

Retention and Disposal Authority for Records of the Information Regulation Function

Authority number: PROS 10/16 VAR 1



PROS 10/16 VAR 1

**Retention and Disposal Authority for Records of
the Information Regulation Function**

Issued Date: 03/09/2019

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INTRODUCTION

Variation

Variation 1

Public Records Act 1973 (Section 12)

Retention and Disposal Authority for Records of the Information Regulation Function (PROS 10/16)

In accordance with section 12 of the *Public Records Act 1973* (as amended), I hereby vary the Standard applying to the records of the Privacy and Information Functions, issued as a Public Record Office Standard (PROS) 10/16 on 17/12/2010, as follows:

The title of PROS 10/16 is changed from 'Retention and Disposal Authority for Records of the Office of the Victorian Privacy Commissioner' to 'Retention and Disposal Authority for Records of the Information Regulation Function'.

References to "*Information Privacy Act 2000*" have been replaced with the generic term "the legislation" or freedom of information, privacy and data protection legislation. Note that the *Information Privacy Act 2000* was repealed by *Privacy and Data Protection Act 2014*.

References to the "Office of the Victorian Privacy Commissioner" have been replaced with the "Office of the Victorian Information Commissioner".

Extension of the application of the Authority until **31/12/2022**.

| Class Number | Description of Change |
|--------------|---|
| 1.0 | Function has been expanded to include Freedom of Information and data protection within its related activities and classes |
| 1.2.4 | Expanded to include the Commissioners appearance as a respondent at VCAT hearings |
| 1.4 | Expanded to includes reviews. Class description has been revised for more comprehensive coverage |
| 1.5.3 | Description revised - final version only to be retained permanently, including FOI and privacy complaints |
| 1.5.4 | New class to authorise disposal of inputs into guidance material |
| 1.6 | New activity, Certification, to cover Certification by the Commissioner that legislation or practice is consistent with the |

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|-----|---|
| | Information Privacy Principles, code of practice or an information handling provision. Two new classes added |
| 1.7 | New activity, Information Privacy Exemptions Management, including a permanent class for the master version of approved exemptions, associated registers and final version of resources and guidance; temporary class to cover routine monitoring and the records associated with the development of guidance |
| 2.0 | Function Prosecutions Management expanded to include freedom of information, privacy and data protection legislation |
| 3.0 | Function Awareness Management expanded to include awareness of all information handling issues |

This Variation shall have effect from its date of issue.

[Signed]

Justine Heazlewood

Director and Keeper of Public Records

Date of issue: 03/09/19

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Retention and Disposal Authority for Records of the Information Regulation Function

| | |
|--|---|
| Retention and Disposal Authority No | PROS 10/16 VAR 1 |
| Scope | This RDA authorises the disposal of records created by the Office of the Victorian Information Commissioner and its successor agencies. |
| Status | Issued by Keeper |
| Issue Date | 03/09/2019 |

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|---|

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Introduction

Purpose of this Authority

The purpose of this Authority is to provide a mechanism for the disposal of public records in accordance with the *Public Records Act 1973*. The Authority:

- identifies records which are worth preserving permanently as part of Victoria's archival heritage
- prevents the premature destruction of records which need to be retained for a specified period to satisfy legal, financial and other requirements of public administration, and
- authorises the destruction of those records not required permanently.

Context of this Authority

Public Record Office Victoria Standards

This Authority should be used in conjunction with the Standards issued by the Keeper of Public Records under Section 12 of the *Public Records Act 1973*. Copies of all relevant PROV standards, specifications and regulatory advice can be downloaded from www.prov.vic.gov.au. These documents set out the procedures that must be followed by Victorian public offices.

Disposal of records identified in the Authority

Disposal of public records identified in this Authority must be undertaken in accordance with the requirements of Public Record Office Standard PROS 10/13 *Disposal*.

It is a criminal offence to unlawfully destroy a public record under s 19(1) of the *Public Records Act 1973*.

The destruction of a public record is not unlawful if done in accordance with a Standard established under s 12 of the *Public Records Act 1973*.

This Standard (also known as an Authority) authorises the disposal of public records as described within its provisions. However, disposal is **not** authorised under this Standard if it is reasonably likely that the public record will be required in evidence in a current or future legal proceeding.

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For the purposes of this Retention and Disposal Authority, a 'legal proceeding' has the same meaning as the *Evidence (Miscellaneous Provisions) Act 1958*, and includes any civil, criminal or mixed proceeding and any inquiry in which evidence is or may be given before any court or person acting judicially, including a Royal Commission or Board of Inquiry under the *Inquiries Act 2014*.

If the public office identifies that public records must be retained under other applicable legislation for a period that exceeds the retention period specified under the Standards, then the longer retention period must apply.

Normal Administrative Practice

The destruction of some public records is permitted without final authorisation under normal administrative practice (NAP). NAP covers the destruction of ephemeral material of a facilitative nature created, acquired or collected by public officers during the course of their duties.

The following material may be destroyed under NAP:

- working papers consisting of rough notes and calculations used solely to assist in the preparation of other records such as correspondence, reports and statistical tabulations
- drafts not intended for retention as part of the office's records, the content of which has been reproduced and incorporated in the public office's record keeping system
- extra copies of documents and published material preserved solely for reference.

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Transfer of records to Public Record Office Victoria

Contact Public Record Office Victoria for further information on procedures for transferring permanent records to archival custody.

Use of Other Authorities

In applying the disposal sentences set out in this Authority, reference should be made to other current Authorities where applicable. Where there is a conflict between two Authorities (for instance this Authority and the General Retention and Disposal Authority for Records of Common Administrative Functions), consult the Public Record Office Victoria for advice.

Explanation of Authority Headings

Class Number

The class number or entry reference number provides citation and ease of reference.

Description

The description of each record class is specified in this entry. A record class is a group of records that relate to the same activity, function or subject and require the same disposal action.

Status

This entry provides the archival status of each class - either permanent or temporary.

Custody

This entry specifies whether the records are to be retained by the public office or transferred to the Public Record Office Victoria. Permanent records must be managed and transferred in accordance with PROV Standards.

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Concurrence of Public Office

This Authority has the concurrence of:

Name: Helen Versey

Position: Privacy Commissioner

Date: 10/12/2010

Establishment of Standard

Pursuant to Section 12 of the *Public Records Act 1973*, I hereby establish these provisions as a Standard (also known as a Retention and Disposal Authority) applying to Office of the Victorian Information Commissioner. This standard as varied or amended from time to time, shall have effect from the date of issue unless revoked.

Justine Heazlewood, Keeper of Public Records

Date of Issue: 17/12/2010

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Authority number: PROS 10/16 VAR 1

| No | Function/Activity | Description | Status | Disposal Action |
|-------|---|--|-----------|--|
| 1 | POLICY, ADVICE AND COMPLIANCE MANAGEMENT | <p>The management of enquiries and the investigation and conciliation of complaints relating to alleged breaches of the Information Privacy Principles (IPPs), Freedom of Information, and data protection requirements as defined under legislation.</p> <p>Auditing and surveying of public sector organisations' compliance with the legislation and the investigation and service of compliance notices on organisations where serious breaches have occurred.</p> <p>Also includes the provision of advice to public sector organisations to ensure compliance with the IPPs, FOI and data protection requirements and the development of guidance material on the operation of the legislation for the public sector and the general public.</p> | | |
| 1.1 | Enquiries Management | <p>The management of enquiries received from members of the public seeking general information about their rights or to determine whether they have grounds for a complaint under the legislation. Also includes the management of enquiries from the Victorian public sector and its contractors seeking advice regarding compliance with legislation.</p> <p>[For enquiries not within the jurisdiction of the Office of the Victorian Information Commissioner, see the <i>General Retention & Disposal Authority for Records of Common Administrative Functions</i>.]</p> | | |
| 1.1.1 | | Records documenting enquiries from the general public which do not become formal FOI reviews, FOI or privacy complaints. This class includes records of | Temporary | Destroy 7 years after date of enquiry. |

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Authority number: PROS 10/16 VAR 1

| No | Function/Activity | Description | Status | Disposal Action |
|---|------------------------------|---|-----------|---|
| <i>POLICY, ADVICE AND COMPLIANCE MANAGEMENT - Complaints Management</i> | | | | |
| | | <p>advice provided to the public sector and its contractors regarding compliance with legislation and which are generally not related to specific proposals and can be anonymous.</p> <p>[For records of enquiries that become complaints, see 1.2.0.]</p> <p>[For records of more specific advice to the public sector, see class 1.5.2.]</p> | | |
| 1.2 | Complaints Management | The management of complaints relating to alleged breaches of the legislation by organisations subject to the Act including public sector agencies, Ministers and Parliamentary Secretaries, local councils and their contracted service providers. Includes the intervention by the Commissioner when a complaint is heard before the Victorian Civil and Administrative Tribunal (VCAT). | | |
| 1.2.1 | | Records documenting the management and investigation of FOI reviews, FOI and privacy complaints in relation to potential breaches of information privacy. Includes case notes, correspondence and records that document complaint details including the outcome of complaints. | Temporary | Destroy 7 years after complaint is finalised. |
| 1.2.2 | | Records documenting interventions made by the Commissioner at VCAT. The <i>Victorian Civil and Administrative Act 1998</i> gives the Commissioner the power to intervene in a complaint that has been referred to VCAT. Records include correspondence | Temporary | Destroy 5 years after VCAT determination. |

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| No | Function/Activity | Description | Status | Disposal Action |
|---|---|--|-----------|---|
| <i>POLICY, ADVICE AND COMPLIANCE MANAGEMENT - Complaints Management</i> | | | | |
| | | between the parties, orders from VCAT, parties submissions to VCAT and results of research. | | |
| 1.2.3 | | Records documenting applications to VCAT for interim injunctions in relation to complaints under investigation by the Commissioner. Section 40C of the <i>Victorian Civil and Administrative Act 1998</i> allows for an application for an interim injunction in order to prevent a further or continuing breach of privacy. | Temporary | Destroy 5 years after VCAT determination. |
| 1.2.4 | | Records documenting the Commissioner's assistance in Freedom of Information (FOI) review proceedings at VCAT, including appearing as a respondent. Records include correspondence regarding proceedings, orders from and submissions to VCAT and results of research. | Temporary | Destroy 5 years after VCAT determination. |
| 1.3 | Management of Compliance Notices | The serving of Compliance Notices on organisations subject to the legislation. A Compliance Notice is served when the Commissioner believes a serious or flagrant breach of one or more of the IPPs has occurred or where there have been five complaints against the same organisation on the same issue in two years. Failure to comply with a Compliance Notice can lead to prosecution. [For records of prosecutions, see 2.0.0.] | | |
| 1.3.1 | | Records documenting the management of Compliance Notices served on organisations subject to the legislation. Includes records of the investigation, the serving of the notice and any | Temporary | Destroy 7 years after after notice expires. |

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| No | Function/Activity | Description | Status | Disposal Action |
|---|--|--|-----------|---|
| <i>POLICY, ADVICE AND COMPLIANCE MANAGEMENT - Reviews, Audits and Surveys</i> | | | | |
| | | related activities | | |
| 1.4 | Reviews, Audits and Surveys | The conduct or commission of examinations, reviews, audits, investigations and surveys of public sector organisations to assess compliance with legislation. | | |
| 1.4.1 | | Records documenting the management of examinations, reviews, audits, investigations and surveys of public sector organisations to assess compliance with legislation. Includes records documenting the use of coercive powers and investigations requested by the relevant Minister. | Permanent | Retain as State Archives, Transfer to PROV |
| 1.4.2 | | Working papers supporting the management of audits and surveys of public sector organisations to assess compliance with the legislation. Includes completed survey forms, records of interview, key draft reports sent to organisations for comment, background research and expert reports from external contractors. | Temporary | Destroy 2 years after final report of audit or survey issued. |
| 1.5 | Advice, Consultations, and Guidance | The provision of advice to and consultation with public sector organisations in relation to compliance with the privacy, freedom of information and data protection requirements. Also includes the development of guidelines and procedural guidance. | | |
| 1.5.1 | | Records documenting the management and provision | Permanent | Retain as State Archives, Transfer to |

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| No | Function/Activity | Description | Status | Disposal Action |
|---|----------------------|---|-----------|--|
| <i>POLICY, ADVICE AND COMPLIANCE MANAGEMENT - Advice, Consultations, and Guidance</i> | | | | |
| | | of consultations that involve: <ul style="list-style-type: none"> • matters of significant public importance; or • a significant section of the population; or • interpretation of the legislation; or • significant legislative change | | PROV |
| 1.5.2 | | Records documenting the management and provision of consultations that do not involve: <ul style="list-style-type: none"> • matters of significant public importance; or • a significant section of the population; or • interpretation of the legislation; or • significant legislative changes. | Temporary | Destroy 7 years after date of advice. |
| 1.5.3 | | Final version of Guidance materials produced and published for the public sector and the general public relating to the implementation of FOI, privacy and data protection. Guidance outlines best practice and includes case notes of actual complaints which have been de-identified to demonstrate how the Commissioner applies the legislation to specific FOI reviews, FOI and privacy complaints. | Permanent | Retain as State Archives, Transfer to PROV |
| 1.5.4 | | Records of data gathered, draft research reports, and consultation conducted in the development of resources and guidance. | Temporary | Destroy 5 years after action completed. |
| 1.6 | Certification | Certification by the Commissioner that legislation or practice is consistent with the Information Privacy | | |

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| No | Function/Activity | Description | Status | Disposal Action |
|---|---|---|-----------|--|
| <i>POLICY, ADVICE AND COMPLIANCE MANAGEMENT - Certification</i> | | | | |
| | | Principles, a code of practice or an information handling provision. | | |
| 1.6.1 | | <ul style="list-style-type: none"> • Register of certification issued • Master version of certification issued | Permanent | Retain as State Archives, Transfer to PROV |
| 1.6.2 | | <ul style="list-style-type: none"> • Routine advice provided in relation to a certification • Monitoring and routine reviews of an organisations' compliance with Certification | Temporary | Destroy 7 years after action completed. |
| 1.7 | Information Privacy Exemption Management | <p>The management of provisions that allow for exemptions to information privacy legislation including:</p> <ul style="list-style-type: none"> • public interest determinations • approval of practice that modifies the application of Information Privacy Principles, provides for non-compliance or enables an information handling provision (known as Information Usage Arrangements). | | |
| 1.7.1 | | <ul style="list-style-type: none"> • Register of determinations issued, including approvals • Register of Information Usage Arrangements issued, including approvals • Master version of determinations issued • Master version of Information Usage | Permanent | Retain as State Archives, Transfer to PROV |

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| No | Function/Activity | Description | Status | Disposal Action |
|--|--------------------------------|--|-----------|--|
| <i>POLICY, ADVICE AND COMPLIANCE MANAGEMENT - Information Privacy Exemption Management</i> | | | | |
| | | Arrangements issued <ul style="list-style-type: none"> • Final version of research reports and resources created to assist an organisation to implement exemptions | | |
| 1.7.2 | | Monitoring, routine reviews and advice provided to organisations in relation to performance and compliance with approved exemptions, determinations and information usage arrangements. | Temporary | Destroy 7 years after action completed. |
| 2 | PROSECUTIONS MANAGEMENT | The management of prosecutions of organisations or individuals for offences under the freedom of information, privacy and data protection legislation. Prosecutions can be brought for the failure to comply with a Compliance Notice, failure to attend before the Commissioner or for breaches of the secrecy obligations of staff and contractors of the Office of the Victorian Information Commissioner. [For the handling of complaints see class 1.2.0.] | | |
| 2.1 | Prosecutions | The prosecution of organisations or individuals for offences under the legislation. Includes the investigation and preparation for appearance in court. | | |
| 2.1.1 | | Records documenting of the prosecution of organisations or individuals for offences under the freedom of information, privacy and data protection legislation. Includes records of the investigation and preparation for appearance in court. | Permanent | Retain as State Archives, Transfer to PROV |

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| No | Function/Activity | Description | Status | Disposal Action |
|-----------------------------|-----------------------------|--|-----------|---|
| <i>AWARENESS MANAGEMENT</i> | | | | |
| 3 | AWARENESS MANAGEMENT | <p>The development and delivery of training programs that aim to train public sector organisations about good information privacy practices and assist them to comply with the legislation and IPPs. Also includes the development and management of competitions to raise awareness of the legislation within the general public.</p> <p>[For the management of events and sponsorships, see the <i>General Retention and Disposal Authority for Records of Common Administrative Functions</i>.]</p> | | |
| 3.1 | Training Programs | The development, delivery and administration of training programs designed to educate and promote awareness amongst Victorian public sector staff. Includes training programs that aim to educate staff on their responsibilities under the legislation. | | |
| 3.1.1 | | Records documenting the development of the content of training programs | Temporary | Destroy 7 years after training program is discontinued or superseded. |
| 3.1.2 | | Records documenting the delivery and review of training programs. Includes records of organisations and individuals attending training sessions, including the date of session and the type of training delivered. | Temporary | Destroy 7 years after after delivery. |
| 3.1.3 | | Records documenting requests for training, arrangements for the delivery of programs and course evaluations. | Temporary | Destroy 2 years after after delivery. |

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| No | Function/Activity | Description | Status | Disposal Action |
|--|---------------------|---|-----------|---|
| <i>AWARENESS MANAGEMENT - Competitions</i> | | | | |
| 3.2 | Competitions | The management of competitions held to raise awareness of information handling issues and of the Office of the Victorian Information Commissioner. | | |
| 3.2.1 | | Records documenting the development of and the arrangements made for competitions. Includes the setting up and judging of the competition and obtaining and issuing competition prizes. | Temporary | Destroy 7 years after competition discontinued. |
| 3.2.2 | | Records documenting the assessment of successful nominations, entries and submissions for competitions | Temporary | Destroy 7 years after competition date. |
| 3.2.3 | | Records documenting the assessment of unsuccessful nominations, entries and submissions for competitions. | Temporary | Destroy 2 years after competition date. |