

## Records and Information Management: Why Should I Care?

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- David Douglass, KCP&L
- Jayne Riske, Black Hills Corp
- Chris Whicker, Duke Energy

Utilities & Energy Compliance & Ethics Conference  
Society of Corporate Compliance & Ethics  
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## FERC Records Requirements

Federal Energy Regulatory Commission

### **§ 366.2 Commission access to books and records.**

In general. Unless otherwise exempted by Commission rule or order, each holding company and each associate company thereof shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records as the Commission determines are relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

### **§ 367.3 Records.**

(a) Each service company must keep its books of account, and all other books, records, and memoranda that support the entries in the books of account, so as to be able to furnish full information on any item included in any account. Each entry must be supported by sufficient detailed information that will permit ready identification, analysis, and verification of all facts relevant and related to the records.

(b) The books and records referred to in this part include not only accounting records in a limited technical sense, but all other records, such as minutes books, stock books, reports, correspondence, and memoranda, that may be useful in developing the history of or facts regarding any transaction.

(c) No service company may destroy any books or records unless the destruction is permitted by the rules and regulations of the Commission.

(d) In addition to prescribed accounts, clearing accounts, temporary or experimental accounts, and subaccounts of any accounts may be kept, provided the integrity of the prescribed accounts is not impaired.

(e) The arrangement or sequence of the accounts prescribed in this part must not be controlling as to the arrangement or sequence in report forms that may be prescribed by the Commission.

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## FERC Records Requirements

Federal Energy Regulatory Commission

### **18 CFR § 125.1 Preservation of Records of Public Utilities and Licensees**

<https://www.gpo.gov/fdsys/pkg/CFR-2017-title18-vol1/pdf/CFR-2017-title18-vol1-sec125-1.pdf>

### **18 CFR § 125.3 Schedule of records and periods of retention**

<https://www.gpo.gov/fdsys/pkg/CFR-2017-title18-vol1/xml/CFR-2017-title18-vol1-sec125-3.xml>

### **18 CFR § 368 Preservation of Records of Holding Companies and Service Companies**

<https://www.gpo.gov/fdsys/pkg/CFR-2009-title18-vol1/pdf/CFR-2009-title18-vol1-part368.pdf>

### **18 CFR § 368.3 Schedule of records and periods of retention**

<https://www.gpo.gov/fdsys/pkg/CFR-2009-title18-vol1/xml/CFR-2009-title18-vol1-sec368-3.xml>

### **18 CFR § 366 PUCHA 2005 Accounting and Recordkeeping**

<https://www.gpo.gov/fdsys/pkg/CFR-2008-title18-vol1/pdf/CFR-2008-title18-vol1-chapl-subchapU.pdf>

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# FERC Records Requirements

Federal Energy Regulatory Commission

## FERC Standards of Conduct

§ 358.7 Transparency rule.

(h) *Exclusion for and recordation of certain information exchanges.*

The transmission provider shall make the record available to the Commission upon request. The record may consist of hand-written or typed notes, electronic records such as e-mails and text messages, recorded telephone exchanges, and the like, and **must be retained for a period of five years.**

(i) *Posting of waivers.* A transmission provider must post on its Internet Web site notice of each waiver of a tariff provision that it grants in favor of an affiliate, unless such waiver has been approved by the Commission. The posting must be made within one business day of the act of a waiver. The transmission provider must also maintain a log of the acts of waiver, and must make it available to the Commission upon request. **The records must be kept for a period of five years from the date of each act of waiver.**

## NERC Reliability Standards (excerpts from Rules of Procedure)

The Registered Entity's data and information must show compliance with the Reliability Standards that are the subject of the Compliance Audit **for the entire period covered by the Compliance Audit.**

If a Reliability Standard specifies **a document retention period that does not cover the entire period described above**, the Registered Entity will not be found in noncompliance solely on the basis of the lack of specific information that has rightfully not been retained based on the retention period specified in the Reliability Standard.

(BOLD added for emphasis)

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## FERC Audits

### 2017 Report on Enforcement

Docket No. AD07-13-011 issued Nov. 16, 2017

- No mention of record-retention audits or issues
- In 2017, Division of Audits and Accounting responded to 102 accounting inquiries from jurisdictional entities and other stakeholders on dozens of accounting and financial topics
- Inquiries made via:
  - Compliance Help Desk
  - Accounting Inquiries phone line and email or;
  - Direct contact with staff.
- Inquiries made included seeking information on records-retention requirements

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## FERC Audits

### 2016 Report on Enforcement

Docket No. AD07-13-010 issued Nov. 17, 2016

Division of Audits and Accounting

**Record Retention.** DAA has identified instances in which companies have failed to retain records in accordance with Commission regulations. In some cases, DAA determined that companies have failed to obtain records from the original owner when acquiring jurisdictional assets. DAA also identified instances in which inadequate records management programs led to premature destruction of records. Failure to maintain adequate records can impair the Commission's ratemaking and enforcement activities and ultimately impact an entity's ability to recover costs associated with those assets.

Under Part I of the FPA, hydro-power licensees must maintain records that may be used in determining the actual legitimate original cost of and net investment in a licensed project in the event that the Commission opts to take over a hydro-power project or another entity wants to take over the license.

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## FERC Audits

### ▪ NRG Energy, Inc., PA14-1

- Compliance with the various tariffs governing markets in which its resources operate.
- Focused on tariff provisions relevant to NRG's participation as a generation resource in wholesale capacity markets and evaluated NRG has sufficient procedures, practices, and resources to carry out its programmatic responsibilities. NRG failed to report plant outage data and the destruction of plant outage log records.

### ▪ Exelon Corporation, PA13-15

- Compliance with corporate merger orders, nuclear plant decommission trust funds, accounting and reporting regulations
- Found Exelon and its subsidiaries didn't properly comply on NDTF items and retention of records

### ▪ PPL Corporation, FA12-12

- Compliance with wholesale formula rates and cross-subsidization restrictions on affiliate transactions, service company accounting requirements, preservation of records
- Ten findings of noncompliance and 33 recommendations for corrective actions
- No mention of a specific records issue

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## Potential FERC Audit Questions

- What policies, procedures, and controls does the entity have in place regarding the preservation of records?
- What is the process to preserve records?
- Who is responsible for administering the records retention program?
- Where is that group located in corporate organization?
- Describe the organization of the area administering the records retention program.
- How is that organization staffed?
- Who supervises the company's preservation or destruction of its records?
- Do you have a process for the destruction of records?
- What documents, policies or procedures do have overseeing the destruction of company records?
- Has the entity prematurely destroyed or lost a record before the expiration of the prescribed period of retention?
- If yes, provide the notification filed at FERC?
- How does the entity utilize electronic messages such as IM, voice recordings or emails?
- How does the entity record energy trades and how does it preserve those records?

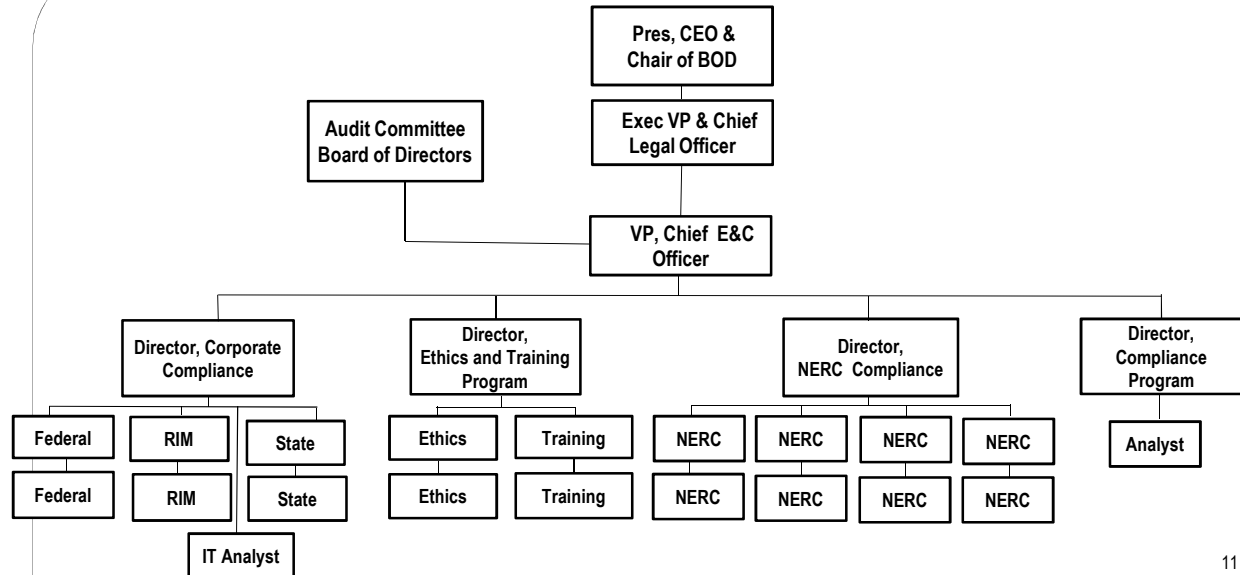
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**Records and Information Management**  
Chris Whicker, Duke Energy

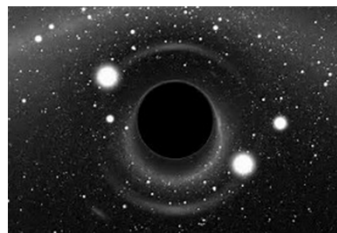


## Duke Energy Ethics & Compliance Organization



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## What's the “visual” of RIM Compliance in your organization?



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## RIM Compliance Program Structure

### Governance - Records & Information Management Compliance

- Resides in Ethics & Compliance organization (within Office of General Counsel)
- Owns and administers the corporate policy and companion standards
- Maintains an in-house *Record Retention Schedule* application
- Over 900 record types
- Responsible for overall Records governance (except for Nuclear)
- Manages/facilitates Enterprise Records Destruction (Purge, Pitch & Delete and Records Center Destruction) Initiative
- Assuming Corporate Policy Management – 2017/2018

### Operations - Enterprise Records Center

- Resides in Administrative Services organization
- Owns and administers Records box inventory
- Maintains an in-house application: *Records Center Application*
- +146,000 boxes
- Maintains contract with commercial vendor in 7 cities

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## RIM Compliance Program Overview

- One of 21 compliance areas at Duke Energy
- 2 FTEs
- Records Coordinator network – 190 (approx)
- RIM Strategy Team – Legal, IT architecture, SharePoint team
- Heavy intranet presence
- Recurring *Enterprise Records Destruction* Initiative
- Quarterly Records Coordinator Newsletter
- Outlook mailbox: [RIMcompliance@duke-energy.com](mailto:RIMcompliance@duke-energy.com)
- Training
  - RIM Overview : eLearning (primarily for new employees)
  - Records Coordinators – “RIM Lite” : in-person
  - Targeted Topics: GoAnimates

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## RIM Compliance Program: Key FERC Components

- Foundationally built on FERC and respective state commission requirements, and other regulatory bodies (SEC, Dodd-Frank, etc.)
- FERC provides guidance under the Preservation of Records for Public Utilities, Natural Gas Companies, and Holding/Services Companies (18 CFR 125; and 18 CFR 368)
- FERC requirements included in FERC Compliance Manual

### RIM Compliance team:

- Communicates key FERC Record requirements to business: Index of Records, Conversion requirements, and premature destruction/loss of Records
- Completes annual review of Enforcement Reports for insight
- Coordinates/facilitates Records inquiries related to regulatory investigations, data requests, or premature destruction/loss of Records

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## RIM Compliance Program

Keys to maintaining an “effective” and “sustainable” RIM compliance program:

1. Garner support from leadership and promote the importance of a strong RIM compliance program
2. Partner with stakeholders to build alliances and champion our similar causes
3. Recognize that there are various levels of understanding of RIM compliance
4. Inform, engage and equip Records Coordinators and key business contacts
5. Develop key and meaningful messages and effectively deliver based on audience and topic (yes, “messaging” means training!)
6. Develop an Enterprise Records Destruction Initiative plan and stick to it
7. Regularly assess your RIM compliance program
8. Offer effective tools for retaining Records (e.g. FileNet, SharePoint Records Manager) and strive for automation to make processes/procedures user friendly
9. Connect with peers (URIM user’s group, ARMA) to share best practices
10. Incorporate monitoring and oversight (especially, with electronic data)

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## **RIM Compliance: What's next?**

- Records & Information Management transitions to Information Governance
- Transition from paper to electronic Records
- Cyber security....moving to the Cloud
- RIM Compliance Program expands role to include “active” governance (monitoring and oversight)
- Continued strengthening of strategic partnerships to ensure success
- Need for RIM professionals to become even more tech savvy

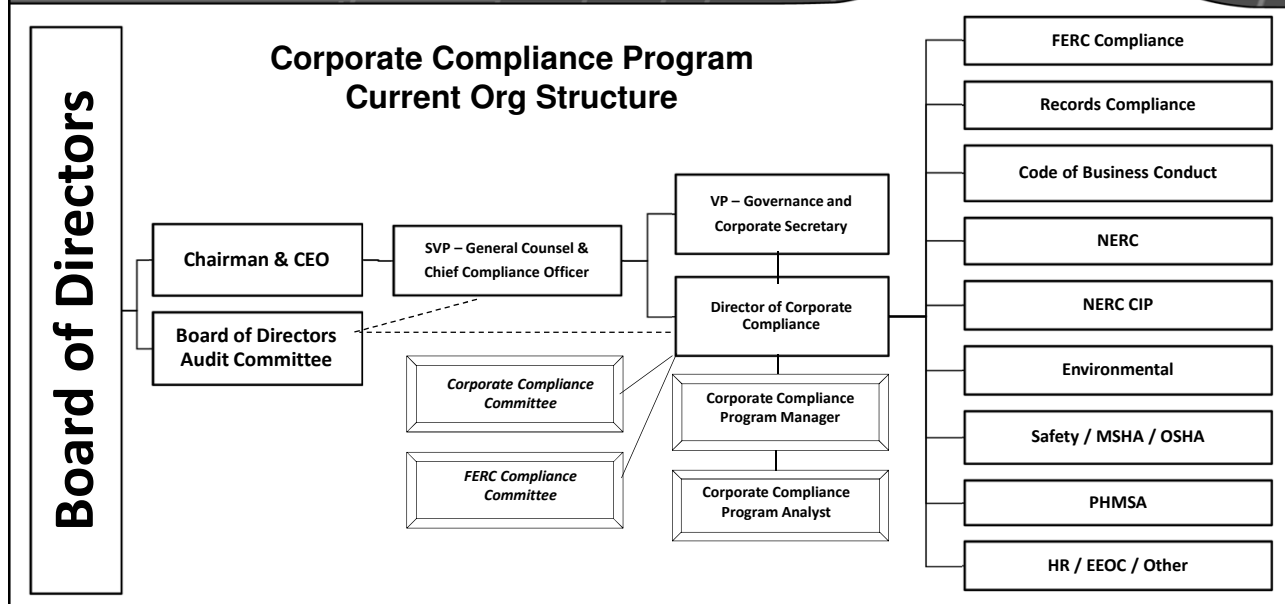
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**February 5, 2018**

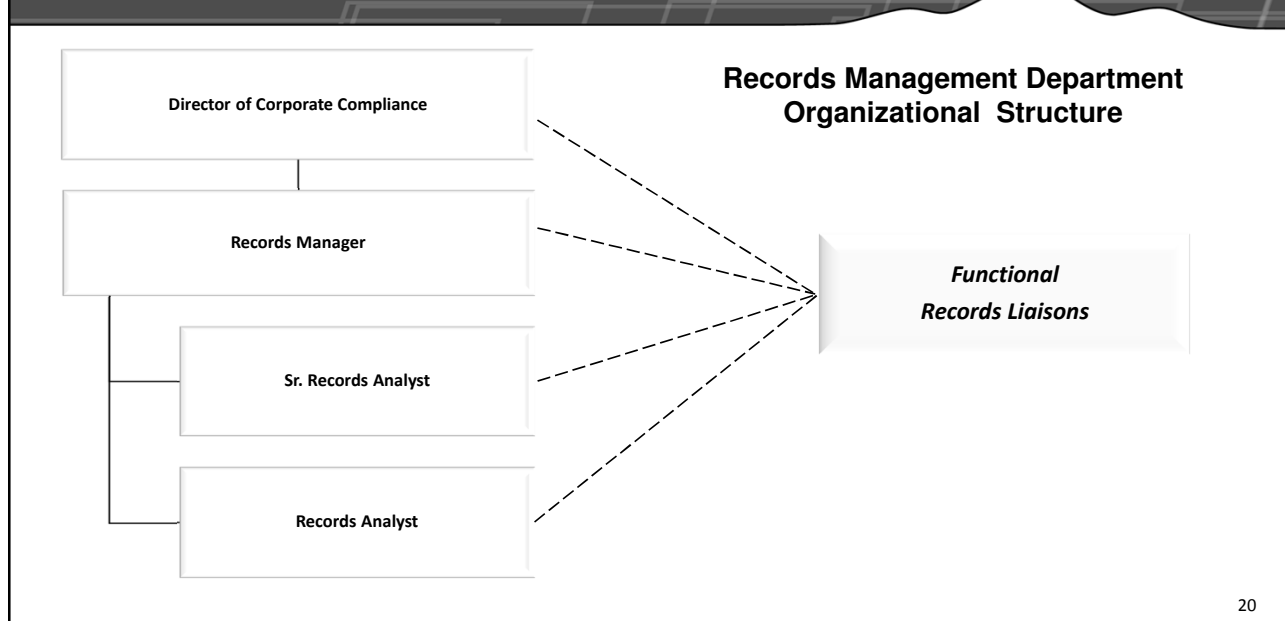
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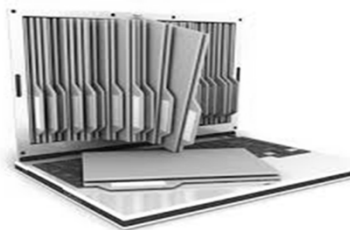
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### Where we started

- 2007 Department Created
- Policy and Retention Schedule
- Centralized Physical Records Process and Software Solution
- Physical Records Cleanup Project
- Centralized Scanning Program
- Electronic Records Solution



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## Records and Information Management: Why Should I Care?

### Where we are today:

- Acquisitions / Divestitures
- Automated Physical Records Management & Disposition
- Mature Records Program
- Communications & Training
- Electronic Records Management Solution
- Online training and resources



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Where we are today

Records Compliance	Basics	Services	Retention
<p>Home</p> <p>Corporate Compliance</p> <p><b>A Message from the Director of Corporate Compliance</b></p> <p>We all have a duty to ensure the information we create and receive is managed per our corporate records management policy. Our customer, employee, and operational information must be protected from loss or improper disclosure, we must protect the privacy and confidentiality of our customers, employees and proprietary information. We all need to do our part to ensure our records management practices are in line with policy requirements and stakeholder expectations.</p> <p><b>Announcements</b></p> <p>The records compliance department can help you get on track for effective and compliant records management. Please reach out to the records compliance department by emailing RMSupport.</p> <p><i><b>Remember:</b> When subject to a legal hold you must preserve ALL potentially relevant information!</i></p> <p><b>Events</b> <a href="#">SEE ALL EVENTS &gt;</a></p>	<p><b>Basics</b></p> <p>Records tree</p> <p>Lifecycle of a record</p> <p>What is a non-record</p> <p>Why manage records?</p> <p>How do I request record's services?</p> <p>BHYou: Search for "Records Management Basics"</p> <p>Shared Drive Clean-Up Recommendations</p> <p><b>Contacts</b></p>	<p><b>Services</b></p> <p>RMBC</p> <p>Box content request form</p> <p>Submission &amp; inventory guidelines</p> <p>Liaison list</p> <p>Request for authority to dispose of company records</p> <p>Scanning submission guidelines</p>	<p><b>Retention</b></p> <p>Retention schedule</p> <p>Retention schedule instructions</p> <p>Create or modify the retention schedule</p> <p>Records management policy</p> <p>Electronic communication use and retention policy</p> <p>Litigation hold/retention preservation policy</p>

## Records and Information Management: Why Should I Care?

### Long-term Vision | What's on the Horizon

Collaboration	Information Governance as a Business Process	Cloud vs. On-Premise
<ul style="list-style-type: none"> <li>Define</li> <li>Identify Use Cases</li> <li>Select Solution</li> <li>Governance Plan                             <ul style="list-style-type: none"> <li>Information retention</li> <li>Records vs. non-records</li> <li>System owner – integration with enterprise records management system</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Data Map</li> <li>IT   Legal   Compliance Partnership</li> <li>Auditable Retention Compliance</li> <li>Data Privacy</li> <li>Risk Assessment</li> <li>GRC Integration</li> <li>Enterprise Risk Management Integration</li> <li>Electronic Records Retention Management</li> </ul>	<ul style="list-style-type: none"> <li>Risk Tolerance</li> <li>Integration of Cloud and On-Premise Challenges</li> <li>Continued Assessment</li> </ul>

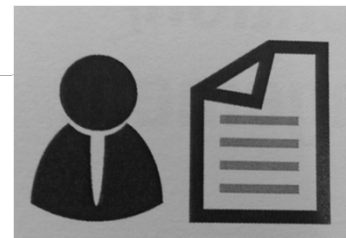


David Douglass, KCP&L

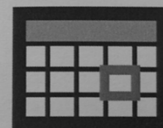


## Emphasis on Records

- Mergers / Leadership Changes / Regulatory Emphasis
- Nuances at every company that easily are highlighted as companies integrate or any other changes occur
- Where should the organization reside?
  - Governance vs. Operations
  - Centralized / De-centralized / Hybrid
- Resources – Internally and Externally
  - Data Governance Committee
  - Industry Groups
  - Consultants and law firms
- Company Policies and Procedures
- Documentation for department procedures and instructions
- Data Privacy



### Policy C301 – Preservation of Records

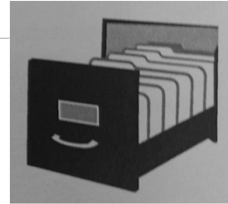


Records Management maintains the documented retention periods, legal citations and classifications of Information Assets.

To assist employees in determining how long to retain records, the KCP&L Records Retention Schedule is available online on the Records Management web-site. The Records Retention Schedule lists specific Company retention periods, and the Information Asset confidentiality and availability classifications for each record series type.

## Information Governance

- Consider including in your Information Governance policy:
  - Information Ownership
  - Classification of Information
  - Information Disclosure
  - Information Storage
  - Email retention
  - Destruction procedures
- At KCP&L - Created a brochure created and posted throughout company providing details on asset classifications and records management



### Controls

- Detailed work orders for offsite storage/transportation of records
- Transmittal forms for releasing physical records
- Confidential records require approval prior to release
- Quarterly custody audits – identification of any potentially lost records
- Critical Infrastructure Information (CII) or CIP-related records have additional scrutiny and approvals
- Legal holds



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