

Warrumbungle Shire Council

Records Management for Councillors

Procedure

Resolution 156/2021
19 November 2020

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1. General

1.1 Introduction

Council is bound by the *State Records Act 1998* (NSW) (hereafter referred to as 'the Act') which establishes rules for best practice for recordkeeping, encouraging transparency and accountability.

Councillors, when discharging functions of Council, are subject to these rules as set out by the Act when they create or receive 'State Records'.

A council is identified as a public office under section 3(1) of the Act. Councillors are subject to the Act when they create or receive 'State Records' while undertaking business on Council's behalf. They are not subject to the Act when conducting personal business or business that is unrelated to their role as councillors.

1.2 What is a Record?

A 'record' is defined at s 3(1) of the Act as:

'any document or other source compiled, recorded or stored in written form or on film, or by electronic process, or in any other manner or by any other means'

A 'State record' is defined at s 3(1) of the Act as:

'any record made and kept or received and kept by any person in the course of the exercise of official functions in a public office, or for any purpose of a public office, or for the use of a public office'

1.2.1 Examples of State Records

Examples of State records include, but are not limited to:

- Correspondence, including emails, relating to any Council business (including correspondence sent to a Council-provided or private email or postal address);
- A petition received from a community group;
- Declarations concerning a councillor's pecuniary interests;
- Speech notes made for addresses given at official Council events;
- Complaints, suggestions or enquiries by residents about Council services;
- Any written response provided by the councillor to any of the above examples.

1.2.2 Examples of Records that are not State Records

Conversely, records that are created, sent or received by councillors when they are **not** discharging functions of Council are **not** considered to be State Records for the purposes of the Act.

Examples of records that are **not** State records include, but are not limited to:

- Records relating to political or electoral issues, eg lobbying for votes, supportive emails from members of the community regarding elections or political stances;
- Communications regarding matters of personal/general interest rather than Council interest, eg information from environmental or other interest groups not specific to issues being considered by councillors or Council;
- Records relating to attendance at sports functions, church fetes, or community functions when the councillor is not representing Council;

- Personal records of councillors such as personal emails, character references for friends (these should not be written on Council letterhead), nomination for awards, and letters to local newspapers etc that are not related to Council business.

1.3 Importance of Recordkeeping

Accurate recordkeeping provides protection for councillors in the event that questions are raised regarding conduct. Documenting events, activities and decisions enables councillors to recall or provide information on a matter when required and supports transparency of councillor conduct.

Records are a vital asset to Council. Many records created and received by councillors have the potential to:

- Support the work of councillors and Council's Delivery and Operational Plans, management and administration;
- Help councillors and Council deliver customer service in an efficient, fair and equitable manner;
- Provide evidence of councillors' actions and decisions and establish precedents for future decision-making;
- Protect the rights and interests of the Council, councillors and customers.

2. Creating and Capturing Records

2.1 What Records to Create and Capture

Councillors should create and capture full and accurate records of any significant business undertaken in the course of their official duties for Council. Significant business can include:

- Providing advice, instructions or recommendations;
- Drafts of documents for Council containing significant annotations or submitted for comment or approval by others;
- Correspondence received and sent relating to their work undertaken for Council.

Council is responsible for:

- Creating and capturing records of Council or committee meetings;
- Capturing any State records that it sends to councillors regarding Council business.

2.2 How to Create Records

Council has paper and electronic templates available for councillors to create emails, letters and memos while conducting business for the Council. These will assist councillors in ensuring that the essential information is recorded.

Details of significant advice, commitment, etc made during telephone or verbal conversations or via SMS should be recorded using the Council's standard file note template. Details should be recorded to include the following:

- Date and time;
- Parties involved;
- Summary of discussion;
- Commitments;
- Advice given; and
- Reasons for commitments/advice given.

Notes in councillors' diaries are generally not adequate where there are recordkeeping requirements; they should be converted into a formal file note. These records should be made as soon as possible after the event to ensure the information is accurate.

2.3 How to Capture Records

2.3.1 Paper Records

Councillors are to keep paper records together and **at each Ordinary Council meeting** transfer them to the General Manager. Any confidential documents should be marked 'CONFIDENTIAL' so that appropriate security measures can be implemented.

Records received from councillors will be registered into Council's recordkeeping system, with appropriate security controls attached.

2.3.2 Email and Electronic Records

Councillors are to keep any electronic records, including emails, together and **at the end of each month** transfer them to the Executive Assistant to the General Manager for registration into Council's recordkeeping system. Any confidential documents should be marked 'CONFIDENTIAL' so that appropriate security measures can be implemented.

For councillors utilising a Council email address, a copy of all emails is automatically securely stored in Council's archives.

Records received from councillors will be registered into Council's recordkeeping system, with appropriate security controls attached.

2.3.3 Councillor Copies

Councillors may wish to retain a copy of any record. Copies should only be retained while needed for current Council business.

2.4 Councillors' Mail

Any incoming mail or email (hereafter referred to as 'correspondence') addressed to councillors will be opened and processed by Records staff.

Correspondence relating to Council business will be processed into Council's recordkeeping system.

Correspondence relating to operational matters will be processed into Council's recordkeeping system and assigned to the Executive Assistant to the General Manager for forwarding to the relevant staff member for response. Councillors will be notified of this and be provided a copy of the correspondence.

Any correspondence not related to Council business will be forwarded to the councillor.

2.5 Creation of State Records

Should a councillor create a document on behalf of Council that:

- Provides instructions;
- Gives permission or consent; or
- Makes decisions, commitments or agreements binding on Council.

The document must be approved by the Mayor and/or General Manager before it is sent. This applies to hard copy and electronic documents. Approval is not required for documents created purely on behalf of the councillor, with no implicit or explicit impact on Council.

If it is deemed that a proposed document will contravene Council policy, or breach a Council resolution or intention, the Mayor may rule the document inappropriate and require the document to be destroyed.

3. Unauthorised Access or Disclosure of Council Records

Section 664(1) of the *Local Government Act 1993* (NSW) ('the LGA') prohibits the disclosure of information obtained in connection with the administration or execution of the LGA, except in certain specific circumstances.

Councillors are also bound by Council's Code of Conduct and Code of Meeting Practice **not** to:

- Attempt to access records they are not authorised to see;
- Provide unauthorised access to other parties while Council records are in their care;
- Disclose confidential information about Council business; or
- Disclose personal information of employees, customers etc without the subject's consent.

These rules help to ensure that Council and its staff and clients are protected and that the requirements of relevant legislation, such as privacy legislation, are met.

4. Handling and Storage of Records

4.1 Damage or Neglect of Records is an Offence

Damage or neglect of a State record is an offence under s21 of the Act.

4.2 Storage of Records

When storing Council records temporarily the following rules apply:

- Records are to be kept away from known risks such as water, fire, mould, vermin, vandalism, chemicals, direct sunlight, extreme temperatures etc;
- Electronic records should be protected against additional hazards such as viruses;
- Records should be secured appropriately to their level of sensitivity. No Council records should be left in plain view in vehicles or lying around the house; and
- Councillors who are storing records of a sensitive or confidential nature should ensure that they are appropriately protected.

Copies of confidential business papers or documents can be forwarded to the Executive Assistant to the General Manager for destruction.

5. Disposal of Records

5.1 Disposal in Accordance with the Act

State records held by Councillors must be disposed of in accordance with the Act. Such records should be returned to the Executive Assistant to the General Manager.

State Records NSW has issued General Retention and Disposal Authority – Local Government Records (GA39), which outlines classes of records and how long they should be kept before being legally destroyed or transferred to archives. Periods specified are based on

relevant legislation, guidelines and standards. Failure to keep records for the length of time specified in the GA39 may put councillors and Council at risk.

5.2 Liaison with Council for Disposal

Councillors should liaise with the Director Corporate and Community Services regarding the disposal of any records of Council business as Council is responsible for:

- Ensuring legislative requirements are met;
- Ensuring destruction is undertaken appropriately (eg that no sensitive information is released due to inappropriate destruction methods); and
- Documenting disposal decisions for accountability purposes.

6. Access to Records of Council

For information regarding councillors' access to information/records, refer to Council's 'Interaction between Councillors and Staff' policy.

7. Security and Confidentiality of Records

7.1 Building Controls

Council's paper records are kept securely in Council's buildings with security controls to protect against unauthorised access.

7.2 System Controls

Council's recordkeeping systems restrict access according to security levels. Each electronic record is classified on registration and this classification determines users who have access to the record.

8. Breaches

Breaches of this policy and procedure will be dealt with by the Mayor and/or General Manager in accordance with the Code of Conduct.

9. References

Independent Commission Against Corruption, *Lobbying local government councillors*, 2006, <www.icac.nsw.gov.au>

NSW Ombudsman, *Good Conduct and Administrative Practice: Guidelines for State and Local Government*, <www.ombo.nsw.gov.au/news-and-publications/publications/guidelines/state-and-local-government/good-conduct-and-administrative-practice>

State Records, *Destruction of records*, NSW Government State Archives and Records, <www.records.nsw.gov.au/recordkeeping/advice/retention-and-disposal/destruction-of-records>

State Records, *General retention and disposal authority: local government records (GA39)*, NSW Government State Archives and Records, <www.records.nsw.gov.au/recordkeeping/rules/qdas/ga39>

State Records, *Recordkeeping Fundamentals for Councillors*, NSW Government State Archives and Records, <www.records.nsw.gov.au/sites/default/files/Recordkeeping/Recordkeeping-Fundamentals-NSW%20Local%20Government%20Councillors%20-%20Printable.pdf>

State Records, *What have records got to do with me?*, NSW Government State Archives and Records, <www.records.nsw.gov.au/recordkeeping/what-have-records-got-do-me-local-government>

10. Attachments

1. Meeting note template
2. File note template

Attachment 1 – Meeting Note Template
COUNCILLOR MEETING NOTE

SUBJECT

DATE **TIME**

PRESENT

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DISCUSSED

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ACTIONS/DECISIONS

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NAME **SIGNATURE**

COUNCILLOR

Office Use Only

Date registered Document ID

COUNCILLOR FILE NOTE

SUBJECT

DATE TIME

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