

Policy on managing complaints about recordkeeping in public offices

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1. Introduction

While the *State Records Act 1998* provides no specific complaint-handling provisions or powers, the State Records Authority NSW ('State Records NSW') may choose to pursue those complaints which enable the correction and improvement of public office records management and recordkeeping (s66(1)(a)).¹

State Records NSW has the discretion in determining which complaints will be pursued and what action, if any, will be taken.

Complaints about public office records management and recordkeeping are received from a variety of stakeholders. These include but are not limited to members of the public, employees of public offices, public interest advocacy groups, and members of Parliament. Complaints may also be referred to State Records NSW by other NSW Government agencies, courts and tribunals, and the Parliament.

2. Objectives of the Policy

The objectives of the *Managing Complaints About Recordkeeping* ('The Policy') are to establish principles and a framework for decision-making about complaints about poor recordkeeping in public offices.

The policy provides decision-makers with a framework for:

¹ Public offices are defined by section 3 of the *State Records Act 1998*.

- determining which complaints meet the criteria to be pursued
- identifying significant or complex complaints which will be referred to the appropriate oversight agency²
- undertaking impartial and evidence-based assessments of issues raised in complaints, and
- resolving complaints.

State Records NSW commits to ensuring that complaints are handled in a timely, consistent, and accountable way, and resolved efficiently and effectively. We will use learnings from complaints to support records management and recordkeeping improvement in public offices.

3. Application of the policy

This policy applies only to State Records NSW and its staff and how complaints about recordkeeping and records management within public offices are managed.

Complaints about staff, consultants, contractors and outsourced service providers performing work for State Records NSW, are dealt with under the State Records Authority NSW's *Complaint Handling Policy*.

4. Ethical conduct

All activities must be conducted in an ethical and transparent manner and comply with the values, principles and articles in the Code of Conduct.

Each complaint will be handled with integrity and in a fair, equitable, objective and unbiased manner that is respectful of complainants.

All State Records NSW complaint handlers must declare any conflict of interest they have or may be reasonably perceived to have, in relation to a complaint or the people who are involved in the complaint.

5. Policy principles

The following principles guide State Records NSW's complaint handling.

5.1 Improved recordkeeping in public offices

State Records NSW's focus in accepting and pursuing complaints about records management and recordkeeping in public offices is to

- identify recordkeeping performance issues, and
- ensure improved outcomes for records management and recordkeeping in public offices.

We only accept those complaints which meet the criteria for attention (see Appendix A for further detail).

In assessing complaints, it may become apparent that there are issues which fall outside the scope of the *State Records Act 1998* or the capacity of State Records NSW. In these instances, we will refer the matter to the appropriate oversight agency as outlined in our *Co-Regulation Policy*.

5.2 Facilitating complaints

People focus

While the *State Records Act 1998* does not include specific complaint-handling provisions or powers, receiving and dealing with complaints is an incidental function and we are committed to handling complaints in an appropriate and respectful manner.

People making complaints will be:

² Oversight agencies are those agencies which have special powers that enable them to safeguard the public interest and conduct investigations. They include the NSW Ombudsman, Independent Commission Against Corruption, Audit Office of NSW, and Information and Privacy Commission of NSW. (see <https://sef.psc.nsw.gov.au/understanding-the-sector/central-and-oversight-agencies>)

- provided with information about our complaint handling process
- provided with multiple and accessible ways to make complaints
- listened to, treated with respect by staff, and actively involved in the complaint process where possible and appropriate, and
- provided with reasons for our decision/s and any options for redress or review.

No detriment to people making complaints

State Records NSW will take all reasonable steps to ensure that people making complaints are not adversely affected because a complaint has been made by them or on their behalf.

Anonymous complaints

Anonymous complaints will be assessed and appropriate action taken. This may include a decision not to take further action. Anonymous complaints will be included in State Records NSW's reporting on complaints received.

Frivolous or vexatious complaints

A complaint may be assessed but is declined where the conduct of the complainant is such that the complaint may be deemed to be frivolous, vexatious or not made in good faith.

Accessibility

Information about making a complaint about poor records management or recordkeeping and our process for handling such complaints is available on our website.

No charge

All expenses in the evaluation and resolution of complaints will be borne by State Records NSW.

5.3 Responding to complaints

Responsiveness

State Records NSW will promptly acknowledge receipt of complaints within 2 business days.

State Records NSW will assess and triage complaints within 10 business days after acknowledgement of the complaint to determine if the complaint meets the criteria for accepting and pursuing a complaint (see Appendix A for further information).

State Records NSW will advise the complainant of our intention to pursue or decline, expected timeframes for the assessment, and possible outcomes under the *Regulatory Framework for the State Records Act 1998*³. We will ensure all parties are informed of any delays or changes to the timeframe.

If State Records NSW declines a complaint, we will advise the complainant that we are unable to deal with their complaint or take any action and provide reasons for why we are not taking any action. If appropriate, we will provide advice about where such issues and/or complaints may be directed.

Referral of complex or significant complaints

State Records NSW has monitoring and inspection powers under sections 12(4), 12(5) and 15 of the *State Records Act 1998*, but does not have the legislative mandate to undertake investigations, and cannot undertake coercive or intrusive actions, e.g. enter a public office and search for documents.

State Records NSW will refer:

- complaints about possible corrupt conduct to the Independent Commission Against Corruption (ICAC)
- complaints about possible maladministration to the NSW Ombudsman
- complaints about possible destruction of information to deliberately prevent disclosure via the *Government Information (Public Access) Act 2009* to the Information and Privacy Commission

³ Available at <https://staterecords.nsw.gov.au/recordkeeping/guidance-and-resources/regulatory-framework-the-state-records-act-1998>

(IPC).

State Records NSW may refer significant or complex complaints which require investigation to the relevant oversight agency, with the permission of the complainant after having informed them that we are unable to deal with their complaint. It will be up to the receiving agency to determine, in accordance with their processes, whether or not to take action. A referral of a matter is not of itself a direction that in any way binds the receiving agency.

Objectivity and fairness

State Records NSW will address each complaint with integrity and in an equitable, objective and unbiased manner. Each complaint will be assessed on its merit.

Decision-making

The Manager State Records NSW will determine if a complaint is pursued or declined based on the initial assessment and triage process.

If a complaint is to be pursued, approval will be sought from the Executive Director, State Records NSW to proceed with the complaint and a possible associated Recordkeeping Assessment process.

Transparency

State Records NSW will deal with people who make complaints in an open and transparent manner so that they have a clear understanding of what is expected from them and what they can expect from us. Our decision-making occurs within governance processes and is fully documented. We recognise that we are accountable for how we manage and resolve complaints.

Confidentiality

State Records NSW will manage each complaint with discretion. We will protect the identity of people making complaints where this is practical and appropriate. Personal information that identifies individuals will only be disclosed or used by us as permitted under the relevant privacy laws, secrecy provisions and any relevant confidentiality obligations.

5.4 Managing complaints

Impartial and evidence-based assessments

State Records NSW will undertake impartial and evidence-based assessments of a public office's recordkeeping to understand the issues identified in a complaint. Section 15 of the *State Records Act 1998* provides the authority for this work. When required State Records NSW may also use the notices power at section 12(5) of the *State Records Act*.

A Recordkeeping Assessment is conducted according to the *Procedures for managing complaints about recordkeeping*. The Recordkeeping Assessment Report documents the issues raised and State Records NSW's findings and recommendations. State Records NSW will recommend fair and reasonable remedies.

Matters already being dealt with or investigated by other agencies

Where a matter has been reported, or State Records NSW has been made aware that the matter is being investigated by (or is to be investigated by) another agency, State Records NSW will wait until after that investigation has been completed and reported on before deciding on any action that may be taken.

The exception to this is where a direct complaint to State Records NSW is significant enough to trigger the commencement of an independent assessment by State Records NSW. In this scenario, State Records NSW will contact the agency already undertaking an investigation to discuss a proposed assessment approach and scope of assessment.

Procedural fairness

State Records NSW will provide the public office with a draft Recordkeeping Assessment Report for comment. The public office's response to the findings will be incorporated into the final version of the Report and a copy of this Report will be provided to the public office.

Proportionality

Any enforcement action, as a result of recordkeeping issues raised in our assessment, will be in proportion to the level of recordkeeping risk or failure and the seriousness of the breach of the *State Records Act 1998* and the standards issued under the Act.

Complaints involving multiple public offices

Where a complaint identifies records management or recordkeeping issues in a number of public offices, each public office will be treated as a separate complaint. State Records NSW will advise the complainant about the coordination and management of multiple complaints.

5.5 Resolving complaints

State Records NSW will contact the complainant in writing at the conclusion of the assessment process and finalisation of the Recordkeeping Assessment Report. State Records NSW will:

- advise on the actions taken to address the complaint,
- our decisions and/or actions, and
- the reasons for the decision and/or actions.

5.6 Managing unreasonable conduct by people making complaints

State Records NSW is committed to being accessible and responsive to all people who approach us with complaints. When people behave unreasonably in their dealings with us, their conduct can significantly affect the progress and efficiency of our work. State Records NSW will take action to manage any conduct that negatively and unreasonably affects us and will support staff. In this, we are guided by the NSW Ombudsman's guidance on [Managing unreasonable conduct by a complainant](#).

Document History

Version	Date	Reason for Amendment
1.0	November 2020	Initial Draft; consultation with Recordkeeping Standards & Advice
2.0	February 2021	Revised draft; consultation with Manager Recordkeeping Standards & Advice
3.0	May 2021	Draft for consultation with Director
4.0	June 2021	Final draft approved by Board
5.0	April 2023	Revisions to incorporate legislative changes; consultation with Manager State Records NSW
5.1	June 2023	Incorporation of feedback and finalisation of draft
6.0	July 2023	Final draft approved by Board

Review Date

This policy will be reviewed approx. July 2026 (review dates are dependent on the type of policy and impending regulatory changes. Review dates may change to accommodate).

Contact

Governance@staterecords.nsw.gov.au

Appendix A: Criteria for accepting a complaint about recordkeeping

The following criteria are not definitive, but designed to guide decision-making. In all cases, consideration will also be given to the availability of resources and the public interest. A Complaint Assessment Form is completed for each complaint.

1. Does the complaint involve an organisation that is covered by the State Records Act 1998?

State Records NSW only accepts complaints about public offices covered by the *State Records Act 1998*. Complaints about records management in organisations not covered by the Act are automatically declined.

2. Does the matter concern an immediate risk to safety or security?

If yes, State Records NSW will respond promptly and escalate the matter appropriately.

3. Is State Records NSW the appropriate organisation to assess the matter and have jurisdiction over the matter?

Reviewing the complaint and allegations will determine if State Records NSW is the appropriate organisation to accept the complaint and review the matter.

If the matter involves maladministration or corrupt conduct, then the complaint will be referred to the NSW Ombudsman or the Independent Commission Against Corruption.

If the matter concerns destruction of information contained in a record to deliberately prevent disclosure via the *Government Information (Public Access) Act 2009* as authorised or permitted under the GIPA Act, then the complaint will be referred to the Information and Privacy Commission.

If State Records NSW is not the appropriate organisation, the complaint will be declined and the complainant advised of oversight agencies that are relevant to the topic of the complaint.

4. Is this a complaint about a matter that State Records NSW has already looked at?

If State Records NSW has previously looked at the matter, or another instance of the matter and there is no new information or compelling evidence, then the complaint will be declined. State Records NSW will only accept a complaint about a matter that has been previously looked at if there is new information or compelling evidence sufficient to warrant a new Recordkeeping Assessment process.

5. Has supporting information or evidence been provided by the complainant?

State Records NSW may decline complaints where the complainant is unable to provide sufficient information to support allegations made in the complaint.

6. Does the complaint concern a minor recordkeeping issue or a once-off issue, e.g. the failure to create a note of a telephone conversation or failure to create a minute of a meeting?

If it is an isolated incident, then the complaint will be declined. State Records NSW may decline the complaint, but make initial enquiries to determine if the public office has dealt with the matter and undertaken adequate steps to address the issues. Alternatively, the complaint may be accepted if recordkeeping is related to a business function of significant public interest or concern, or is open to dispute, or if it is likely that the recordkeeping issue is systemic.

7. Is the complaint currently being investigated by another agency?

State Records NSW will normally wait until after that investigation has been completed and reported on before deciding on any action. The exception is when a complaint made to State Records NSW is sufficient and significant enough to trigger the commencement of an independent assessment by us.

8. Has the complaint been reviewed and investigated by another agency? Does the complaint have substantial recordkeeping issues which should be assessed?

If the complaint has already been investigated by another agency, then the complaint will be declined as the matter has been satisfactorily dealt with. The only exception to this would be if the complaint has raised substantial recordkeeping issues.

9. Has the complaint been made by an MP, Secretary of a cluster, senior public servant, or advocacy group?

Complaints made by Members of Parliament, senior public servants, and advocacy groups are likely to be in the public interest and will be carefully considered. Undertaking a risk assessment of the allegations and a review of the risk profile of the public office will also assist to determine if the complaint should be accepted.

10. Has the complaint been referred by a Court or Tribunal, or the Parliament?

State Records NSW will accept recordkeeping complaints referred by a Court or Tribunal or the Parliament.

11. Does the complaint meet the criteria for serious or significant?

State Records NSW will accept complaints that are serious or significant particularly where they relate to significant issues of public interest or recordkeeping failure and meet the following criteria:

- significant public interest or concern
- poor recordkeeping that results in significant detriment to NSW Government or the rights and entitlements of the people of NSW
- unauthorised disposal of records which had long retention periods or were required to be retained permanently as State archives
- widespread practices within a public office which are contrary to acceptable Normal Administrative Practices
- records of significant value to the NSW Government or the people of NSW which are endangered or at risk of damage and/or disposal
- significant number of records affected by poor recordkeeping or records management practice
- risk profile of the public office suggests that the public office may be failing in its records management obligations
- a pattern of non-compliance by the public office
- systemic (structural or procedural) deficiencies in recordkeeping or records management matters which are indicative of a risk of future recordkeeping failure within a public office
- poor recordkeeping in a public office which demonstrates a blatant disregard for the State Records Act
- action that is likely to have a worthwhile educative or deterrent effect, or conduct that is Government-wide or may become widespread