

State Archives and Records Authority of New South Wales

Functional Retention and Disposal Authority: FA397

This authority covers records documenting the function of law enforcement misconduct prevention

This 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 Archives and Records Authority of New South Wales in accordance with section 21(3) of the Act.

State Archives and Records Authority of New South Wales

Functional Retention and Disposal Authority

Authority no FA397

SR file no 17/0472

Scope This retention and disposal authority covers records documenting the function of law enforcement misconduct prevention.

Public office Law Enforcement Conduct Commission

Approval date

Theresa Fairman A/Executive Director State Archives and Records Authority of New South Wales	02/05/2018 Date
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About the Functional Retention and Disposal Authority

Purpose of the authority

The purpose of this 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 the State Archives and Records Authority of New South Wales (State Archives and Records 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 Archives and Records NSW does not disapprove. Advice on the State Records Act can be obtained from State Archives and Records 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 Archives and Records NSW reviews and approves organisations' retention and disposal authorities under the *State Records Act*. It is the duty of a public office, in submitting a draft retention and disposal authority for approval, to disclose to State Archives and Records NSW any information which affects the retention of the records covered by the authority.

State Archives and Records 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 Archives and Records 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 Archives and Records NSW and of public offices in undertaking appraisal processes and disposal activities.

Implementing the authority

This 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. For further advice 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 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 State Archives and Records NSW 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 State Archives and Records NSW regarding the management of State archives.

Transferring records identified as State archives and no longer in use for official purposes to State Archives and Records NSW 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, government directives and changing social or community expectations. 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*.

Organisations should review functional retention and disposal authorities regularly to ensure that they remain relevant as the organisation's functions and activities, operating environment and requirements for records change. Retention requirements may change over time. This can occur when:

- business needs or practices change
- new laws, regulations or standards are introduced
- new technology is implemented
- government administration is restructured and functions are moved between entities, or
- unforeseen or new community expectations become apparent.

State Archives and Records NSW recommends that organisations check any functional retention and disposal authorities more than 5 years old to ensure that the retention periods and disposal actions remain relevant.

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 Archives and Records NSW.

Administrative change

This 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. The movement of specified functions between branches or units within the public office does not require the authority to be resubmitted to State Archives and Records NSW for approval. However, when functions move from one public office to another the public office that inherits the new function should contact State Archives and Records NSW to discuss use of any existing retention and disposal authority approved for use by a predecessor organisation.

Amendment and review of this authority

State Archives and Records NSW must approve any amendment to this authority. Public offices that use the authority should advise State Archives and Records NSW of any proposed changes or amendments to the authority.

State Archives and Records NSW recommends a review of this authority after five years to establish whether its provisions are still appropriate. Either the public office or State Archives and Records NSW may propose a review of the authority at any other time, particularly in the case of change of administrative arrangements, procedures or to operating environments which are likely to affect the value of the records covered by this authority.

In all cases the process of review will involve consultation between State Archives Records NSW and the public office. If the process of review reveals that this authority requires amendment, the necessary amendments should be made and approved.

Contact Information

State Archives and Records NSW
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Kingswood NSW 2747
Telephone: (02) 9673 1788
E-mail: govrec@records.nsw.gov.au

Functional Retention and Disposal Authority Law enforcement misconduct prevention

Authority number: FA397

Dates of coverage: Open

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1.0.0 COMPLAINTS

The function of managing complaints concerning misconduct, corruption and maladministration by law enforcement officers.

See General Retention and Disposal Authority *Administrative records* **COMMITTEES** for associated with the management of committees which assess complaints.

See General Retention and Disposal Authority *Administrative records* **GOVERNMENT RELATIONS - Agreements** for records relating to agreements with other agencies to facilitate the management of complaints handling, audits or review processes.

1.1.0 Advice and information

The activities associated with providing information and advice.

See **PREVENTION, EDUCATION & RESEARCH - Advice** for records relating to the provision of advice and recommendations to law enforcement agencies.

See General Retention and Disposal Authority *Administrative records* **COMMUNITY RELATIONS - Enquiries** for records relating to the handling of enquiries regarding the organisation and its services.

See General Retention and Disposal Authority *Administrative records* **GOVERNMENT RELATIONS - Advice** for records relating to providing advice to a Minister, the Premier or other government organisations.

01	Records relating to the provision of advice and information regarding the making of complaints about the conduct of law enforcement officers, and the jurisdiction of the organisation. Includes fact sheets, brochures and presentations.	Retain minimum of 10 years after action completed, then destroy
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1.2.0 Assessment

The activity of assessing complaints and allegations of corrupt behaviour, misconduct and maladministration by law enforcement officers.

See **INVESTIGATION - Witnesses, prisoners and informants** for records relating to conducting formal interviews with witnesses in a complaint matter.

02	Records relating to receiving and assessing allegations of misconduct from the public, elected officials or legal representatives, other agencies (e.g. NSW Police Force), and scans of complaints systems. Includes notifications, assessments, decisions, correspondence informing complainants of decisions made.	Retain minimum of 10 years after action completed, then destroy
03	Records relating to complaints outside the jurisdiction of the organisation and unsubstantiated allegations of a minor, insignificant or unspecified nature.	Retain minimum of 5 years after action completed, then destroy

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COMPLAINTS- Audit

1.3.0 Audit

The activities associated with scrutinising systems for dealing with misconduct matters. Includes assessing compliance with statutory requirements, complaints handling systems, policies etc.

04	Records relating to the conduct of audits or reviews of agency systems or practices. Includes records supporting the development of final audit and review reports, research documentation and project papers.	Retain minimum of 10 years after action completed, then destroy
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PREVENTION, EDUCATION & RESEARCH- Advice

2.0.0 PREVENTION, EDUCATION & RESEARCH

The function of preventing corruption, misconduct and maladministration within law enforcement agencies by identifying misconduct risks, developing prevention strategies, and providing advice on improvements to systems and practices.

2.1.0 Advice

The activities associated with offering opinions by the organisation as to an action or judgement. Includes the process of advising.

05	Records relating to the provision of advice and recommendations to law enforcement agencies regarding officer misconduct, officer and/or agency maladministration, corruption education and prevention strategies, and complaint handling practices and procedures. Records include briefings, submissions, reports, requests for advice, responses and correspondence.	Required as State archives
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2.2.0 Education

The activity of educating the general public and law enforcement agencies about misconduct and corruption.

See **COMPLAINTS - Advice and information** for records relating to providing advice to members of the public on the processes for making complaints and the jurisdiction of the Commission.

See **PREVENTION, EDUCATION & RESEARCH - Research** for records relating to reports or reference material generated from the Commission's specific research projects.

See General Retention and Disposal Authority *Administrative records* **COMMUNITY RELATIONS - Conferences** for records relating to administrative arrangements for presentations and workshops.

06	Records relating to educating the community and law enforcement officers about officer misconduct, officer maladministration and agency maladministration to reduce/prevent misconduct and maladministration. Records include educational material and supporting documentation.	Retain minimum of 10 years after action completed, then destroy
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2.3.0 Research

The activity of conducting research projects into and reporting on findings to improve understanding of the corruption environment, identify misconduct risks, develop prevention strategies and assess potential improvements to systems and practices for addressing misconduct. Includes forming research networks with other agencies to improve knowledge of corruption prevention practices and identify emerging corruption issues.

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PREVENTION, EDUCATION & RESEARCH- Research

07	Records relating to the conduct and outcomes of research into corruption and misconduct. Records include research proposals, briefing and consultation papers and final reports.	Required as State archives
08	Records relating to collecting material and information to support research activities and the production of final research reports.	Retain minimum of 10 years after action completed, then destroy

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INVESTIGATION- Assumed identities

3.0.0 INVESTIGATION

The function of detecting and investigating misconduct and maladministration within law enforcement agencies as well as the oversight of investigations undertaken by law enforcement agencies.

See General Retention and Disposal Authority *Administrative records* **EQUIPMENT & STORES** for records relating to managing the storage and allocation to staff of and licensing for firearms.

See General Retention and Disposal Authority *Administrative records* **GOVERNMENT RELATIONS - Reporting** for records relating to reporting to oversight bodies and Parliament.

3.1.0 Assumed identities

The activity of using assumed identities to assist with covert investigation of misconduct and corruption.

09	Records relating to the granting, varying or revoking of authority for the acquisition and use of assumed identities. Records include approvals for use of assumed identities, records of use of assumed identities, revocations, drivers licences, documentation issued by other organisations relating to the assumed name etc.	Required as State archives
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3.2.0 Controlled operations

The activity of conducting controlled operations, i.e. operations involving activities which would, but for authorisation in accordance with legislation, be illegal.

010	Records relating to the conduct of controlled operations. Includes applications and authorities to conduct an operation, variations to and renewals of authorities, notices and reports to the Commissioners and/or chief executive, operational plans and certificates, and any other relevant correspondence.	Required as State archives
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3.3.0 Formal powers

The activity of declaring an investigation, preliminary investigation or intention to monitor critical incidents to enable the Commission to make full use of its statutory powers.

See **OVERSIGHT - Critical incidents monitoring** for records relating to monitoring the conduct of a critical incident investigation.

011	Records relating to formally declaring a preliminary or full investigation or intention to monitor critical incidents. Records include briefs and submissions seeking approval, formal purpose of investigation	Required as State archives
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<i>INVESTIGATION- Formal powers</i>		
	documents signed by the Commissioner, and minutes of meetings that relate to specific approvals for investigation by the Commissioners.	
012	Records relating to developing and producing guidelines to inform persons (in particular legal practitioners) about the nature and exercise of the Commission's functions and powers, including obtaining, handling and releasing information.	Required as State archives

3.4.0 Examinations

The activity of conducting examinations to assist in the investigation of misconduct or corrupt conduct.

See General Retention and Disposal Authority *Administrative records* **COMMITTEES** for records relating to reporting to internal management committees on matters that do not proceed to public hearing.

See General Retention and Disposal Authority *Administrative records* **CONTRACTING-OUT** for records relating to engaging external transcription services.

See General Retention and Disposal Authority *Administrative records* **GOVERNMENT RELATIONS - Reporting** for records relating to reporting to Parliament following public hearings.

013	<p>Records relating to the conduct of examinations, including:</p> <ul style="list-style-type: none"> • developing and producing practice notes • applications for issue, summonses and other documents for witnesses to attend and give evidence • bench books comprising ad hoc notes and comments made by the Commissioner or Presiding Official during Commission examinations • records documenting proceedings before the Commission such as examination briefs, records documenting the scope and purpose of an examination, recordings and transcripts of proceedings and exhibits tendered in evidence • certificates for variations to non-publication orders made during any examination held before the Commission to allow publication or dissemination for the purposes of prosecution or managerial action • register of code names applied to witnesses called before an examination. 	Required as State archives
014	Records relating to the management of transcripts and exhibits, and administering non-publication and access	Retain minimum of 5 years after

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INVESTIGATION- Intelligence and investigation support

	orders. Includes: <ul style="list-style-type: none"> records that support the production of transcripts schedules documenting orders made and any variations. 	investigation completed, then destroy
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3.5.0 Intelligence and investigation support

The activity of gathering, collating and analysing information and undertaking associated technical functions which serve to support the investigation of misconduct or corrupt conduct.

015	Records documenting intelligence gathered for the purpose of an investigation and financial analysis of suspected persons. Includes: <ul style="list-style-type: none"> intelligence reports and documentation gathered from internal and external databases, and internal correspondence documenting operational activities, day to day happenings of investigative staff etc. information obtained from financial institutions, travel agents, car dealers, real estate agents etc regarding the suspect's financial situation, travel movements, assets, business interests etc. 	Retain minimum of 10 years after investigation completed, then destroy
016	Records relating to operational support. Includes: <ul style="list-style-type: none"> official diaries and notebooks of operational staff documenting working hours, information obtained, places visited and names of persons interviewed or seen working papers/files of operational staff consisting of copies of intelligence documents third party information where further dissemination or use is not permitted, e.g. records from the Australian Transaction Reporting and Analysis Centre, the Australian Taxation Office and the NSW Police Force Source Management Unit. 	Retain minimum of 10 years after action completed, then destroy

3.6.0 Notices to produce

The activity of issuing notices for the production of information, documents etc.

017	Records relating to the issue of notices requiring a public authority, public official or person to produce information, documents etc. Records include applications for issue, notices and any other	Retain minimum of 10 years after action completed, then destroy
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INVESTIGATION- Notices to produce

	documents associated with service of notices.	
018	<p>Records relating to any documents or items produced in response to a notice. Includes originals and copies of any document or item.</p> <p>Note: Original documents or items are to be returned to the owner upon completion of an investigation. In the event that all attempts to return the documents or items to the owner have been unsuccessful, then approval to destroy them must be sought from the Commission Solicitor, before approval of the chief executive.</p>	Return to owner after completion of investigation, or, if unable to return to owner, retain minimum of 10 years after investigation completed, then destroy

3.7.0 Prosecution

The activity of compiling evidence to be used by the State or Commonwealth for prosecuting persons for criminal offences.

019	Records relating to the prosecution of criminal offences. Records include briefs of advice and evidence prepared for the Commonwealth or State Director of Public Prosecutions, court attendance notices served on persons against whom charges have been preferred, affidavits and witness statements.	Required as State archives
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3.8.0 Search and seizure

The activity of seizing items or documents under warrants issued.

020	Records relating to the issue, execution and recording of search warrants. Records include applications, warrants, affidavits, occupier's notices, reports to authorised justices, property seizure lists and receipts. Also includes records relating to the recording of a search warrant as it is being conducted such as audio and visual recordings and photos.	Retain minimum of 10 years after action completed, then destroy
021	<p>Original items or documents seized under warrant.</p> <p>Note: Original items or documents are to be returned to the owner upon completion of an investigation or settlement of confiscation proceedings. In the event that all attempts to return the items or documents to the owner have been unsuccessful, then approval to destroy them must be sought from the Commission Solicitor.</p>	Dispose of in accordance with Magistrate's order or return to owner after completion of the investigation or settlement of proceedings or, if unable to return to owner, retain minimum of 10 years after action completed, then

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INVESTIGATION- Surveillance

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3.9.0 Surveillance

The activity of observing, gathering and recording evidence using covert and overt methodologies.

022	<p>Records relating to the management of surveillance activities. Includes:</p> <ul style="list-style-type: none"> warrants, registers, affidavits, emergency authorisations, notifications, revocations, operational orders, surveillance requests, group tasking and running sheets and other supporting documentation relevant to gaining authorisation for and conducting surveillance activities records relating to the technical and administrative aspects of surveillance, with particular regard to telecommunications interception, such as MOUs, working files, records of liaison, methodologies, effectiveness reports, carrier interception capability plans and exemption requests. <p>Note: Records relating to any material or product obtained under warrant pursuant to the following Acts must be dealt with in accordance with the relevant provisions of that Act:</p> <ul style="list-style-type: none"> <i>Listening Devices Act 1984</i> (legacy records) <i>Surveillance Devices Act 2007</i> <i>Telecommunications (Interception and Access) (NSW) Act 1987</i>. 	Retain minimum of 10 years after action completed, then destroy
023	<p>Records relating to the outcomes of surveillance where authority to conduct the surveillance is not required under legislation. Records include reports, recordings and photographs.</p> <p>Note: Records relating to any material or product obtained under warrant pursuant to the following Acts must be dealt with in accordance with the relevant provisions of that Act:</p> <ul style="list-style-type: none"> <i>Listening Devices Act 1984</i> (legacy records) <i>Surveillance Devices Act 2007</i> <i>Telecommunications (Interception and Access) (NSW) Act 1987</i>. 	Retain until no longer required for investigative or operational purposes, then destroy

3.10.0 Task forces

The activity of establishing or co-operating with task forces within the State or with the Commonwealth or other States or Territories.

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INVESTIGATION- Task forces

024	Records relating to the establishment and operation of task forces. Records include operational and personnel related correspondence.	Retain minimum of 10 years after investigation completed, then destroy
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3.11.0 Witnesses, prisoners and informants

The activities associated with gathering and collating evidential based information from individuals associated with a particular complaint or investigation.

025	Records relating to conducting formal interviews with witnesses in either an investigation or complaint matter that are not tendered in evidence before the Commission. Records include audio and/or visual recordings and associated transcripts.	Retain minimum of 15 years after action completed, then destroy
026	Summary records of informants, and liaison between the Commission, witnesses and external agencies in relation to the provision of witness protection and informants. Includes: <ul style="list-style-type: none"> • applications, assessments and records documenting liaison concerning the ongoing management of witnesses • registers of informants listing all registered Commission informants including full names, code names, case officers and dates of registration. 	Required as State archives
027	Records relating to Commission relations and liaison with informants. Records include registration and de-registration forms, risk assessments, formal agreement forms, contact reports and payments records.	Retain minimum of 10 years after action completed, then destroy
028	Records relating to documents or items volunteered by witnesses or informants during the course of an investigation. Includes originals and copies of any document or item. Note: Original documents or items are to be returned to the owner upon completion of an investigation. In the event that all attempts to return the documents or items to the owner have been unsuccessful, approval to destroy them must be sought from the Commission Solicitor.	Return to owner after completion of investigation, or, if unable to return to owner, retain minimum of 10 years after investigation completed, then destroy
029	Records relating to: <ul style="list-style-type: none"> • administration of witnesses before Commission examinations, at prosecutions and in records of 	Retain minimum of 10 years after action completed,

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INVESTIGATION- Witnesses, prisoners and informants

	<p>interview, including decisions as to how information provided by witnesses will be used, letters of comfort, expenses and travel arrangements</p> <ul style="list-style-type: none">liaison between the Commission and corrective services facilities in relation to the interview of prisoners, including arrangements to interview prisoners within a correctional facility, or custodial arrangements for prisoners to attend the Commission hearing room.	then destroy
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OVERSIGHT

4.0.0 OVERSIGHT

The function of monitoring law enforcement agencies' investigations of:

- alleged misconduct or maladministration by their officers
- critical incidents involving officers or other members of law enforcement agencies that results in death or serious injury to a person.

See **PREVENTION, EDUCATION & RESEARCH - Advice** for records relating to reviewing law enforcement agencies' complaints handling processes.

See **PREVENTION, EDUCATION & RESEARCH - Research** for records relating to reviewing law enforcement agencies' complaint investigation reports.

030	Records relating to overlooking the handling and investigation of complaints about law enforcement agencies. Includes notifications of complaints, advice, recommendations, decisions and correspondence with other agencies and members of the public.	Retain minimum of 10 years after action completed, then destroy
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4.1.0 Critical incidents monitoring

The activity of oversight of law enforcement agencies' investigations into critical incidents involving a law enforcement officer that results in death or serious injury of any person, civilian, person in custody or police officer.

031	Records relating to the oversight and review of law enforcement agencies' investigation of critical incidents including: <ul style="list-style-type: none">• authorisations for Commission officers to attend incidents and crime scenes• notifications to family members of the oversight of an incident• assessments of critical incidents, protocols and documents obtained or prepared by law enforcement officers for the purposes of the investigation• interviews of witnesses• advice given during the investigation from the Commissioner• investigation outcome reports and investigation cessation notices.	Required as State archives
032	Records relating to the operational support of monitoring of critical incidents investigations. Includes: nomination of contacts, copies or extracts of documents collected but not required for the investigation etc.	Retain until administrative or reference use ceases, then destroy

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LIAISON

5.0.0 LIAISON

The function of liaising with law enforcement agencies, government departments and private organisations concerning the gathering of intelligence, operational activities or transfer of information.

See General Retention and Disposal Authority *Administrative records* **GOVERNMENT RELATIONS - Agreements** for records relating to agreements with other agencies to facilitate working relationships.

033	Administrative records associated with liaison with other agencies for access to external databases. Includes requests, reasons, permissions, authorised staff access and memoranda of understandings (MOU), e.g. memoranda of understanding entered into with the police.	Retain minimum of 5 years after action completed, then destroy
034	Records relating to correspondence and liaison with law enforcement agencies, government departments and private organisations concerning the gathering of intelligence, operational activities or transfer of information. Records include dissemination of information and advice concerning intelligence gathering methodologies.	Retain minimum of 10 years after investigation or action completed, then destroy
035	Records relating to the dissemination of information to law enforcement agencies for the management and welfare of an officer and any action arising following an investigation. Records include copies of transcripts from hearings and copies of hearing or prosecution briefs.	Retain minimum of 15 years after action completed, then destroy

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POLICIES & PROCEDURES

6.0.0 POLICIES & PROCEDURES

The function of developing rules and standard methods of operation.

036	Final versions of policies and procedures for the management and conduct of investigations and complaints. Includes policies and procedures on the: <ul style="list-style-type: none">• management and handling of complaints• conduct of formal investigations and examinations• exercise of statutory powers by the Commission• conduct of audits or reviews.	Required as State archives
037	Records relating to the development, review and implementation of policies and procedures regarding investigations, inquiries and complaints.	Retain minimum of 10 years after action completed, then destroy