



JULY 2019

Council records

A guideline for mayors, councillors, CEOs and council employees

In this advisory, the Crime and Corruption Commission (CCC) and Queensland State Archives (QSA) set out the requirements for the management of council records. It addresses the following questions:



- Why is good recordkeeping important?
- What is a public record?
- What are the requirements for managing records?



Crime and Corruption Commission
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Government

Why is good recordkeeping important?

Public records are the cornerstone of an accountable and democratic society. They allow scrutiny from the public of the decisions made by those who are elected or employed to act on their behalf.

In the past the CCC has identified cases where inadequate recordkeeping has hindered an investigation of alleged corrupt conduct and indeed may have enabled that conduct to occur in the first place.

The risk of misconduct occurring can be significantly reduced by adopting a systematic approach to good recordkeeping.

Effective recordkeeping strengthens transparency and good governance

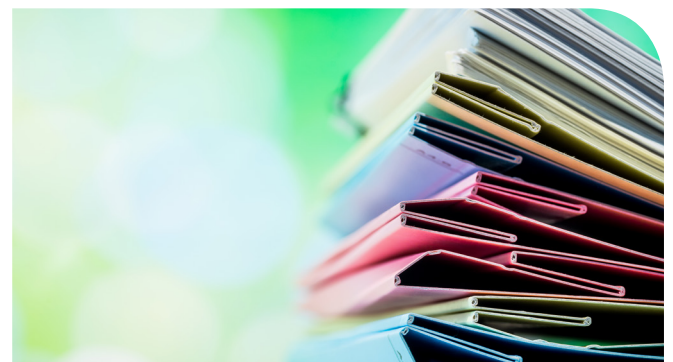
It also supports the five Local Government principles from the *Local Government Act 2009* (LG Act) that mayors and councillors (as elected representatives), CEOs and council employees must comply with while performing their roles. These principles are:

- transparent and effective processes, and decision-making in the public interest
- sustainable development and management of assets and infrastructure, and delivery of effective services
- democratic representation, social inclusion and meaningful community engagement
- good governance of, and by, local government
- ethical and legal behaviour of councillors and local government employees.¹

Inadequate recordkeeping increases the risk of councils being unable to provide evidence of their decisions or actions potentially undermining public confidence in the ability of the Council and its employees to conduct itself in an accountable and transparent manner.

Effective recordkeeping allows councils, including mayors and councillors, to:

- meet their legislative requirements and responsibilities
- protect the rights and entitlements of ratepayers
- protect and help defend against complaints or accusations of wrongdoing
- make robust and consistent decisions
- promote confidence in the authenticity and integrity of information
- support efficient and transparent business practices
- provide evidence of decisions and actions.



Inadequate recordkeeping increases the risk of councils being unable to provide evidence of their decisions or actions.

¹ *Local Government Act 2009*, s.4 (2)

What is a public record?

The *Public Records Act 2002* (PR Act) defines a public record as “any form of recorded information, created or received by a public authority, in the exercise of its statutory, administrative or other public responsibilities or for a related purpose”.² Councils are public authorities and therefore required to create and manage public records.

A public record is any record that:

- is evidence of a decision
- is evidence of a transaction or an action taken
- is created or received to meet legal requirements, community expectations or business needs.

Public records can be created in digital or paper formats and include:



- videos
- images
- text messages
- emails
- social media interactions
- data held in business systems
- messaging applications.

How does this apply to council records?

Council records are public records where the content of the record relates to the administration of council business and the responsibilities of council employees, the mayor and councillors under the LG Act or the *City of Brisbane Act 2010* (COBA).³

Examples of public records

- ✓ minutes of council meetings and the notes used to make those minutes
- ✓ decisions resulting from discussions between councillors about the administration or management of the local government
- ✓ rate notices
- ✓ dog registrations and renewals
- ✓ an email telling staff about a WHS meeting
- ✓ a text with a decision to approve funding for a project
- ✓ a post-it note with instructions to act on a report
- ✓ a council Facebook post with a complaint from a ratepayer
- ✓ a video or audio recording of a meeting about progress on a council project
- ✓ a Twitter or Instagram post talking about an upcoming council event.

Records relating to the following activities are not public records

- ✗ personal activities and interactions with family and friends
- ✗ political membership or activities
- ✗ electorate, ward or divisional activities.

² *Public Records Act 2002*, s.6

³ *Local Government Act 2009*, s.12, s.13; *City of Brisbane Act 2010*, s.14, s.15

What are the requirements for managing public records?

All public records, including digital records such as social media interactions, conversations within messaging applications and text messages, are subject to legislation and legal processes such as discovery and subpoena.



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A range of legislation exists which specifies requirements for the creation and management of public records, including:

- *Local Government Act 2009*
- *Public Records Act 2002*
- *Right to Information Act 2009*
- *Information Privacy Act 2009*
- *Evidence Act 1977*
- *Electronic Transactions Act 2001.*

Councils are also required to abide by the recordkeeping policies and guidelines issued by the State Archivist including:

- Records Governance Policy
- Local Government Sector Retention and Disposal Schedule
- General Retention and Disposal Schedule.

The following pages outline the three requirements essential to good recordkeeping:

1. Council employees, mayors and councillors are aware of and fulfil their recordkeeping obligations under the *Public Records Act 2002*
2. Council employees, mayors and councillors must make full and accurate public records
3. Public records must be retained for as long as they are lawfully required to be kept.



REQUIREMENT 1

Council employees, mayors and councillors are aware of and fulfil their recordkeeping obligations under the *Public Records Act 2002*

Policies and procedures for the management of public records

Councils have a responsibility for the efficient management of public records so that all council employees (including contractors and volunteers), mayors and councillors, can fulfil their recordkeeping obligations under the PR Act, LG Act or the COBA. Inadequate management of public records can constitute corruption. It can also result in dismissal and/or civil action against the individual and organisation involved.

To assist council employees, mayors and councillors in meeting their statutory recordkeeping obligations, council recordkeeping policies and procedures should outline expectations for the capture and management of public records. Recordkeeping policies and procedures should:

- outline the recordkeeping roles and responsibilities of the CEO, council employees, contractors, mayors and councillors
- define council-specific recordkeeping requirements
- specify the use of council-approved technologies and applications that meet security and recordkeeping requirements
- define a public record and provide advice on how to identify one
- identify how public records will be captured and managed appropriately, including:
 - » responsibility for the capture of emails
 - » the management of public records in social media or instant messaging applications
 - » the usage of private accounts and how and when public records are captured

- » capture protocols for records contained on council-issued mobile devices (e.g. through device management software or routine physical download from devices)
- outline when public records can be disposed of and under what circumstances, including authorisation, disposal methods and documentation.

Mayors and councillors should consult with the CEO (or delegate) of their Council to determine how public records in their possession or control will be managed.

The deliberate use of unapproved technology and platforms by council employees, mayors or councillors would be a breach of council policies. For mayors and councillors this may result in a complaint to the Office of the Independent Assessor (OIA) and would be inappropriate conduct within the meaning of the LG Act. More serious cases may also be misconduct within the meaning of the LG Act on the basis that it is a breach of the trust placed in a councillor, and disciplinary action may be commenced in the Councillor Conduct Tribunal.

REMEMBER



Recordkeeping policies and procedures should:

- outline roles and responsibilities
- define requirements
- specify use of approved technologies
- define a public record
- identify how records will be captured and managed
- outline disposal timeframe.



REQUIREMENT 2

Council employees, mayors and councillors must make full and accurate public records

Recordkeeping responsibilities for council employees

Under the PR Act, overall responsibility for recordkeeping in a local government rests with the Council's CEO. However, the recordkeeping responsibilities outlined in the PR Act extend to anyone who creates or receives public records, including council employees, the mayor and councillors.

Specific recordkeeping responsibilities of the CEO include:

- ensuring the safe custody of all council records (not just public records)⁴
- ensuring the Council makes and keeps full and accurate records of activities and has regard to any relevant policy, standards and guidelines made by the State Archivist.⁵

Recordkeeping responsibilities for mayors and councillors

As with council employees, mayors and councillors are required to comply with all laws that apply to local government.⁶ This includes the legislative obligations outlined in the PR Act. Any record created or received in a mayor or councillor's official capacity that relates to their responsibilities under the LG Act or the COBA⁷ and is related to the administration of council business is a public record.⁸

Some examples of such records are:

- documents created as part of the administration of the local government
- communications about the adoption and implementation of policy and local laws
- a letter addressed to a councillor from a constituent relating to council business
- an internal memo written by a councillor to their CEO
- posts on social media or any other application about council-related matters that relate to responsibilities under the LG Act or the COBA⁹

- a mayor or councillor's diary of council-related appointments and meetings.

Records relating to personal activities, party political memberships or activities, or electorate or divisional activities are not public records and do not need to be managed as public records.

The failure by council employees, mayors or councillors to make and keep full and accurate records is a breach of the PR Act and may be a breach of the *Crime and Corruption Act 2001* (CC Act). Breaches could result in disciplinary or criminal charges being laid against the individual/s involved.

An individual's credibility may also be called into question if it is revealed that communications were deliberately withheld to avoid the accountability and transparency requirements of the LG Act, the COBA or the Code of Conduct.

⁴ *Local Government Act 2009*, s.13(3)(e); *City of Brisbane Act 2010*, s.15(2)(e)

⁵ *Public Records Act 2002*, s.7

⁶ *Local Government Act 2009*, s.12; *City of Brisbane Act 2010*, s.14

⁷ *Local Government Act 2009*, s.12; *City of Brisbane Act 2010*, s.14; *Local Government Sector Retention and Disposal Schedule*

⁸ *Local Government Sector Retention and Disposal Schedule*, 13.5.1

⁹ *Local Government Act 2009*, s.12; *City of Brisbane Act 2010*, s.14



REQUIREMENT 2 continued

Management of records in email, text or app-based communications

Emerging technologies provide opportunities to conduct business more efficiently. Regardless of the format used, communication by councillors, the mayor or council employees about the administration of council business, are public records that must be documented and captured. This includes messages sent and received via email, text messages, social media posts (and related comments) on channels such as Facebook or Twitter, and chats or direct messages through messaging apps such as Facebook Messenger, WhatsApp, Wickr or Telegram. It also includes private email, messaging or social media accounts used to conduct council business.

Failure to capture communications about council business (or similarly, deliberately avoiding the use of approved channels in order to have “off-line” communications), is a breach of an individual’s recordkeeping responsibilities.

There are a number of tools that can assist in automating the capture of email, text or app-based communications so that they can be saved as public records.¹⁰ However caution should be exercised when using instant messaging apps in particular as their extraction and identification as public records can be more difficult.

The use of private email and social media accounts to conduct council business (e.g. policy development, decision making etc.) should be avoided as their use can:

- create the perception of corrupt conduct (even if this is not the case)
- be perceived as a way for mayors or councillors to avoid public scrutiny
- give the impression that this information is not intended to be captured as a public record.

Recommended practice for managing records in private accounts includes:

- forwarding any public records received to an official council email account within 20 days of receipt or creation
- using a council account to respond to any communications
- activating automatic replies that direct people to send correspondence related to their local government responsibilities to official council accounts.¹¹

Note: The Code of Conduct includes specific requirements regarding councillor use of email. Specifically, standard of behaviour 1.3 requires councillors to “Use only official council electronic communication accounts (e.g. email accounts) when conducting council business”.¹²

To assist in determining whether social media accounts are being used in an official capacity, the Office of the Information Commissioner has published specific advice with a range of factors for consideration.¹³

REMEMBER



Use of private email and social media accounts to conduct council business can:

- create the perception of corrupt conduct
- be perceived as a way for mayors or councillors to avoid public scrutiny
- give the impression that this information is not intended to be captured as a public record.

¹⁰ [Social media and Yammer](#)

¹¹ [Public records in private accounts](#)

¹² [Code of Conduct for Councillors in Queensland](#)

¹³ [Online and on your phone: processing access applications for social media, webmail and text messages](#)



REQUIREMENT 3

Public records must be retained for as long as they are lawfully required to be kept

Retention of public records

The *Local Government Sector Retention and Disposal Schedule (QDAN 480v4)* and the *General Retention and Disposal Schedule* establish the retention requirements for public records and can be used to assist councils to manage their records and meet the requirements of the PR Act.

Examples of council records that must be retained permanently include:

- a master set of council and committee meeting minutes and agendas¹⁴
- diaries of mayors¹⁵
- a speech made by a mayor or councillor on an occasion of historical significance.¹⁶

Examples of council records that are only required to be retained temporarily include:

- audio recordings of council meetings (once the minutes are confirmed)¹⁷
- mayor or councillor representation on external committees.¹⁸

The retention requirements of a record may be changed by activities such as legal action or a Right to Information (RTI) application. See the *General Retention and Disposal Schedule* for the retention requirements for records relevant to legal action or RTI applications.¹⁹

REMEMBER



Examples of council records that must be retained permanently include:

- a master set of council and committee meeting minutes and agendas
- diaries of mayors
- a speech made by a mayor or councillor on an occasion of historical significance.

¹⁴ [Local Government Sector Retention and Disposal Schedule, 13.6.4](#)

¹⁵ [Local Government Sector Retention and Disposal Schedule, 13.4.8](#)

¹⁶ [Local Government Sector Retention and Disposal Schedule, 2.1.1](#)

¹⁷ [Local Government Sector Retention and Disposal Schedule, 13.6.6](#)

¹⁸ [Local Government Sector Retention and Disposal Schedule, 13.6.8](#)

¹⁹ [General Retention and Disposal Schedule](#)



REQUIREMENT 3 continued

Disposal of public records

Public records can only be disposed of or destroyed with the authorisation of the State Archivist.

Retention and disposal schedules are the most common way for the State Archivist to provide authorisation for disposal of public records.

Not all public records can be disposed of – some must be retained permanently, and these may be transferred to Queensland State Archives.²⁰

Any disposal of public records must meet the requirements of the PR Act. Councils are required to develop and maintain a disposal plan which includes recording the details of when and how any disposal occurs. The Council’s CEO or their delegate must endorse any disposal before it occurs.²¹

Any disposal method used must be appropriate for the records in question. For example, records with confidential information will require a disposal

method that ensures confidentiality will not be breached. For paper records, this may involve two-axis shredding or burning. For electronic records, this may require digital sanitisation.

The unlawful disposal of public records is an offence under s.13 of the PR Act, punishable by a fine of up to 165 penalty units, or \$22,019.²²

The fine may be up to five times that amount for a corporation. The CCC, as well as the State Archivist, has jurisdiction to investigate possible breaches of the PR Act.



For more information on appropriate disposal methods, see QSA advice on how to destroy records²³ and the CCC Corruption Prevention Advisory *Information security and handling*.²⁴

Disposal of public records by mayors and councillors

Mayors and councillors are required to follow council recordkeeping processes and must not destroy public records unless authorised. For example, mayors and councillors must not:

- delete council-related emails from council or private email accounts unless those emails have been captured in the council’s recordkeeping system where appropriate
- delete any posts that are council-related in social media or any other apps, even when they are in a private account.

REMEMBER



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- delete council-related emails from council or private email accounts unless those emails have been captured in the council’s recordkeeping system where appropriate
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²⁰ [Transfer records](#)

²¹ [Records Governance Policy](#), Policy Requirement 6

²² As of 1 July 2019, [Penalties and Sentences Regulation 2015](#), s.3

²³ [How to destroy records](#)

²⁴ [Information security and handling](#)

Further information and resources

- **Department of Local Government, Racing and Multicultural Affairs**
www.dlgrma.qld.gov.au
- **Queensland Ombudsman**
www.ombudsman.qld.gov.au
- **Queensland State Archives**
www.forgov.qld.gov.au/recordkeeping
- **Office of the Information Commissioner Queensland**
www.oic.qld.gov.au
- **Queensland Audit Office**
www.qao.qld.gov.au
- **Office of the Independent Assessor**
www.oia.qld.gov.au



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