



Document Retention and Disposal Policy

To detail the council's commitment to records management, advising on the policy and procedures to be adopted regarding document retention and disposal.

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Owner: Performance and Community

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Introduction

This policy has been prepared for use by all officers and elected members acting on behalf of the council, when storing information.

The council recognises that its records are an important public asset, and are a key resource to effective operation and to accountability. Like any asset they require careful management and this policy sets out the council's responsibilities and activities in regard to the management and retention of its records.

In the course of carrying out its various functions and activities, the council collects information from individuals, partners, groups and external organisations and generates a wide range of data/information some of which is recorded. These records can take many different forms e.g.

- Letters received from third parties
- Copy letters which have been sent out
- File attendance notes
- Invoices
- Completed application forms
- Plans/drawings
- Financial records
- Contracts/deeds
- Email communication
- Photographs
- Audio/visual recordings

Many of the above can be retained as hard paper copies or in electronic form. For the avoidance of doubt the terms 'documents' and 'records' should be taken to include both documents and records which are available in digital format as well as hard copy.

Retention of specific documents may be necessary to;

- Fulfil statutory or other regulatory requirements.
- Evidence events/agreements in case of dispute.
- Meet operational needs.
- Ensure the preservation of documents of historic or other value.

The untimely destruction of documents could cause the council;

- Difficulty in defending litigious claims.
- Operational problems.
- Embarrassment.
- Failure to comply with the Freedom of Information Act 2000 or Data Protection Act 1998.

Conversely, the permanent retention of all documents is undesirable, and appropriate disposal is to be encouraged for the following reasons:

- There is a shortage of new storage space.
- Disposal of existing documents can free up space for more productive activities.

- Indefinite retention of personal data may be unlawful.
- Reduction of fire risk (in the case of paper records).
- There is evidence that the de-cluttering of office accommodation can be psychologically beneficial for many workers.

The effective management of records in all formats depends as much on their efficient disposal as well as their long-term preservation. Records disposal policies are essential for effective records management. As a local authority we must be consistent in the way we handle and dispose of our information. These guidelines will assist the council in meeting local needs whilst providing a consistent approach to records keeping across government.

Scope

The purpose of this policy is to provide a corporate policy framework to govern management decisions on whether a particular document or set of documents should either be:

- Retained – and if so in what format and for what period of time; or
- Disposed of – and if so when and by what method.

Additionally, this policy seeks to clarify the roles and responsibilities of Service Managers in the decision making process.

This policy is not concerned with the disposal/retention of unused materials (e.g. stocks of paper, unused forms, and duplicated documents).

Retention/Disposal

Any decision whether to retain or dispose of a document should be taken in accordance with the;

- Key disposal/retention considerations as set out in Appendix 2. Essentially no document should be disposed of unless all these have been considered in relation to the document.
- The Retention Schedules working document (taken from the Records Management Society) that provides guidance on the recommended and mandatory minimum retention periods for specific classes of documents/records.

Where a retention period has expired in relation to a particular document a review should always be carried out before a final decision is made to dispose of the document. Such reviews need not necessarily be detailed or time consuming. Where the service manager is familiar with the contents of the document or where contents are straightforward and easily apparent then such an exercise may only take a few minutes.

In the event that a decision is taken to dispose of a particular document or set of documents, then consideration should be given to the method of disposal.

Roles and Responsibilities

Responsibility for determining whether to retain or dispose of specific documents rests with the service manager in respect of those documents that properly fall within the remit or control of their service, but they may wish to appoint someone else to carry out this task. They should ensure, however, that any such officer is fully conversant with this policy and is familiar with the operational requirements of the Service so they are able to assess the significance of documents.

Service managers are expected to be proactive in carrying out or instigating audits of existing documentation that may be suitable for disposal.

Legal services can advise on whether minimum retention periods are prescribed by law, and whether retention is necessary to protect the council's position where the likelihood of a claim has been identified by the relevant service manager. As service managers possess the operational background knowledge required to assess whether, for example, a particular document may be required by the service concerned for operational needs arising in the future, or contains information that if deleted, could cause problems and issues for the council, they are best placed to make such assessments.

Disposal

Disposal can be achieved by a range of processes:

- Non confidential disposal, i.e. waste bin (electronic or paper)
- Recycling
- Treatment as confidential waste
- Physical destruction on site (paper records)
- Deletion (computer files)
- Transfer of document to external body

In the selection of the method of disposal, regard should be given to the following;

- Under no circumstances should paper documents containing personal data or confidential information be simply disposed of through a waste paper bin, or sent for recycling without being shredded unless they are placed in the council's confidential Datashred bins provided for this purpose. To do so could result in the unauthorised disclosure of such information to third parties, and render the council liable to prosecution or other enforcement action under the Data Protection Act 1998, as well as serious embarrassment and claims for damages.
- Transfer of documents to a third party is unlikely to be an option in most cases where there is personal data having regard to the Data Protection Act 1998. However, this method of disposal will be relevant where documents or records are of historic interest and/or have intrinsic value.
- Wherever practicable, disposal should support and promote recycling in line with the council's commitment to work to safeguard the environment for future generations.

Documenting Disposal

Disposal of documents identified should be recorded in order to provide an auditable trail of destruction. Details of the document(s) disposed of, the date and the officer who authorised disposal are essential requirements of this process. In particular, the record should be able to demonstrate that the disposal was in accordance with this policy, or set out the reasons for departing from it (which should only be in very exceptional circumstances).

Data Protection Act 1998 (obligation to dispose of certain data)

Under the Data Protection Act 1998 (the fifth principle) “personal data” processed for any purpose or purposes must not be kept longer than is necessary for that purpose or those purposes. Ensuring personal data is disposed of when no longer needed will reduce the risk that it will become inaccurate, out of date or irrelevant. Assuming that you have a good reason for processing the personal data in question, it is obvious that discarding that data too soon would be likely to disadvantage the council and, quite possibly, to inconvenience the people the information is about as well. However, keeping personal data for too long may cause the following problems:

- There is an increased risk that the information will go out of date, and that outdated information will be used in error – to the detriment of all concerned.
- As time passes it becomes more difficult to ensure that information is accurate.
- Even though you may no longer need the personal data, you must still make sure it is held securely.
- You must also be willing and able to respond to subject access requests for any personal data you hold. This may be more difficult if you are holding more data than you need.

Review and Updating of the Policy

This policy will be revised, updated and recorded on a regular basis, not less than every three years. Any changes of a significant nature will be reported to and agreed by Council Executive.

Index to Policy Appendices

Appendix 1 – Document Disposal Certificate

Certificate to provide an audit trail of document disposal

Appendix 2 – Key disposal/retention considerations

This provides guidance for service managers considering whether to retain or dispose documents including;

- Has the document been appraised?
- Is retention required to fulfil statutory or other regulatory requirements?
- Is retention required for evidence?
- Is retention required to meet the operational needs of the service?
- Is the document or record of historic interest or intrinsic value?

Appendix 3 – Document Disposal work flow

Working Document – Nominated Officer responsible for Retention and Disposal of Documents

Details the job title of the officers responsible for service specific retention and disposal of documents and records

Working Document – Retention periods schedule

These are set out in a separate schedule and detail the arrangements for different categories of document types. It is not within the scope of this document to provide specific and detailed retention and disposal arrangements for all specific documents contained in each service area. Detailed periods for retention of various classes of documents are set out by service area based on a wide range of local government document types, however new categories are continually developed and adjusted to the needs of the services and their customers and it would be impossible for a single policy to encompass all of these. It is therefore recommended that services should consider preparing their own more detailed retention schedules based on the guidelines contained in this policy.

The retention schedule is based on the local government group of records management society in Great Britain which provides nationally accepted guidance on the retention periods for a wide range of local government document types, where these are not covered, as a rule, it should be possible to dispose of most records and ordinary correspondence type documents after a statutory/limitation period of 6 years.

Obvious exceptions to this will include legal documents and notices, documents which the council is legally required to maintain in a public register, correspondence about ongoing contracts and building works less than 15 years old, and leases and matters about which a dispute is known or anticipated.

Some documents and records will be of a temporary nature and can be disposed of much more quickly. If in any doubt reference should be made to the retention schedule , or Legal Services, but there will be a point at which the balance of convenience and safety rests with retaining a document rather than conducting extensive inquiries to determine whether it is safe to dispose of it.

Where a retention period has expired in relation to a particular document, a reviewed should always be carried out before a final decision is taken to dispose of a particular document or set of documents, regard should be had to the method of disposal; and the disposal should be recorded for audit purposes.

Contact Details

For further information or for any queries please contact:-

The Performance and Information Security Officer
Town Hall
Wharnccliffe Road, Ilkeston
Derbyshire
DE7 5RP
Email: foi@erewash.gov.uk
0115 907 2244 ext. 3579

Further Information can also be found on the following websites, or the Information Commissioners Office:-

Department for Constitutional Affairs: www.dca.gov.uk

Information Commissioner's Office: www.ico.gov.uk
Tel: 0303 123 1113 or 01625 54 57 45
Email: casework@ico.gsi.gov.uk
Website: www.ico.gov.uk

Appendix 1 – Document Disposal Certificate

1. Origin

Directorate / Department	
Service Area	

2. Record(s)

Record Series title <i>(i.e. Service User Files 2001-2004)</i>					
Further information <i>(i.e. box number)</i>					
Covering Dates					
Quantity <i>(i.e. 3 boxes)</i>					
Format <i>(i.e. paper, electronic, microfilm...)</i>					
Reason for Disposal					
Destruction Date/Retention Schedule Reference <i>(i.e. CAYA Retention Schedule reference 4.2)</i>					
Disposal Method <i>(i.e. in-house shredding)</i>	<table border="1"> <tr> <td>Confidential?</td> <td><input type="checkbox"/></td> <td>Non Confidential?</td> <td><input type="checkbox"/></td> </tr> </table>	Confidential?	<input type="checkbox"/>	Non Confidential?	<input type="checkbox"/>
Confidential?	<input type="checkbox"/>	Non Confidential?	<input type="checkbox"/>		

3. Status

Active FOI?		Active EIR?		Active DP?		Active Legal?	
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If the answer to any of these questions is yes please contact the Performance and Information Security Officer for guidance (email: martin.durkin@erewash.gov.uk).

4. Authorisation for Disposal

	Name	
	Job Title	
	Date	
	Signature	

5. Confirmation of Disposal

Name	
Date	
Signature	

Please retain a copy of this certificate for your records and send a copy to the Performance and Information Security Officer at martin.durkin@erewash.gov.uk.

Appendix 2 – Retention and Disposal Considerations

Key Disposal/Retention Considerations

No document should be earmarked for disposal unless due regard has first been given to;

- The five key disposal/retention considerations detailed below, and
- The retention schedule.

Key Consideration 1

Has the document been appraised?

As a first step, the nature/contents of any document being considered for disposal should be ascertained. No document(s) should be identified or designated for disposal unless this has been done. The process may only take a very short period of time; nonetheless, it can be a skilled task, depending on the complexity of the document(s) concerned and should only be undertaken by officers who possess sufficient operational knowledge to enable them to identify the document and its function within both the individual Service and corporate frameworks.

Key Consideration 2

Is retention required to fulfil statutory or other regulatory requirements?

There is very little specific legislation that stipulates mandatory retention periods for documents in local government.

The following legislation, either directly or indirectly, imposes minimum retention periods as follows:

Tax Legislation:

Minimum retention period for certain financial records are imposed by statutes such as the VAT Act 1994, and the Taxes Management Act 1970. These retention periods are identified in the retention schedules.

Statutory Registers:

Various local government statutes require registers to be kept of certain events, notifications, or transactions. It is implicit within such legislative requirements that these records be maintained on a permanent basis, unless the legislation concerned stipulates otherwise. The Town and Country Planning legislation requires that a number of registers be kept (e.g. of enforcement notices issued) and these warrant special attention (they are dealt with in the Retention Schedule), as in some cases there is an obligation to include documentation.

The Local Government Act 1972, S.225:

Any document deposited with “the proper officer” of the council in accordance with Statute should be retained permanently. (This is comparable to the position regarding Statutory Registers, above.)

Part VA of the Local Government Act 1972:

This governs public access to certain documents relating to council and committee meetings. Certain documents that form part of the public section of the agenda are required to be available for inspection by members of the public for a period of six years from the date of the meeting. These documents are:

- Minutes, or copy Minutes of the meeting.
- A copy of the agenda of the meeting.
- A copy of any reports discussed (except exempt items).

Background documents, i.e. documents, other than published works, which have been relied on in preparing any report and which disclose facts or matters on which the report or an important part of it is based. The six-year requirement relating to background documents has implications for document retention that, potentially, are relevant to all council services.

Key Consideration 3

Is retention required for evidence (legal admissibility)?

On occasions, the council becomes involved in disputes with third parties. Such disputes, if not satisfactorily resolved, can result in the dissatisfied party bringing legal proceedings against the council, usually, but not always with a view to obtaining monetary compensation. Conversely, the council may wish to institute legal proceedings against an individual or organisation, e.g. to recover an unpaid debt, or in respect of faulty workmanship. Where a dispute arises, or litigation has been commenced it is important that the council has access to all correspondence and other documentation that is relevant to the matter. Without such, there is the danger that the council's position will be compromised, and the very real possibility that an unmeritorious claim might succeed, or that the council may be unable to assert its legal entitlements.

The Limitation Act 1980 specifies time limits for commencing litigation. The starting point therefore, is that the retention period is the length of time that has to elapse before a claim is barred. The main time limits that are directly relevant to local government are as follows:

- Claims founded on simple contract or tort (other than personal injury claims) cannot be brought after the expiration of **6 years** from the date on which the cause of action occurred. Most claims by or against the council come under this heading, and include debt recovery actions, and compensation claims in respect of sub-standard work, negligent advice, and damage to property.
- Compensation claims for personal injury are barred on expiry of **3 years** from the date on which the cause of action occurred (this will usually be the date when the incident causing the injury occurred; **or** the date when the injured person first had knowledge of the injury, its cause and the identity of the person responsible (some injuries are latent and do not manifest themselves for some period of time).
- Claims that are based on provisions contained in documents that are 'under seal' are barred after the expiration of **12 years** from the date on which the cause of the action occurred.

Limitation Act 1980 S.14A and S.14B: "Latent damage claims"

These provide a special time limit for negligence actions (excluding personal injury) where facts relevant to the cause of action were not known to the claimant at the date of the negligence of the person responsible. Notwithstanding these special provisions, S.14B goes on to provide an overriding time limit of **15 years** from the date of the defendant's negligence.

This provision has particular significance where building or engineering works, either carried out by or for the council, are concerned.

Key Consideration 4

Is retention required to meet the operational needs of the service?

In some cases retention may be desirable (whether permanent or otherwise) even though no minimum retention period applies, or has expired.

Documents or records might be useful for future reference purposes, e.g. training, as precedents, or for performance management (performance indicators, benchmarking and comparison exercises). A professional judgement needs to be made as to the usefulness of a particular document. Regular housekeeping must be undertaken to ensure that all such documents are removed as soon as they are no longer required.

Key Consideration 5

Is the document or record of historic interest or intrinsic value?

In most cases this consideration will not be applicable. However, some documents currently in council storage may be of historic interest and/or even have some monetary value. Even if the document is of historical or monetary value, disposal, rather than retention by the council, may well be the appropriate option, but in the form of transfer to, e.g. the County Archivist, or even sale to an external body.

Appendix 3 – Disposal Work Flow

