

Records retention policy

Introduction

The concept of Open Government requires public authorities to be transparent, so that the public has the opportunity of seeing the information on which decisions are based. Sevenoaks District Council (the Council) should not keep all records which it creates but the Council needs to avoid accusations that records have been deliberately destroyed to avoid meeting its obligations under the Freedom of Information Act 2000 (FOI).

The destruction of records can be a very emotive issue and the process needs to be managed as part of a coherent record keeping system to avoid accusations that something is being hidden.

More practically, records disposal also needs to be managed so that the Council can cope with storage problems and is not overwhelmed with a mass of information. However, there is often a reluctance to throw records away. This may be because there is a perceived need to keep records “just in case” because there is enough space to store paper records, or enough space to keep saving electronic files on the network. However, keeping records indefinitely can have profound implications as:

- Under the Data Protection Act 2018 “personal data” processed for any purpose or purposes must not be kept for longer than is necessary for that purpose or those purposes.
- The Council must operate in full compliance with the General Data Protection Regulation (GDPR)
- The sheer volume of records retained means that physical access is difficult, an excess of information inhibits clear decision making and system clog up with files in both paper and electronic environments.
- Staff resources committed to searching for information is increased.
- The office accommodation becomes cluttered.

Definition

Under FOI information is very broadly treated. It is defined as information recorded in any form. The consultation paper originally accompanying the draft Freedom of Information Bill gave a fuller explanation and stated: “This includes paper records and information recorded electronically, or by any other technological means. The records may be structured or unstructured, and the information may be recorded in any number of different forms, styles, media, and location. The Bill does not in general apply to unrecorded information, including information which at the time of the

request has not yet been recorded or information which was recorded only in records which have been destroyed.”

Purpose

The purpose of this Policy is to provide a corporate Policy framework to govern decisions on whether a particular record should be retained and for what period. The Policy does not cover the disposal or retention of unused materials such as stocks of paper, unused forms and materials that do not form part of a record of a Council business activity or transaction.

Decision to dispose

Any decision whether to retain or dispose of a record should only be taken in accordance with the following criteria:

- The key disposal/retention considerations checklist set out in Appendix 1
- “Retention Guidelines for Local Authorities” produced by the Local Government Group of The Records Management Society of Great Britain contained within Appendix 2. The Retention Schedules within the guide set out recommended and mandatory minimum retention periods for specific classes of records where special rules and considerations apply.

Where a retention period has expired in relation to a particular record a review should always be conducted before a final decision is made to dispose of that record. Such reviews need not be detailed or time consuming.

Disposal

Disposal can take place in a number of ways:

- Binning
- Recycling
- Treatment as Confidential Waste
- Physical destruction on site (paper records)
- Deletion in respect of computer files
- Transfer of the document to an external body

Where records are destroyed a record needs to be kept, containing the reference, a description, the date, method of destruction and the officer who authorised the disposal. The record should be able to demonstrate that the disposal was in accordance with this Policy, or a written record should be made justifying the reasons for departure from the Policy. Only exceptional circumstances should justify departure from the Policy.

Once records are selected for disposal the method of disposal should be appropriate to the confidentiality of the record and the destruction should take place in a secure manner.

Paper records containing personal data or confidential information should not be binned or sent for recycling without being shredded as this could result in the unauthorised disclosure of such information to third parties. Transfer of records to a third party may not be an option in cases where there is personal data having regard to the Data Protection Act 2018 and obligations under the GDPR.

Whenever possible, methods of disposal should further the Council's commitment to recycling and sustainable development.

Particular care must be taken if outside contractors are dealing with the destruction of records, off the Council's premises. The Council has a duty of care to protect records while they are awaiting collection. They should not be left unattended on a loading bay, for example.

Contracts should be carefully drawn up to ensure that the records are kept secure in transit, and during the disposal process itself. Such contracts should allow for spot checks to be made of the contractor's premises to ensure compliance. These checks and findings should be recorded and kept with the contract. The contractor should supply a dated, signed consignment note showing a consignment number and the council should be able to link this number with specific records so that the Council can say with certainty that certain records were destroyed under a particular consignment number.

Archives

Where records are transferred to an archive service these must be carefully documented and recorded. Only those records that are no longer of active use may be selected for transfer to an archive.

Records due for destruction

Where a record which is due for destruction becomes the subject of a request for information then destruction should be delayed until the request has been satisfied or in the case of a refusal, until any complaint and appeal mechanisms have been exhausted. However, before a formal request for information has been received, routine amendments, or even disposal can take place.

Electronic records

In relation to the management of the Council's electronic records the principles of this Policy are of equal application.

In electronic records management systems, the retention schedule instructions are built into the system so that records will automatically be deleted at the appropriate time. In other electronic systems where no control of records is available, then it is up to individuals to delete records at the appropriate time. Where there is a hybrid

environment it is common for records to be created electronically, but for the paper version to become the master copy.

If the paper version is destroyed but the electronic version is overlooked, then the legitimate explanation that an FOI access request cannot be met because the information no longer exists is invalid and can be challenged. As a result, when a master paper document is destroyed consideration needs to be given as to whether there are any electronic duplicates that need to be destroyed along with any other unnecessary duplicates and working copies that are no longer required.

Email specific advice

Every office-based colleague has access to email, which is the predominant form of communication internally and externally. Many communications are repetitive or otherwise of no significance, yet still contain names and details about a person. As such, emails account for a vast amount of personal data which may be requested by way of a subject access request at any time.

The UK GDPR does not dictate for how long the Council must keep personal data. The Council must be able to justify retention based on the purposes for processing. The unthinking retention of vast quantities of unnecessary email traffic is unacceptable.

Colleagues are expected to be able to justify why they need to keep personal data in any form that permits identification of individuals. While there is no intention to reduce the use of email, or to require the deletion of information which is lawfully and necessarily retained, it is best practice to limit email retention to the shortest period possible. Colleagues should regularly curate their email accounts and delete any unnecessary messages.

It should be noted that archived emails are included in this advice and that simply moving emails from an inbox into the recycling folder is insufficient to render an email deleted.

Responsibility

Responsibility for determining whether to retain or dispose of specific records rests with the Chief Officer in respect of those records that fall within the remit or control of their Service, but they may wish to appoint someone else to conduct this task. However, they should ensure that any such officer is fully conversant with this Policy and is also familiar with the operational requirements of the Service so that they are able to assess the significance of the records.

Chief Officers are expected to be proactive in carrying out or instigating audits of existing records that may be suitable for disposal.

Reviewing and updating of this policy

This Policy will be revised and updated on a regular basis. This policy may need to be reviewed after legislative changes, new case law or new guidance. Consideration should be given to reviewing this policy on an annual basis.

Contact

Martin Goodman Tel: 01732 227245

Head of Legal & Democratic Services (Monitoring Officer) (Data Protection Officer)

Last revised: 14.03.2024

Appendix 1 - key disposal/retention considerations

1. Has the document been appraised?

Before a record is designated for disposal the nature and contents of the record needs to be ascertained. This process may only take a few minutes. However, this can be a skilled task depending on the complexity of the record concerned. This evaluation process should only be undertaken by officers who possess sufficient operational knowledge to enable them to identify the record concerned and its function within both the individual Service and corporate framework.

2. Is retention required to fulfil statutory or other regulatory requirements?

Identifying how long records need to be kept is one of the most key areas to be addressed.

The document produced at Appendix 2 entitled “Retention Guidelines for Local Authorities” includes Retention Schedules and is one of the key tools for facilitating how long records need to be kept.

As a rule of thumb, it should be possible to dispose of most records and ordinary correspondence type records after seven years. This is calculated by allowing a statutory limitation period of 6 years plus a further year as an added safeguard.

However, there are exceptions to this that include legal records and notices, records which the Council is legally required to maintain in a public register, correspondence about ongoing contracts and building works less than 15 years old, leases and matters about which a dispute is known or anticipated.

However, some records will be of temporary nature and can be disposed of much more quickly. If there is any doubt regarding the correct retention period for a certain record reference may need to be made to legislation that stipulates minimum retention periods for particular records in local government. In addition, advice can be sought from the Legal Team of the Council. However, there may come a point at which the balance of convenience and safety rests with retaining a record rather than conducting extensive inquiries to determine whether it is safe to dispose of the record.

3. Is the retention required for evidence?

Occasionally, the Council becomes involved in disputes with third parties. Such disputes can result in the party who is dissatisfied bringing legal proceedings against the Council. Alternatively, the Council may wish or be required to institute legal proceedings against an individual or organisation. Such proceedings may be civil or criminal in nature.

Where a dispute arises, or litigation has been commenced it is important that the Council has access to all records that are relevant to the matter. Without such records there is the danger that the Council's position will be compromised.

Specific time limits are laid down for the commencement of litigation. The time limits are different according to the nature of the claim. The starting point, therefore, is that the retention period is the length of time that has to elapse before a claim is barred.

The Legal Section at the Council will be able to give advice if there are areas of doubt.

4. Is retention required to meet the operations needs of the service?

In some cases, retention may be desirable even though no minimum retention period applies or has expired. Records may be useful for future reference purposes, as precedents, or for performance management. Skilled judgment may be needed to assess the usefulness of a particular document.

5. Is the document or record of historic interest?

In most cases, this consideration will not be applicable. However, some records currently in Council storage may be of historic interest. If the record is of historic interest consideration may be given to transfer to the County Archivist rather than retention or disposal by the Council.

Appendix 2

Detailed periods for retention of various classes of records are provided by the Retention Schedules within the document entitled "Retention Guidelines for Local Authorities" produced by the Local Government Group of the Records Management Society of Great Britain as set out herein.