SUED IN THE MAKING OF THIS SCENARIO)

*A credit union calls CU*Answers, very concerned. A member is furious and claiming that their check in the amount of \$250,000 was not returned by the Federal Reserve. The member is threatening to sue "anyone and everyone" involved in the transaction.*

Because of the threat of litigation, the employee immediately contacted a member of the Executive Council. After a preliminary investigation, the Executive Council determined that a Litigation Hold is appropriate.

"LITIGATION HOLD" YOU SAY? WHAT IS THAT?

Litigation Holds are simply a way of putting a company on notice that relevant evidence needs to be preserved. Organizations are not allowed to destroy information (even if they normally would) that might be relevant evidence in a lawsuit. If you destroy evidence, you can be sanctioned by the court or even go to jail.



See, back in the halcyon days of the early aughts, organizations liked to claim to courts that with all this *goi-dang newfangled technology* (like "email") they couldn't find evidence the court required for the case ("the computer ate my homework"). Eventually, the courts said it is **on your head** if you destroy evidence knowing that litigation is pending or is simply a likely possibility. So, we issue a Litigation Hold to protect the organization and our employees from destroying evidence that might be needed in a court of law.

SOUNDS SCARY!

Well, a little bit. You do need to take a Litigation Hold seriously. It is your right as an American to have easy access to the courts, and sometimes people run to the lawyers even when it isn't a good idea. We need to hold on to evidence even when the other side is wrong or unreasonable.

But that's why we are here! To walk you through a Litigation Hold so you know what to do if the time comes.



Understanding Litigation Holds | Page 2 of 6

Report submitted by Marilyn Boyd, CRA | CU*Answers | Internal Auditor