

What is a public record and who needs to keep them?

The *Public Records Act 2002* (the Act) governs recordkeeping in Queensland.

Under the Act, public authorities must make and keep records of their activities, manage their public records responsibly and dispose of public records only if authorised.

What is a public record?

A public record is any form of recorded information that is evidence of official business activities. The content of the record determines whether it is a public record – not its medium.

A public record includes:

- any record created, received or kept by a public authority in the course of their business or conduct of their affairs
- a Ministerial record*
- a record of an Assistant Minister
- a copy of a public record
- a part of or a copy of a part of a public record.

What are public authorities?

Public authorities covered by the Public Records Act include:

- departments
- Ministers and Assistant Ministers
- the Governor
- organisations created by a minister or through legislation
- Commissions of Inquiry
- Government Owned Corporations
- officers of the court, and
- local governments.



Public records can take many forms

They can include (but are not limited to):

- ✓ Video including CCTV and body worn camera footage
- ✓ Images
- ✓ Text messages
- ✓ Emails
- ✓ Social media interactions
- ✓ Data held in business systems
- ✓ Messages in messaging applications e.g. WhatsApp, Snapchat, etc.

Term you should know: Ministerial record*



A ministerial record includes any form of recorded information created or received by, or created on behalf of, a Minister in the course of carrying out Ministerial portfolio responsibilities, but does not include:

- a record only related to personal or party-political activities
- a record held in their capacity as a member of the Legislative Assembly.

Find out more:

www.forgov.qld.gov.au/glossary/ministerial-record

Why is good recordkeeping important?

Creating and keeping good records provides accessible, trustworthy information that helps to enhance service delivery, improve decision making and deter and uncover wrongdoing.

Good records management helps public authorities to:

- make good decisions
- provide evidence of decisions and actions
- support business practices
- promote confidence in information
- protect against complaints or accusations of wrongdoing
- meet legislative requirements and responsibilities.

Records management and corruption

Taking a systematic approach to good recordkeeping can significantly reduce the risk of corruption.

Inadequate management of public records can constitute corruption. It can also result in dismissal and/or civil legal action against the individual and organisation involved.

The CCC has identified cases in which inadequate recordkeeping may have

- i. enabled corruption or
- ii. hindered a corruption investigation, or
- iii. prolonged a corruption investigation.

Records management requirements

Public authorities must:

- make and keep public records having regard to policies, standards and guidelines issued by the State Archivist, and
- only dispose of public records when authorised to do so.

The Chief Executive of a public authority is responsible for ensuring the authority makes and keeps public records.

The *Records governance policy*

The *Records governance policy* sets out the foundational principles of recordkeeping for public authorities. Under this policy, public authorities must:

- ensure records management is supported at all levels of the business
- systematically manage records using governance practices that are integrated and consistent with broader agency frameworks
- create complete and reliable records
- actively manage permanent, high-value and high-risk records and information as a priority
- make records discoverable and accessible for use and re-use
- dispose of records in a planned and authorised way.

Additional recordkeeping requirements

Records management requirements can also come from other legislation such as:

- *Right to Information Act 2009*
- *Information Privacy Act 2009*
- *Evidence Act 1977*
- *Electronic Transactions Act 2001*
- *Crime and Corruption Act 2001*
- any other legislation that covers the agency's activities.



The creation, storage and disposal of public records

Creating and capturing

Create vs capture

Public authorities both create and receive public records. Some public records are created as part of a business process, for example, when sending an email. However, some activities must be captured deliberately, for example, by making a file note of a conversation or a meeting.

To determine what to create or capture, public authorities must determine what records should be created or kept to:

- provide evidence of their activities and decisions
- support legal and business requirements, and
- meet community expectations.

The creation and capture of public records should be systematic and integrated into business processes wherever possible.

When you create or capture a public record, you should ensure it is:

- ✓ **Complete** – contains all the information needed to document the activity and make sense of the content
- ✓ **Meaningful** – be able to be understood because of the information it contains or because the context in which it was created and used is apparent
- ✓ **Accurate** – be a true depiction of the activity concerned.

Storing and managing

Public records must be stored and managed so that they are authentic, secure, usable, discoverable and accessible for as long as they must be kept. Every public record should be:

- ✓ **Authentic** – be proven and trusted to be what it says it is and to have been created and used in the way it says it was created and used
- ✓ **Secure** – safe from unauthorised access, alteration or removal
- ✓ **Usable** – able to be used past the point of creation
- ✓ **Discoverable** – easily findable when needed
- ✓ **Accessible** – can be found and located as required.

Storing and managing records can involve activities such as:

- the capture of metadata*
- the implementation of security and access controls and
- preservation activities for both paper and digital records.

Public authorities should approach the storage and management of records strategically, with considerations of both current and future needs.



What is...



Metadata* is data about the record itself such as author or date of creation.

Disposal

Disposal has a specific definition under the Act and includes destroying, damaging, abandoning, transferring, donating, giving away or selling a record in whole or in part.

Authorisation

Public records cannot be disposed of without authorisation.

Disposal of a public record without proper authorisation is a criminal offence and carries a penalty of up to 165 penalty units.

Authorisation for disposal is generally given through retention and disposal schedules approved by the State Archivist.

Any disposal of public records must also be endorsed by the CEO or authorised delegate* of the public authority.

Authorisation for disposal may also come from another legal authority, justification or excuse.

Public authorities seeking to use authorisations outside of retention and disposal schedules should perform their own investigations about the legality or impact of the authority, justification or excuse.

Terms you should know: **Authorised delegate***



A person or position within an agency who has recordkeeping responsibilities delegated to them by the agency's CEO. This usually includes permission to restrict access to, transfer and/or endorse the disposal of public records on behalf of the CEO of a public authority. The legal responsibility for recordkeeping remains with the CEO.

Find out more:

www.forgov.qld.gov.au/glossary/authorised-delegate

Disposal freeze**

The State Archivist or an agency's CEO may issue an instruction that requires temporarily stopping the destruction of public records relating to a specific topic or event.



Regular, authorised disposal:

- ensures that only important and useful records are kept,
- reduces storage and maintenance costs and
- makes it easier to locate records

Undertaking disposal

Public authorities should undertake regular, planned disposal of their public records.

Disposal must be documented to enable a public authority to tell when and how a record was disposed of.

Records that cannot be disposed of

Records cannot be destroyed if they:

- are required as evidence for legal proceedings
- are under a disposal freeze**
- are subject to a right-to-information request
- have a permanent retention period in a retention and disposal schedule
- have intrinsic value (i.e. special qualities and characteristics that contribute to the record's significance).

What are...



Intrinsic value records include those that have special qualities and characteristics such as:

- an aesthetic quality such as an example of 19th century cartography, book binding or handwriting
- historical significance such as a connection to a famous place, person or event
- personal significance to the subject of the record (such as a handwritten letter within an adoption file).

Checklist for public records and their lifecycle

Capture and creation

- ✓ **Complete:** Do I have all the information needed to document the activity and make sense of the content?
- ✓ **Meaningful:** Will my record be able to be understood by other people? Is the information clear? Is the context in which the records were created and used apparent?
- ✓ **Accurate:** Is this a true depiction of the activity concerned?

Storage and management

- ✓ **Authentic:** Can my record be proven and trusted to be what it says it is? Has it been created and used in the way it says it was created and used?
- ✓ **Secure:** Is it safe from unauthorised access, modification or destruction?
- ✓ **Usable:** Will anyone coming after me be able to use this record once I have finished with it?
- ✓ **Discoverable:** Will people be able to find it when it's needed, because I've used a logical title and search terms?
- ✓ **Accessible:** Can it be accessed only by those people with a genuine business need? Is it protected from unauthorised access?

Disposal

- ✓ Do I have proper authority to dispose of these records?
- ✓ Are they subject to a disposal freeze?
- ✓ Are they currently subject to an access application under RTI or the IP Act?
- ✓ Are they or could they be required for a legal proceedings in the future?



Records required for legal proceedings or right-to-information requests



Any records which are subject to a request for access under the *Right to Information Act 2009*, the *Information Privacy Act 2009* or any other relevant Act must not be destroyed until the action, and any applicable appeal period, has been completed.

Legal proceedings

A duty of care exists for agencies to ensure records that may foreseeably be needed as evidence in a judicial proceeding, including any legal action or a Commission of Inquiry, are not disposed of. The destruction of evidence is an offence under the *Criminal Code Act 1899* (section 129)—“for a person who, knowing something is or may be needed in evidence in a judicial proceeding, damages it with intent to stop it being used in evidence”. Internal processes should be implemented to meet this obligation. You may need to consult with your legal or Right to Information area.

Further information and resources

- **Queensland State Archives** | www.forgov.qld.gov.au/recordkeeping
- **Crime and Corruption Commission** | www.ccc.qld.gov.au
- **Office of the Information Commissioner Queensland** | www.oic.qld.gov.au



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