

GUIDANCE DOCUMENT



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1. State Records

1.1 Some Councillor's records are State Records

Public offices are bound by the *State Records Act 1998* which establishes rules for best practice for recordkeeping in NSW Government, encouraging transparency and accountability. Councils are identified as public offices under the Act (section 3(1)). When discharging functions of Council, Councillors are subject to the State Records Act when they create or receive 'State records'.

A State record is 'any record made and kept or received and kept, by any person in the course of the exercise of official functions in a public office, or for any purpose of a public office, or for the use of a public office' (section 3(1)).

1.2 Examples of State records

Examples of State records include (but are not limited to):

- Correspondence, including emails, regarding building and development matters;
- A petition received from a community group;
- Declarations concerning a Councillor's pecuniary interests;
- Speech notes made for addresses given at official Council events; and
- Complaints, suggestions or enquiries by ratepayers about Council services.

1.3 Examples of records that are not State records

Conversely, records which are created, sent or received by Councillors when they are not discharging functions of Council are not considered to be State records for the purposes of the *State Records Act 1998*.

Examples of records that are not State records include (but are not limited to):

- Records relating to political or electoral issues, e.g. lobbying for votes, supportive emails from members of the community regarding elections or political stances;
- Communications regarding matters of personal/general interest rather than Council interest e.g. information from environmental or other interest groups not specific to issues being considered by Councillors or Council;
- Records relating to attendance at sports functions, church fetes, community functions when the Councillor is not representing Council; and
- Personal records of Councillors such as personal emails, character references for friends, nomination for awards, letters to local newspapers etc that are not related to Council business.

2. Records as a resource

Records are a vital asset to Council. Many records created and received by Councillors have the potential to:

- Support the work of Councillors and Council's program delivery, management and administration;
- Help Councillors and Council to deliver customer services in an efficient, fair and equitable manner;
- Provide evidence of Councillor's actions and decisions and establish precedents for future decision making; and
- Protect the rights and interests of the Council, Councillors and its clients and ratepayers.

A small percentage of records created and received by Councillors will become archives, part of the cultural resources of the State.

3. Creation and capture of records

3.1 What records to create and capture

Councillors should create and capture full and accurate records of any significant business undertaken in the course of their official duties for Council. Significant business can include:

- Providing advice, instructions or recommendations;

- Drafts of documents for Council containing significant annotations or submitted for comment or approval by others; and
- Correspondence received and sent relating to their work undertaken for Council.

Council is responsible for:

- Creating and capturing records of Council or committee meetings where the Council is the secretary; and
- Capturing any State records it sends to Councillors regarding Council business.

3.1.1 Creation of records of a confidential nature

On some occasions Councillors are approached and asked to keep matters discussed relating to Council business confidential. In this case they should refer the person to Council's Privacy Management Plan. This indicates that confidential conversations/correspondence must still be recorded and registered into Council recordkeeping systems if they refer to Council business. There are security controls in place to ensure that these records have limited access (see [Section 5 - Security and confidentiality of records](#)), but these records may still need to be produced under relevant legislation e.g. subpoena or the *Government Information (Public Access) Act 2009*. With security controls in place records are likely to be less at risk than if they were not in recordkeeping systems.

3.2 How to create records

Council has a number of paper and electronic templates available for Councillors to create emails, faxes, letters and memos while conducting business for the Council. These will assist Councillors in ensuring that the essential information is recorded.

Details of significant advice, commitments etc made during telephone or verbal conversations or via SMS should be recorded using the Council's standard file note template (e.g. time, date, parties involved, summary of discussion, commitments, advice given etc and reasons for them). Notes in Councillors' diaries are generally not adequate where there are recordkeeping requirements and should be converted into a formal file note. These records should be made as soon as possible after the event to ensure the information is accurate.

See [Section 5 - Security and confidentiality](#) of records for information about the treatment of confidential matters.

3.3 How to capture records

Records of Council business that are created or received by Councillors (with the exception of those sent from Council as they are already captured) should be saved into official Council recordkeeping systems as soon as is practicable so that Council can assist with their long term management.

3.3.1 Paper records

Records created or received in paper format should be forwarded to the Executive Assistant to the Mayor and General Manager. If records are of a sensitive or confidential nature, the Councillor should alert the Executive Assistant to this fact so that appropriate security controls can be applied.

3.3.2 Email and electronic records

Email and other electronic records should be forwarded to the Executive Assistant to the Mayor and General Manager promptly for registration. If records are of a sensitive or confidential nature, the Councillor should alert the Executive Assistant to the Mayor and General Manager to this fact, so that appropriate security controls can be applied.

See [Section 5 - Security and confidentiality of records](#) for information about security controls for sensitive records.

3.3.3 Councillors' copies

If a Councillor retains copies of any records once the originals have been forwarded for registration, these should be retained only while needed for current Council business. When the copies are no longer required they are to be forwarded to the Executive Assistant to the Mayor and General Manager for destruction. The routine destruction of copies of records is permitted under the *State Records Act* (section 21(2)). See [Section 10 - Disposal](#) for more information.

It is important to recognise that these copies should be treated like the originals with regard to security controls applied (see [Section 9 - Handling and storage of records](#)).

4. Registration of records by Council

4.1 Registration procedures

Records received from Councillors for registration will be handled in accordance with Council's Records Management Procedures.

See [Section 5 - Security and confidentiality of records](#) for information about security controls applied to sensitive records.

4.2 Councillors' mail (including email)

Mayoral mail is opened by Council's records staff and where appropriate, registered in Councils records management system and tasked to the Executive Assistant to the Mayor and General Manager for action with a copy referred to the General Manager. The hardcopy is placed in the Mayor's tray.

Mail addressed to Councillors is not opened by Council staff. Mail is placed unopened in the Councillors' pigeon holes. Should there be a requirement to capture the mail received by Councillors into Council's records management system, it should be forwarded to the Executive Assistant to the Mayor and General Manager promptly for registration.

Faxes to Councillors are registered in Council's recordkeeping system and tasked to the Executive Assistant to the Mayor and General Manager for action with a copy referred to the General Manager.

Electronic mail received through the Council's generic email address that is addressed to Councillors is registered in Council's recordkeeping system and tasked to the Executive Assistant to the Mayor and General Manager for action with a copy referred to the General Manager.

5. Security and confidentiality of records

5.1 Building controls

Council's paper records are kept securely in designated Storage Areas with security controls to protect against unauthorised access.

5.2 System controls

Council's records management software which controls both paper and electronic records restricts access according to security levels.

5.3 Security labels

Sensitive records in all formats have labels such as 'Commercial in Confidence' or are copyright protected. Councillors must treat these records in accordance with their respective labeling.

5.4 Rules for Council staff and Councillors

Council staff and Councillors are bound by Council's Code of Conduct, preventing unauthorised access or disclosure of Council records.

See [Section 9 - Handling and storage of records](#) for advice regarding Councillors' security responsibilities when storing records.

6. Access to records of Council

6.1 Access relating to civic duties

Councillors need to have access to information held by Council to help them make informed decisions on matters under their consideration. This information should be relevant and appropriate to the discharge of their obligations e.g. records relating to matters before Council or due to be listed for which there is notification.

As a first step, Councillors should direct all requests for access to records to the Executive Assistant to the Mayor and General Manager.

Councillors wishing to access records that are not deemed to be related to their civic duties must follow the relevant procedure for requesting access under the GIPA.

6.2 Access relating to personal interest

Councillors wishing to access records in relation to a matter of personal interest have the same rights as other members of the public. Access may be obtained, for example, under:

- The *Privacy and Personal Information Protection Act 1998*;
- The *Health Records and Information Privacy Act 2002*;
- The *State Records Act 1998*; or
- The *Government Information (Public Access) Act 2009*.

6.3 Refusal of access

If a Councillor is refused access to records, they should refer to any appeal provisions of the relevant Act.

6.4 More information on access

More information on gaining access to Council records can be obtained from contacting Council's Public Officer.

See also [Section 8 - Unauthorised access or disclosure of council records.](#)

7. Borrowing records of Council

7.1 Borrowing paper-based records

Under section 11(1) of the *State Records Act*, Councils are required to ensure the safe custody and proper preservation of records they are responsible for. If a Councillor needs to borrow a paper-based Council record in the course of their duties with Council, they should contact the Executive Assistant to the Mayor and General Manager for assistance.

The records should then be promptly returned to Council storage for safety and to enable the files to be made available to other Councillors and Council staff.

7.2 Loss of records

Councillors are responsible for records held in their custody and should protect them accordingly. If a record is not able to be located, the Councillor is to advise the Executive Assistant to the Mayor and General Manager as soon as possible.

7.3 Archives

Council policy regarding archives is that they are **not** to be borrowed. Rather, they are to be viewed within Council offices during normal working hours in the presence of a Records Officer. Photocopies of relevant pages can be made available to Councillors if restrictions on copying do not apply.

8. Unauthorised access or disclosure of Council records

The *Local Government Act 1993* section 664(1) prohibits the disclosure of information obtained in connection with the administration or execution of the Act, except in certain specific circumstances. Councillors are also bound by the Council's Code of Conduct **not** to:

- Attempt to access records they are not authorised to see;
- Provide unauthorised access to other parties while Council records are in their care;
- Disclose confidential information about Council business; or
- Disclose personal information of employees, clients etc without the subject's consent.

These rules help to ensure that Council, its staff and clients are protected and that the requirements of legislation, such as privacy legislation, are met.

9. Handling and storage of records

9.1 Damage or neglect of records is an offence

Damage or neglect of a State record is an offence under section 21 of the *State Records Act*. Councillors should apply the storage and handling rules outlined below to ensure records are protected.

9.2 Handling of records

When handling Council records the following rules apply:

- Registered documents are not to be rearranged or removed from Council files (the order provides context for the records) and information on files should never be altered;

- No food or drink is to be consumed near records (grease and food particles can attract vermin and liquids can damage records if spilt on them);
- Strictly no smoking around records (due to airborne pollutants and the risk of fire); and
- If records are damaged during handling, the Executive Assistant to the Mayor and General Manager should be informed. No attempts should be made to repair the record (as some repairs can do long term damage).

Information on handling specific formats is available in State Records' *Recordkeeping in Brief 14: Handle with care* or can be provided by Council's Records staff.

9.3 Storage of records

When storing Council records temporarily the following rules apply:

- Records are to be kept away from known risks such as water, fire, mould, vermin, vandalism, chemicals, direct sunlight, extreme temperatures etc;
- Electronic records should be protected against additional hazards such as viruses or electronic fields; and
- Records should be secured appropriate to their level of sensitivity. No Council records should be left in plain view in vehicles or lying around the house.

Councillors who are storing records of a sensitive or confidential nature should ensure that they are appropriately protected.

10. Disposal of records

10.1 Disposal in accordance with the State Records Act

State records held by Councillors must be disposed of in accordance with the *State Records Act 1998*.

State Records NSW has issued *General Retention and Disposal Authority – Local Government records (GDA10)*, which outlines classes of records and how long they should be kept before being legally destroyed or transferred to archives. Periods specified are based on relevant legislation, guidelines and standards. Failure to keep records for the length of time specified in the GDA may put Councillors and Council at risk.

Other forms of authorised disposal include:

- By order of a court or tribunal; or
- 'Normal administrative practice' (NAP) where ephemeral, duplicate or facilitative records can be destroyed. State Records has produced *Guidelines on Normal Administrative Practice (NAP)* which provide further information on the application of NAP.

10.2 Liaison with Council for disposal

Councillors should liaise with Council regarding the disposal of any records of Council business as Council is responsible for:

- Ensuring legislative requirements are met;
- Ensuring destruction is undertaken appropriately (e.g. that no sensitive information is released due to inappropriate destruction methods); and
- Documenting disposal decisions for accountability purposes.

Council's Records staff is primarily responsible for the disposal of State records, unless other arrangements are approved. Councillors should contact the Executive Assistant to the Mayor and General Manager for assistance.

For more information about the use of this Guidance Document, please contact Council's Executive Manager Business Systems & Governance.