

# Kyogle Council

## Councillors Records Management Policy



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**1. Validity**

This Policy derives its validity from Council Resolution 200709/24.

**2. Policy Objectives**

The purpose of this document is to ensure that full and accurate records of the activities and decisions of Councillors, in the course of their official duties for Council, are created, managed and disposed of appropriately to meet the Council's organisational needs and accountability requirements.

**4. Applicability**

All Councillors must comply with this document in their conduct of official business for Council. Official business includes business relevant to the performance of the function and duties of the office of Councillor. This document applies to records in all formats, including electronic records.

**5. Some Councillors' records are State records**

Public offices are bound by the State Records Act 1998 which establishes rules for best practice for recordkeeping in NSW Government, encouraging transparency and accountability. Councils are identified as public offices under the Act (section 3(1)). When discharging functions of Council, Councillors are subject to the State Records Act when they create or receive 'State records'.

A State record is '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' (section 3(1)).

Examples of State records

Examples of State records include (but are not limited to):

- correspondence, including emails, regarding building and development matters
- a petition received from a community group
- declarations concerning a Councillor's pecuniary interests
- speech notes made for addresses given at official Council events, and
- complaints, suggestions or enquiries by rate payers about Council services.

Examples of records that are not State records

Conversely, records which 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 *State Records Act 1998*.

Examples of records that are not State records include (but are not limited to):

- records relating to political or electoral issues e.g. 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 e.g. 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, community functions when the Councillor is not representing Council
- personal records of councillors such as personal emails, character references for friends, nomination for awards, letters to local newspapers etc that are not related to Council business.

## **6. Records as a resource**

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 program delivery, management and administration
- help Councillors and Council to deliver customer services in an efficient, fair and equitable manner
- provide evidence of Councillors' actions and decisions and establish precedents for future decision making, and
- protect the rights and interests of the Council, Councillors and its clients and rate payers.

## **7. 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 where the Council is the secretary
- capturing any State records it sends to Councillors regarding Council business.

### Creation of records of a confidential nature

On some occasions, Councillors are approached and asked to keep matters discussed relating to Council business confidential. In this case they should refer the person to Privacy requirements. This indicates that confidential correspondence must still be recorded and registered into Council recordkeeping systems if they refer to Council business. There are policies and security controls in place to ensure these records have limited access but these records may still need to be produced under relevant legislation, e.g. subpoena, the *Freedom of Information Act 1989* or *s.12 of the Local Government Act 1993*. With security controls in place records are likely to be less at risk than if they were not in recordkeeping systems.

## **8. How to create records**

Council has a number of paper and electronic templates available for Councillors to create emails, faxes, 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, commitments etc made during telephone or verbal conversations or via SMS should be recorded using the Council's standard file note template (e.g. time, date, parties involved, summary of discussion, commitments, advice given etc and reasons for them). 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.

## **9. How to capture records**

Records of Council business that are created or received by Councillors (with the exception of those sent from Council as they are already captured) should be saved into official Council recordkeeping systems as soon as is practicable so that Council can assist with their long term management.

### Paper records

Records created or received in paper format should be kept together and regularly (at least once a month) transfer them to Council's Records Manager (although matters requiring action by Council need to be forwarded immediately).

### Email and electronic records

Email and other electronic records should be forwarded to Council promptly for registration [email to [council@kyogle.nsw.gov.au](mailto:council@kyogle.nsw.gov.au)]. If records are of a sensitive or confidential nature, the Councillor should forward

them to the General Manager and alert him/her to this fact so that appropriate security controls can be applied.

#### Councillors' copies

If a Councillor retains copies of any records once the originals have been forwarded for registration, these should be retained only while needed for current Council business. The routine destruction of copies of records is permitted under the *State Records Act* (section 21(2)). It is important to recognise that these copies should be treated like the originals with regard to security controls applied.

### **10. Registration of records by Council**

#### Registration procedures

Records received from Councillors for registration will be handled in accordance with the Council's *Records Management Plan*.

#### Councillors' mail (including email)

Incoming mail for Councillors received at Council with no privacy markings will be opened by the records staff. Mail considered to be a State record will be registered into Council's recordkeeping system before being forwarded to the Councillor. Mail with privacy markings is registered in a separate register but forwarded to the Councillor unopened. It is then the Councillor's responsibility to return any mail that is a State record and requires registration in the Council's main recordkeeping system.

Faxes to Councillors are registered in the recordkeeping system, before being forwarded to Councillors.

Electronic mail received through the Council's generic email address that is addressed to Councillors is forwarded to the Councillor, with the exception of unsolicited recruitment material, items which appear to have little or no significance to the Councillor's role or Council operations, pornographic or obscene material, or spam. Electronic mail considered to be a State record will be registered into Council's recordkeeping system before being forwarded to the Councillor.

### **11. Security and confidentiality of records**

#### Building controls

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

#### System controls

The Council's records management software which controls both paper and electronic records restricts access according to security levels.

### Rules for Council staff and Councillors

Council staff and Councillors are bound by Council's *Code of conduct*, preventing unauthorised access or disclosure of Council records.

## **12. Access to records of Council**

### Access relating to civic duties

Councillors need to have access to information held by Council to help them make informed decisions on matters under their consideration. This information should be relevant and appropriate to the discharge of their obligations e.g. records relating to matters before Council or due to be listed for which there is notification.

Requests for access to records should be directed to the General Manager.

### Access relating to personal interest

Councillors wishing to access records in relation to a matter of personal interest have the same rights as other members of the public. Access may be obtained, for example, under:

- Section 12(1) of the *Local Government Act 1993* which allows all persons to have a right of access to certain Council records
- the *Privacy and Personal Information Protection Act 1998*
- the *Health Records and Information Privacy Act 2002*
- the *State Records Act 1998*, or
- the *Freedom of Information Act 1989*.

### Refusal of access

Should a Councillor be refused access to records of Council, the Councillor will be provided with reason(s) and these reasons will be publicly available. Councillors can ask for a review of a decision to deny access in accordance with section 12A of the *Local Government Act 1993*. Requests for review should be directed to the General Manager.

If a Councillor is refused access to records under another Act, they should refer to any appeal provisions of that Act.

## **13. Borrowing records of Council**

Under section 11(1) of the *State Records Act*, Councils are required to ensure the safe custody and proper preservation of records they are responsible for. Council does not allow Councillors to borrow Council records. If a Councillor needs to view a Council record in the course of their duties for Council, they should request a copy of the record (if restrictions on copying do not apply) or alternatively view the document on Council premises in the presence of a Council officer.

#### 14. **Unauthorised access or disclosure of Council records**

The *Local Government Act 1993* section 664(1) prohibits the disclosure of information obtained in connection with the administration or execution of the Act, except in certain specific circumstances. Councillors are also bound by the Council's *Code of conduct* **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, clients 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 .

#### 15. **Handling and storage of records**

Damage or neglect of a State record is an offence under section 21 of the *State Records Act*. Councillors should apply the storage and handling rules below to ensure records are protected.

##### Handling of records

When handling Council records the following rules apply:

- registered documents are not to be rearranged or removed from Council files (the order provides context for the records) and information on files should never be altered
- no food or drink is to be consumed near records (grease and food particles can attract vermin and liquids can damage records if spilt on them)
- strictly no smoking around records (due to airborne pollutants and the risk of fire)
- if records are damaged during handling, the records manager should be informed. No attempts should be made to repair the record (as some repairs can do long term damage).
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Information on handling specific formats is available in State Records' *Recordkeeping in Brief 14: Handle with care* or can be provided by Council's records staff.

##### Storage of records

Council records should only be stored in Councillors homes for a temporary period prior to registration in accordance with 9 above "How to capture 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
- records should be secured appropriate to their level of sensitivity. No Council records should be left in plain view in vehicles or lying around the house.

## 16. Disposal of records

### Disposal in accordance with the State Records Act

State Records NSW has issued *General Retention and Disposal Authority - Local Government records (GDA10)*, 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.

Other forms of authorised disposal include:

- by order of a court or tribunal
- 'normal administrative practice' (NAP) where ephemeral, duplicate or facilitative records can be destroyed. State Records has produced *Guidelines on Normal Administrative Practice (NAP)* which provide further information on the application of NAP.

### Liaison with Council for disposal

Councillors should liaise with the Council regarding the disposal of any records of Council business as Council is responsible for:

- ensuring legislative requirements are met
- ensuring destruction is undertaken appropriately (e.g. that no sensitive information is released due to inappropriate destruction methods), and
- documenting disposal decisions for accountability purposes.
- The Council's records management staff should be primarily responsible for the disposal of State records, unless other arrangements are approved.

**Acknowledgment:** The Council acknowledges the use of State Records NSW, *Sample records management policy and procedures for Councillors* which draws on policy/procedure documents of State Library of NSW, State Records NSW, Armidale/Dumaresq Council, Shoalhaven City Council, and the Council of the City of Sydney.