

State Records Authority NSW

General Retention and Disposal Authority: GA38

Applications for authorisation to exercise powers for law enforcement purposes

This general retention and disposal authority is approved under section 21(2)c of the *State Records Act 1998* following prior approval by the Board of the State Records Authority NSW in accordance with section 21(3) of the Act.

State Records Authority NSW

General Retention and Disposal Authority

Authority no GA38

SR file no 04/0366,
22/0233

Scope This general retention and disposal authority covers applications for authorisation to exercise law enforcement powers.

Public office Public offices, as defined by the *State Records Act 1998*, responsible for authorising law enforcement agencies to exercise certain powers for the purpose of law enforcement

Approval date 22 June 2010

Amended 22 March 2023
Addition of entry 1.1.4

About the General Retention and Disposal Authority

Purpose of the authority

The purpose of this general retention and disposal authority is to identify those records created and maintained by NSW public offices which are required as State archives and to provide approval for the destruction of certain other records created and maintained by NSW public offices, after minimum retention periods have been met.

The approval for disposal given by this authority is given under the provisions of the *State Records Act 1998* only and does not override any other obligations of an organisation to retain records.

The retention and disposal of State records

The records retention and disposal practices outlined in this authority are approved under section 21(2)(c) of the *State Records Act 1998* (NSW). Part 3 (Protection of State Records) of the Act provides that records are not to be disposed of without the consent of State Records Authority of NSW (State Records Authority NSW) with certain defined exceptions. These exceptions include an action of disposal which is positively required by law, or which takes place in accordance with a normal administrative practice (NAP) of which State Records Authority NSW does not disapprove. Advice on the State Records Act can be obtained from State Records Authority NSW.

The authority sets out how long the different classes of records generated by an organisation must be kept to meet its legal, operational and other requirements, and whether the records are to be kept as State archives. State Records Authority NSW reviews and approves organisations' retention and disposal authorities under the State Records Act.

State Records Authority NSW's decisions take into account both the administrative requirements of public offices in discharging their functional responsibilities and the potential research use of the records by the NSW Government and the public. One of State Records Authority NSW's functions is to identify and preserve records as State archives. These are records which document the authority and functions of Government, its decision-making processes and the implementation and outcomes of those decisions, including the nature of their influence and effect on communities and individual lives. Criteria for the identification of State archives are listed in *Building the Archives: Policy on records appraisal and the identification of State archives*. The Policy also explains the roles and responsibilities of State Records Authority NSW and of public offices in undertaking appraisal processes and disposal activities.

Implementing the authority

This general retention and disposal authority covers records controlled by the public office and applies only to the records or classes of records described in the authority. The authority should be implemented as part of the records management program of the organisation. Two primary objectives of this program are to ensure that records are kept for as long as they are of value to the organisation and its stakeholders and to enable the destruction or other disposal of records once they are no longer required for business or operational purposes.

The implementation process entails use of the authority to sentence records. Sentencing is the examination of records in order to identify the disposal class in the authority to which they belong. This process enables the organisation to determine the appropriate retention period and disposal action for the records. Advice on sentencing can be obtained from State Records Authority NSW. See *Implementing a retention and disposal authority*.

Where the format of records has changed (for example, from paper-based to electronic) this does not prevent the disposal decisions in the authority from being applied to records which perform the same function. The information contained in non paper-based or technology dependant records must be accessible for the periods prescribed in the classes. Where a record is copied, either onto microform or digitally imaged, the original should not be disposed of without authorisation (see also the *General Retention and Disposal Authority: original or source records that have been copied*). Public offices will need to ensure that any software, hardware or documentation required to gain continuing access to technology dependent records is available for the periods prescribed.

Disposal action

Records required as State archives

Records which are to be retained as State archives are identified with the disposal action 'Required as State archives'. Records that are identified as being required as State archives should be stored in controlled environmental conditions and control of these records should be transferred to the Museums of History NSW (MHNSW) when they are no longer in use for official purposes.

The transfer of control of records as State archives may, or may not, involve a change in custodial arrangements. Records can continue to be managed by the public office under a distributed management agreement. Public offices are encouraged to make arrangements with MHNSW regarding the management of State archives.

Transferring records identified as State archives and no longer in use for official purposes to MHNSW's control should be a routine and systematic part of a public office's records management program. If the records are more than 25 years old and are still in use for official purposes, then a 'still in use determination' should be made.

Records approved for destruction

Records that have been identified as being approved for destruction may only be destroyed once a public office has ensured that all other requirements for retaining the records are met. Retention periods set down in this authority are *minimum* periods only and a public office should keep records for a longer period if necessary. Reasons for longer retention can include legal requirements, administrative need, and government directives. A public office *must not* dispose of any records where the public office is aware of possible legal action (including legal discovery, court cases, formal applications for access) where the records may be required as evidence.

Once all requirements for retention have been met, destruction of records should be carried out in a secure and environmentally sound way. Relevant details of the destruction should be recorded. See *Destruction of records: a practical guide*.

Regardless of whether a record has been approved for destruction or is required as a State archive, a public office or an officer of a public office must not permanently transfer possession or ownership of a State record to any person or organisation without the explicit approval of State Records.

Administrative change

This general retention and disposal authority has been designed to link records to the functions they document rather than to organisational structure. This provides for a stable retention and disposal authority that is less affected by administrative change. However, when functions move from one public office to another the public office that inherits the new function should contact State Records Authority NSW to discuss use of any existing retention and disposal authority approved for use by a predecessor organisation.

Contact Information

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General Retention and Disposal Authority
Applications for authorisation to exercise powers for law enforcement purposes

Authority number: GA38

Dates of coverage: Open

No	Function/Activity	Description	Disposal Action
1.0.0	LAW ENFORCEMENT	The function of protecting society through the maintenance of civil order, detection of crime and apprehension of criminals.	
1.1.0	Applications for authorisation to exercise law enforcement powers	<p>The activity of responding to applications from law enforcement agencies for warrants, orders and declarations relating to the exercise of certain powers. Includes applications under the:</p> <ul style="list-style-type: none"> • <i>Crimes (Criminal Organisations Control) Act 2009</i> • <i>Criminal Code Act 1995 (Commonwealth)</i> • <i>Independent Commission Against Corruption Act 1988</i> • <i>Law Enforcement and National Securities (Assumed Identities) Act 1998</i> • <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> • <i>Listening Devices Act 1984</i> • <i>Police Integrity Commission Act 1996</i> • <i>Police Powers (Internally Concealed Drugs) Act 2001</i> • <i>Police Powers (Drug Detection in Border Areas Trial) Act 2003</i> • <i>Surveillance Devices Act 2007</i> • <i>Terrorism (Police Powers) Act 2002.</i> 	
1.1.1		Records relating to applications for:	Required as State

* see *About the General Retention and Disposal Authority*

Applications for authorisation to exercise powers for law enforcement purposes

Authority number: GA38

Dates of coverage: Open

No	Function/Activity	Description	Disposal Action
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LAW ENFORCEMENT - Applications for authorisation to exercise law enforcement powers

		<ul style="list-style-type: none"> • warrants or orders regarding political offences (including terrorism), e.g. preventative detention orders, prohibited contact orders and covert search warrants issued for the purpose of investigating or preventing terrorist acts • orders relating to the use of assumed identities • declarations of criminal organisations and associated control orders. <p>Records include:</p> <ul style="list-style-type: none"> • applications • supporting documentation • issued warrants, orders or declarations • reports on the use of warrants, orders or declarations. 	archives
1.1.2		<p>Records relating to applications for:</p> <ul style="list-style-type: none"> • covert search warrants issued for the purpose of investigating crimes other than political offences or terrorist acts • warrants for the use of surveillance devices, including data surveillance devices, listening devices, optical surveillance devices or tracking devices. <p>Records include:</p> <ul style="list-style-type: none"> • applications 	Retain minimum of 75 years after action completed, then destroy

* see *About the General Retention and Disposal Authority*

Applications for authorisation to exercise powers for law enforcement purposes

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LAW ENFORCEMENT - Applications for authorisation to exercise law enforcement powers

		<ul style="list-style-type: none"> • supporting documentation • issued warrants • reports on the use of warrants. 	
1.1.3		<p>Records relating to applications for:</p> <ul style="list-style-type: none"> • search warrants (other than covert search warrants or search warrants relating to the investigation of political offences or terrorist acts) • drug detection warrants • entry warrants • crime scene warrants • arrest and detention warrants (other than preventative detention orders issued for the purpose of investigating or preventing a terrorist act). <p>Records include:</p> <ul style="list-style-type: none"> • applications • supporting documentation • issued warrants or orders • reports on the use of warrants or orders. 	Retain minimum of 10 years after action completed, then destroy

* see *About the General Retention and Disposal Authority*

Applications for authorisation to exercise powers for law enforcement purposes

Authority number: GA38

Dates of coverage: Open

No	Function/Activity	Description	Disposal Action
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LAW ENFORCEMENT - Applications for authorisation to exercise law enforcement powers

1.1.4		<p>¹Records relating to the oversight of applications for warrants for the use of surveillance devices, including data surveillance devices, listening devices, optical surveillance devices, combination devices or tracking devices. Records include:</p> <ul style="list-style-type: none"> • applications • supporting documentation • submissions prepared and furnished by the Commissioner • issued warrants or orders • reports on the use of warrants or orders • drug supply prohibition orders. 	Retain minimum of 75 years after action completed, then destroy
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¹ This entry was added in March 2023 to cover the records of the Office of the Surveillance Devices Commissioner with effect from 4 November 2019. Legacy records created by the Solicitor General or the Crown Advocate prior to November 2019 can be disposed of under the Normal Administrative Practice provisions of the State Records Regulation 2015 as copies of documents held by the Supreme Court.

* see *About the General Retention and Disposal Authority*