



**South
Derbyshire**
District Council

DRAFT
DOCUMENT RETENTION POLICY

**Northgate Human Resources
Organisational Development**



1. INTRODUCTION

- 1.1 In the course of carrying out its various functions and activities, the Council collects and receives information from individuals, statutory bodies and external organisations and generates a wide range of data/information which has to be recorded. These records can take many different forms, both manual and electronic, for a specified purpose and can include;
- Letters received from third parties
 - Copy letters which have been sent out
 - Employment and recruitment records
 - Legal contracts
 - Invoices
 - Completed application forms
 - Plans/drawings
 - Financial records
 - Registers
 - Contracts/deeds
 - e-mail communications (and any attachments)
 - Photographs
 - Tape Recordings
- 1.2 Many of the above documents can be retained as 'hard' paper records or in electronic form depending on the service area and local practices that are followed.
- 1.3 Retention of specific documents and information may be necessary to:
- Fulfill statutory or other regulatory requirements.
 - Evidence events/agreements in the case of disputes.
 - Meet operational needs.
 - Maintain employment records or other case files
 - Ensure the preservation of documents of historic or other value.
- 1.4 The untimely destruction of documents could cause the Council:
- Difficulty in defending legal claims leading to fines or costs being awarded.
 - Operational problems with the delivery of services.
 - Reputational damage.
 - Failure to comply with the Freedom of Information or Data Protection Acts
- 1.5 However, the permanent retention of all documents is neither practicable or affordable. In addition, the retention of some documents is only permitted for a specified time as described by legislation (CRB disclosures for

example). Therefore appropriate and secure disposal of documents and records is to be encouraged for the following reasons:

- To reduce the demand for and cost of storage space.
- To free up space both in physical and electronic terms that will enable more effective use of resources and assets.
- Indefinite retention of personal data will be unlawful.
- Reduction of fire risk (in the case of paper records).
- To present a professional and clean environment for employees, visitors and members of the Community.

1.6 It is important that the Council has in place a corporate framework for the timely and secure disposal of documents/records that are no longer required for business purposes. Additionally, the Freedom of Information Act will make it important that the Council has clearly defined policies and procedures in place for disposing of records, and that these are well documented.

2. SCOPE & PURPOSE

2.1 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 how long; or
- Disposed of - and if so when and by what method.

Additionally, this policy clarifies the roles and responsibilities of Head of Services in the decision making process.

2.2 This policy is not concerned with the disposal/retention of unused materials or physical assets (e.g. stocks of paper, land etc)

3. GENERAL OVERVIEW

3.1 Any decision whether to retain or dispose of a document should be taken in accordance with this Document Retention Policy. This Policy includes:

- The key disposal/retention considerations criteria checklist, set out in **Appendix 1**. Essentially no document should be disposed of unless all these have been considered in relation to the document(s).
- The Retention Schedules (taken from the Records Management Society) contained in **Appendix 2**. These provide guidance on recommended and mandatory minimum retention periods for specific classes of documents/records.

3.2 Where a retention period has expired in relation to a particular document(s) a review should always be carried out before a final decision is made to

dispose of that document(s). It is expected that in the majority of cases this decision will be straightforward and not be overly time consuming. Adherence to this Policy will ensure that correct and appropriate considerations are made.

- 3.3. In the event that a decision is taken to dispose of a particular document(s) then consideration should be given to the method of disposal in line with the section on Disposal (paragraph 5).

4. ROLES & RESPONSIBILITIES

Heads of Services

- 4.1 Responsibility for determining, in accordance with the Document Retention Policy whether to retain or dispose of specific document(s) rests with the appropriate Head of Service, in respect of those document(s) that properly fall within the remit or control of their Service. It is reasonable to expect that each Head of Service is conversant with the types of documents received, generated and stored in the delivery of the services. Taking into account the stated benefits and risks resulting from the retention and disposal of unnecessary documentation, Heads of Services are expected to be proactive in carrying out or instigating audits of existing documentation that may be suitable for disposal.
- 4.2 Heads of Services may delegate the operational aspects of this responsibility to one or more senior officers within their Service. However in doing so they should ensure that any such Officer is fully conversant with this Policy and is also familiar with the operational requirements of the Service in relation to document(s) retention/disposal.

ADVICE AND GUIDANCE

- 4.3 Generally, each Service Area should be able to determine, in line with statutory, professional or accepted practice, the approach to be taken in line with this Policy for the retention of document (s). If any additional advice or guidance is required this can be obtained either from the Council's Data Protection Officer (Head of Corporate Services) or from Legal Services where any legal considerations have to be made. The advice from Legal Services must be sought where the likelihood of a claim has been identified.

5. DISPOSAL

- 5.1 Disposal of document(s) and information can be achieved by a range of processes:
- Confidential waste – *i.e.* making available for collection by a registered collection service or use of the internal confidential waste service.
 - Physical destruction on site (paper records – cross cut shredding to be used)

- Deletion – where computer files are concerned (please note that this should include back up copies as well)
- Migration of document(s) to external body

5.2 Heads of Services should take into account the following considerations when selecting any method of disposal:

- Under no circumstances should paper documents containing personal data or confidential information be thrown away, put in normal waste bins or deposited in refuse tips. 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. Such documents should be destroyed on site through the internal confidential waste collection service.
- Deletion – the Information Commissioner has advised that if steps are taken to make data virtually impossible to retrieve, then this will be regarded as equivalent to deletion.
- Migration of documents to a third party (other than for destruction or recycling) is unlikely to be an option in most cases. However, this method of disposal will be relevant where documents or records are of historic interest and/or have intrinsic value. The third party here could well be the Public Record Office (“PRO”) the County Archivist or a local Museum.

“Migration” can, of course, include the sale of documents to a third party. This should only be progressed after the consultation with the Head of Corporate Services and Legal Services.

- Recycling – wherever practicable disposal should further recycling, in-line with the Council’s commitment to the environment and sustainable development. If this method is used, no personal data should be included in any documents used for recycling.

5.3 A local record of the disposal of documents should be maintained and include the date and method of disposal, and the authorising officer.

Freedom of Information Act 2000

5.4 The documenting of disposal is particularly important due to the Freedom of Information Act where the Council may need to demonstrate why it is unable to provide requested information.

It is therefore important to consider the requirements of the Council’s Freedom of Information Act Publication Scheme that is available on the intranet. If you need any more advice then please contact the Head of Corporate Services.

6. DATA PROTECTION ACT 1998

- 6.1 To comply with the Data Protection Act personal data processed for any stated purpose must not be kept for longer than is necessary for that purpose. In short, keeping such data beyond the length of time necessary for the stated purpose for which that data was obtained, is unlawful.
- 6.2 The Data Protection Legislation contains no interpretive provisions on this provision. It is a matter for reasonable judgment and common sense as to how long personal data should be retained.
- 6.3 Clearly, in many instances the retention of personal data will be necessary and thus justified for a period of time. In general provided there is adherence to this Policy, the Council should not act against the provision of the Data Protection Act.
- 6.4 Heads of Services and all staff need to be conscious of the fact that in some contexts it can be relatively easy to fall foul of the Data Protection Act regarding the retention of personal data. Where appropriate, training and guidance will be provided for staff and in particular those who work with personal data.

7.0 EQUALITY AND FAIRNESS

- 7.1 In line with the Council's Corporate Equality and Fairness Scheme, this policy will be subject to an Equality Impact Risk Assessment. Any outcomes from this will be considered to develop the Policy to ensure it has no adverse effect on anyone.

8.0. REVIEW

- 8.1 This policy may be reviewed at any time in consultation with the recognised Trade Unions. As a minimum the policy will be reviewed every two years.
- 8.2 Northgate Human Resources have authorisation to make minor amendments to the policy arising out of organisational change (e.g. changes to post titles).

APPENDIX 1

KEY DISPOSAL/RETENTION CONSIDERATIONS

Introduction:

In order to ensure that the Council has a consistent and transparent approach towards the disposal/retention of documents the following issues should be considered.

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

- (i) the five Key Disposal/Retention considerations detailed in this Appendix
- (ii) the Retention Schedules contained in Appendix 2.

KEY CONSIDERATION NO. 1

HAS THE DOCUMENT BEEN REVIEWED?

As a first step, the nature/contents of any document being considered for disposal should be ascertained. No document(s) should be earmarked or designated for disposal unless this has been done.

Insofar as *existing documents* are concerned it follows that the above can only be achieved by the carrying out of physical inspection and reviewed. The process may only take a few minutes – perhaps even seconds. 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(s) concerned and its function within both the individual Service and corporate frameworks.

Any decision to the effect that *future documents* of a specified description be disposed of on expiry of a specified retention period should be an informed one *i.e.* taken with a full appreciation and understanding of the nature and function of such document.

The above is commonsense. However, this step is inadvertently overlooked or carried out negligently, or by an employee who lacks the necessary operational knowledge, the Council increases the risk of important documents being destroyed in error.

KEY DISPOSAL/RETENTION CONSIDERATIONS

KEY CONSIDERATION NO. 2

IS RETENTION REQUIRED TO FULFIL STATUTORY OR OTHER REGULATORY REQUIREMENTS?

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

The pieces of legislation which do, either directly or indirectly, impose minimum retention periods are 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 requirement that these records be maintained on a permanent basis, unless the legislation concerned stipulates otherwise.

The Audit Commission Act 1998: This provides auditors with a right of access to every document relating to the Council that appears necessary for the purposes of carrying out the auditor's functions under the Act.

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 equivalent to the position re 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 part of the agenda are required to be available for inspection by members of the public.

KEY DISPOSAL/RETENTION CONSIDERATIONS

KEY CONSIDERATION NO. 3

IS RETENTION REQUIRED TO EVIDENCE EVENTS IN THE CASE OF DISPUTE?

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 or changing a decision taken by an Officer or Committee. The Council may also wish to institute legal proceedings against an individual or organisation e.g. to recover an unpaid debt, contract failure or in respect of poor service delivery.

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 this, there is the danger that the Council's position will be compromised, and the very real possibility that claims against the Council might succeed, or that the Council may be unable to assert its legal entitlements.

The **Limitations Act 1980** specifies time limits for commencing litigation. The starting point 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.
- Compensation claims for personal injury are barred on expiry of 3 years from the date on which
 - (i) the cause of action occurred (this will usually be the date when the incident
 - (ii) causing the injury occurred; or
 - (iii) 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.

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



The six-year retention period and risk assessment: As stated above the majority of potential legal claims are statute barred on the expiry of 6 years. For this reason many organisations consider it prudent to retain files/records for a period of 6 years from the date when the subject matter was completed.

It is important, though, to keep in mind that in the course of the Council's everyday business large masses of documents are generated that serve no purpose after relatively short periods of time. Many documents will relate to completed matters where, realistically, the risk of subsequent litigation or other dispute is minimal, if not non-existent. Long-term retention of such documents is therefore inappropriate.

Head of Services should be prepared to carry out a risk analysis, with a view to disposal of such documents within a shorter period of than the 6 years time frame.

KEY DISPOSAL/RETENTION CONSIDERATIONS

KEY CONSIDERATION NO. 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. Heads of Services should be open to the danger of discarding documents or records that 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.

The Audit Commission recognises that key records may merit permanent preservation, notwithstanding nothing is prescribed. These are covered in the Retention Schedules developed by each service area.

KEY CONSIDERATION NO. 5

IS RETENTION REQUIRED BECAUSE THE DOCUMENT OR RECORD IS OF HISTORIC INTEREST OR INTRINSIC VALUE?

In most cases this consideration will not be applicable. However, it is certainly possible that some documents currently in Council storage may be of historic interest and/or even have some monetary value.

Illustration

A local authority may have in its possession records of damage to property caused by air raids during WW II. These records may well be of interest to museums, local history societies, and other public records offices.

Where it is suspected that the document falls within this description appropriate enquires should always be made before taking any further action. The Head of Corporate Services should be contacted for advice and guidance in the first instance. 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 the County Records office; or even sale to an external body.

APPENDIX 2

DOCUMENT RETENTION SCHEDULES

(Supplied by the Records Management Society)

Introduction

The following schedules provide guidance only on the retention periods applicable to a wide range of Council documents. It will be the responsibility of each service to determine the length of time that documents are retained and when reviews are completed. It is recommended that the retention schedule developed is reviewed on an annual basis.

Employment

Documents/records relating to employment matters warrant careful attention insofar as retention periods are concerned. There is the need, when considering appropriate retention periods, to be aware of the fact that the Council may need recourse to certain documents/records in the event of employment claims being submitted against the Council.

Many employment documents or records will contain “personal data” and “sensitive personal data” as defined by the Data Protection Act 1984. The fifth data protection principle (personal data processed for long purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes) is therefore relevant. Therefore in some instances, the Council will be under a legal duty to destroy employment records. The Information Commissioner has stated, however, that in considering compliance with this principle, regard will be given to the need for the employer to respond to enquiries, for example, from an employee’s new employer or from Inland Revenue as well as for its own use.

The Information Commissioner has published a draft code of practice on the use of personal data in employer/employee relationships that provides guidance on retention periods for certain categories of employment records. Where applicable, these are referred to in the schedule below.

Legal documents

Documents in the custody or care of Legal Services warrant special consideration, as they may have legal significance. In addition to the document retention considerations set out in the main body of the policy it should be noted that qualified Officers are governed by guidelines issued by the Law Society of England and Wales under the guise of its Professional Conduct Rules.

The Law Society stresses ‘that it is unable to specify particular periods of years for which individual files and documents should be retained. Solicitors should exercise their own judgement in this respect, having regard to such factors as the subject matter of the contents and their own circumstances, including availability of storage space and the costs thereof.’

Subject to that, the Law Society considers it may well be advisable to retain all files for a minimum period of 6 years from when the subject matter was wholly completed. At the end of the 6 year period, Solicitors should review the files again according to the nature of the particular transactions to which they refer, and the likelihood of any claims arising there from within the appropriate limitation period. After taking these matters into account and before deciding that certain old files or documents can be destroyed, Solicitors should consider whether there are any documents that ought nevertheless be preserved for their archival or historic value. If there is any possibility of this it is suggested that contact should be made with the County Archivist in order to arrange for an inspection.

The Law Society guidelines are, of course, in line with the key Disposal/ Retention considerations set out in this Policy. This schedule seeks among other things to identify documents/files that can be safely disposed of before expiry of the six year 'rule of thumb'.

Retention/disposal decisions in respect of 'residual documentation/records' (*i.e.* those which are not specifically covered by the preceding schedules) should be considered against the guidelines contained in this Schedule. Indeed, it is likely that the majority of documentation will fall within this 'residual' category.

It cannot be over emphasised that in determining the retention period appropriate for documents regard must be had to the key disposal/retention considerations set out in Appendix 1. Heads of Services/Managers should be prepared, where necessary, to carry out a risk analysis *i.e.* assess (i) the value (or possible value) of a particular document/class of document; (ii) the likelihood that recourse may be needed to it in the future (Key Disposal/Retention Consideration No. 4 is relevant here); and (iii) the consequences to the Council/Service if that document is not available because it has been destroyed.

Clearly, there will be the temptation to adopt a policy of retaining *every* single document or record for at least 6 years. Undoubtedly, this will be the safest option; but it is also unduly cautious and generally to be discouraged. As the Audit Commission has remarked, in the everyday course of public sector business large masses of documentation are generated which serve no purpose after short periods of time.

Where paper records are concerned Heads of Services/Managers should also endeavour to avoid **duplicity** of record keeping, wherever it is practicable to do so. It may sometimes be the case that two or more Services have the same documents /records in their possession. Provided that one Service has a full set in safe storage there may well be the case that there is no need for the other Service(s) to retain a set. Inter-Service communication and cooperation in the context of document retention is encouraged.

The Disposal Guidelines – Contents

Community safety and emergencies

- . Advice
- . Community safety
- . Emergency planning
- . Emergency service
- . Enforcement
- . Fire prevention
- . Measures against vandalism
- . Training

Council property

- . Common land
- . Maintenance of council property
- . Property acquisition and disposal
- . Property and land management
- . Property use and development

Crematoria and cemeteries

- . Burial identity and location
- . Maintenance of burial grounds

Democracy

- . Decision making
- . Governance
- . Honours and awards
- . Member support
- . Planning
- . Representation

Economic development

- . Business intelligence
- . Promotion
- . Regeneration
- . Sustainability
- . Tourism
- . Training

Environmental protection

- . Advice
- . Conservation
- . Monitoring

Finance

- . Accounts and audit
- . Asset management
- . Financial provisions management
- . Financial transactions management
- . Local taxation
- . National taxation

Health and safety

- . Community safety
- . Compliance
- . Monitoring
- . Risk management

Housing

- . Advice
- . Enforcement
- . Estate management
- . Housing provision
- . Housing stock
- . Managing tenancies

Human Resources

- . Administering employees
- . Employee relations
- . Equal opportunities
- . Monitoring employees
- . Occupational health
- . Recruitment
- . Terms and conditions of employment
- . Training.
- Payroll and pensions
- . Workforce planning

Information and communication technology

- . Infrastructure
- . System support

Information management

- . Access to information
- . Archives
- . Knowledge management
- . Records management
- . Registration

Legal services

- . Advice
- . Bylaws
- . Land registration
- . Land and highways
- . Litigation
- . Management of legal activities
- . Planning controls

Leisure and culture

- . Allotments
- . Archives
- . Arts
- . Community facilities
- . Leisure promotion
- . Libraries
- . Museums
- . Parks and open spaces
- . Sports facilities
- . Sports
- . Tourism

Management

- . Ceremonial

- 
- . Communication support
 - . Corporate communication
 - . Enquiries and complaints
 - . External audits
 - . Preparing business
 - . Project management
 - . Quality and performance
 - . Statutory returns
 - . Strategic planning

Planning and building control

- . Building control
- . Covenant control
- . Development control
- . Forward planning

Procurement

- . Contracting
- . Market information
- . Tendering

RETENTION AND DISPOSAL SCHEDULE

ORGANISATIONAL DEVELOPMENT UNIT				
HUMAN RESOURCES & TRAINING				
Service/record	Where held	Retention Period	Method of Disposal	Statutory provisions
Absence Monitoring records	Employee File	6 years after termination of employment	Electronic deletion	
Disciplinary Matters	Employee file	In Line with Disciplinary Procedure	Electronic deletion from personal file Confidential waste for paper records	
Grievance matters	Employee File	6 years after termination of employment	Electronic deletion from personal file Confidential waste for paper records	
Occupational Health reports & other medical assessment	Employee File	50 years after last action	Electronic deletion Confidential waste for paper records	Health & Safety legislation
Employment administration (contracts, changes, letters etc)	Employee File	6 years after termination of employment	Electronic deletion	
Personal data	Employee File	6 years after termination of employment	Electronic deletion	
Training records (internal and external)	Employee File	6 years after termination of employment	Electronic deletion	
Training records (Health & safety)	Employee File	50 years after last action	Electronic deletion Confidential waste for paper records	Health & Safety legislation
Performance Appraisals	Employee file	6 years after termination of employment	Electronic deletion	

Job evaluation records	Secure filing cabinet	2 years after date of implementation	Confidential waste for paper records	
Human Resources Policies and Procedures	Intranet site	2 years for Policies that are superseded	Electronic deletion	
Termination of employment	Employee File	6 years after termination of employment	Electronic deletion	
Recruitment Administration (successful employee)	Employee File	6 years after termination of employment	Electronic deletion from personal file Confidential waste for paper records	
Recruitment Administration (unsuccessful applicants)	Shared service centre (Leeds)	6 months following completion of interview	Electronic deletion from personal file Confidential waste for paper records	
Criminal Records Bureau	Secure storage in HR	1 week after receipt for successful applicants 1 week after discussion with applicant if anything disclosed	Shredded and then confidential waste	CRB Guidelines and requirements governing Disclosures
Employee relations – (Collective agreements, Disputes, claims)	Electronic record on network	6 years after administrative use is concluded or revised agreement in place	Electronic deletion	
HEALTH & SAFETY				
Service/record	Where held	Retention Period	Method of Disposal	Statutory provisions
Accident records	Electronic record	40 years from date of accident	Electronic deletion from personal file Confidential waste for paper records	Health & Safety at Work Act 1974
Health & Safety Audits	Electronic record	6 years from completion	Electronic deletion	

		of Audit		
Risk Assessments	Electronic record	3 years from completion of assessment	Electronic deletion	Management of Health & Safety at Work Regulations 1992
Health & Safety Inspections	Electronic record	40 years from inspection	Electronic deletion	
Corporate Policy and Procedures	Electronic records on intranet	2 years for Policies that are superseded	Electronic deletion	
PAYROLL				
Service/record	Where held	Retention Period	Method of Disposal	Statutory provisions
Salary details including payments, deductions and allowances for employees	Electronic record	6 complete tax years from date of transactions	Electronic deletion	Taxes Management Act 1970; Audit Commission Act 1998
Statutory and other returns	Electronic record	6 complete tax years from date of transactions	Electronic deletion	Taxes Management Act 1970; Audit Commission Act 1998
Pension details	Electronic record	12 years period	Electronic deletion	Local Government Pension Scheme requirements
Fit notes	Secure storage and electronic record	6 complete tax years from date of transactions	Electronic deletion	Taxes Management Act 1970; Audit Commission Act 1998
Payroll reports	Electronic record	Destroyed after administrative use is completed	Electronic deletion	
POLICY & COMMUNICATIONS				
Service/record	Where held	Retention Period	Method of Disposal	Statutory provisions
Corporate Plan	Website, Intranet other electronic record	Permanent archive	Na	

Equality Impact Risk Assessments	Electronic record	5 years after completion date	Electronic deletion	
Corporate performance information	Electronic record	6 years after administrative use is completed	Electronic	
Public consultation	Secure storage and electronic record	5 years from completion date	Electronic deletion and Confidential waste for paper records	
Media releases and articles	Electronic record	Permanent archive	Na	
Corporate design and production	Electronic record	One copy for archive; 3 years after use is concluded	Electronic deletion and recycled for other materials	
Website & Social Media	Electronic record	Annual review of information	Electronic deletion as required	
Printing	Secure storage and electronic record	1 month after completion date	Electronic deletion, confidential waste and recycling	

