

State Archives and Records Authority of New South Wales

Functional Retention and Disposal Authority: FA406

This authority covers records documenting the function of regulating privacy and access

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.

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Functional Retention and Disposal Authority

Authority no FA406

SR file no 18/0133

Scope This retention and disposal authority covers records documenting the function of regulating privacy and access.

Public office Information and Privacy Commissioner

Approval date 14/11/2019

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
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Functional Retention and Disposal Authority Regulating privacy and access to Government information

Authority number: FA406

Dates of coverage: Open

List of Functions and Activities covered

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No.	Description of records	Disposal action
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1.0.0 PRIVACY AND INFORMATION ACCESS

The function of promoting and protecting privacy and rights of access to information.

See General Retention and Disposal Authority *Administrative records* **COMMITTEES** for records relating to the appointments to and meetings of advisory boards.

See General Retention and Disposal Authority *Administrative records* **PERSONNEL - Employee service history** for records relating to the appointment of Commissioners.

See General Retention and Disposal Authority *Higher and further education* **RESEARCH - Data and Management** for records relating to final reports and the management of research projects commissioned or undertaken by the organisation.

1.1.0 Advice

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

See General Retention and Disposal Authority *Administrative records* **GOVERNMENT RELATIONS - Advice** for records relating to provision of advice to the portfolio Minister or other government organisations concerning aspects of the organisation's policies and procedures, functions, obligations, legislation or liabilities.

See General Retention and Disposal Authority *Administrative records* **GOVERNMENT RELATIONS - Submissions** records relating to the development of position papers or submissions to parliamentary committees, royal commissions, law reform commissions, etc., on privacy and information access rights.

See General Retention and Disposal Authority *Administrative records* **COMMUNITY RELATIONS - Liaison** for records relating to the handling of enquiries regarding routine information about the organisation and its services, e.g. hours of opening, availability of or access to services etc.

1.1.1	Records relating to submissions and the provision of advice on substantive privacy and information access issues involving the development of new policy or complex application of existing policy.	Required as State archives
1.1.2	Records relating to the provision of advice of a routine nature regarding privacy and information access rights. Includes advice and comments provided to other agencies on internal training materials, draft codes of practice, protocols, requests for research etc.	Retain minimum of 7 years after action completed, then destroy

1.2.0 Codes of practice, directions & guidelines

The activity of initiating, developing, or assisting with the development of, codes of practice and guidelines.

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PRIVACY AND INFORMATION ACCESS - Codes of practice, directions & guidelines

See **PRIVACY AND INFORMATION ACCESS - Education** for records relating to the development of training materials and delivery of training courses.

See **PRIVACY AND INFORMATION ACCESS - Advice** for records relating to feedback provided to other agencies on codes of practice etc.

1.2.1	<p>Records relating to the development and review of guidance and codes of practice or directions concerning the collection, storage, use or provision of access to information. Includes:</p> <ul style="list-style-type: none"> • privacy codes of practice developed by the organisation • directions exempting or modifying the application of information principles or privacy codes of practice to particular agencies or organisations • guides, guidelines, and fact sheets concerning the collection, storage, use or provision of access to information. <p>Includes final versions, substantial drafts and research, reports summarising consultation etc.</p>	Required as State archives
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1.3.0 Complaints

The activity of responding to complaints.

See **PRIVACY AND INFORMATION ACCESS - Reviews** for records relating to applications for review of or appeals against decisions to an appeal panel, tribunal or court.

See General Retention and Disposal Authority *Administrative records* **COMMUNITY RELATIONS - Public reaction** for records relating to complaints that result in referral to another organisation or body for response or a routine response.

1.3.1	Records relating to the receipt, investigation and resolution of complaints about access to information or alleged violations of privacy that result in the setting of precedents.	Required as State archives
1.3.2	Records relating to the receipt and investigation of complaints about access to information or alleged violations of privacy issues where a detailed response is provided but which do not set a precedent or result in policy changes.	Retain minimum of 7 years after action completed, then destroy

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PRIVACY AND INFORMATION ACCESS - Education

1.4.0 Education

The activity of preparing and delivering education and training.

See General Retention and Disposal Authority *Administrative records* **COMMUNITY RELATIONS - Customer service** for records relating to the management of bookings for training.

See General Retention and Disposal Authority *Administrative records* **COMMUNITY RELATIONS - Celebrations, ceremonies, functions** for records relating to administrative arrangements for training.

See **PRIVACY AND INFORMATION ACCESS - Advice** for records relating to advice provided to other organisations on the development of training.

1.4.1	Records relating to the development of training materials. Includes final versions.	Retain minimum of 7 years after superseded or action completed, then destroy
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1.5.0 Monitoring

The activity of monitoring, auditing and investigating compliance with legislative or other requirements.

1.5.1	Reports documenting findings or outcomes of compliance audits, investigations or reviews.	Required as State archives
1.5.2	Records relating to the monitoring of compliance with privacy or information access requirements. This includes: <ul style="list-style-type: none">• monitoring information guides and the release of public information by agencies• records relating to the conduct of audits or investigations of agencies to monitor compliance.	Retain minimum of 7 years after action completed, then destroy
1.5.3	Privacy management plans submitted by agencies.	Retain until superseded and reference use ceases, then destroy

1.7.0 Reviews

The activities associated with applications for review of decisions.

Regulating privacy and access to Government information

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PRIVACY AND INFORMATION ACCESS - Reviews

1.7.1	Records relating to applications for review or appeals against decisions to a panel, tribunal or court where the Commissioner is actively involved, represented or makes a written submission.	Required as State archives
1.7.2	Records relating to applications for internal review where there is no subsequent application to an external review body. Includes advice.	Retain minimum of 7 years after action completed, then destroy