

State Records Authority of New South Wales

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 of New South Wales in accordance with section 21(3) of the Act.

ISBN 978-0-9806390-6-3

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General Retention and Disposal Authority

Authority no GA38

SR file no 04/0366

Scope

This general retention and disposal authority covers applications for authorisation to exercise law enforcement powers from c.1984 onwards.

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

John Burke
Acting Director
State Records Authority of New South Wales

22/6/2010
Date

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 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 does not disapprove. Advice on the State Records Act can be obtained from State Records.

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. The State Records Authority ('State Records') reviews and approves organisations' retention and disposal authorities under the State Records Act.

This authority is the product of an appraisal process conducted in accordance with State Records' *Standard on the appraisal and disposal of State records*.

State Records' 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' 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 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. 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 – Imaged records*). 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 Records 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 Records regarding the management of State archives.

Transferring records identified as State archives and no longer in use for official purposes to State Records' 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.

Custody

The custody column in the general retention and disposal authority is designed to assist public offices in identifying storage requirements or transfer arrangements for records identified as State archives (ie with a Disposal action of 'Required as State archives'). The directions in this column are recommendations only and are *not* mandatory. The type of information may include directions on how long records should be retained in the office and how long they should be kept in off-site, off-line or secondary storage prior to their transfer as State archives. A recommendation to retain records in the organisation for more than 25 years does not imply that a *still in use determination* (see Part 4, Section 28 of the *State Records Act 1998*) or that a distributed management agreement (see Part 4, Section 30 of the *State Records Act 1998*) has been approved by State Records. Advice on arrangements for managing and transferring State archives can be obtained from 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 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: c.1984+

No	Function/Activity	Description	Disposal Action	Custody*
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> 		

* see *About the General Retention and Disposal Authority*

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No	Function/Activity	Description	Disposal Action	Custody*
<i>LAW ENFORCEMENT - Applications for authorisation to exercise law enforcement powers</i>				
1.1.1		<p>Records relating to applications for:</p> <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. 	Required as State archives	Retain minimum of 75 years after action completed, then transfer
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. 	Retain minimum of 75 years after action completed, then destroy	

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No	Function/Activity	Description	Disposal Action	Custody*
<i>LAW ENFORCEMENT - Applications for authorisation to exercise law enforcement powers</i>				
		<p>Records include:</p> <ul style="list-style-type: none"> • applications • 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 	Retain minimum of 10 years after action completed, then destroy	

* see *About the General Retention and Disposal Authority*

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No	Function/Activity	Description	Disposal Action	Custody*
<i>LAW ENFORCEMENT - Applications for authorisation to exercise law enforcement powers</i>				
		<ul style="list-style-type: none">• issued warrants or orders• reports on the use of warrants or orders.		

* see *About the General Retention and Disposal Authority*