

# RESPONSIBILITIES AND GUIDANCE

*State Records Act 1997*

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*Information Privacy Principles Instruction*

**STATE RECORDS**  
of South Australia



Government of South Australia  
State Records



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# Message from the Director

State Records of South Australia has responsibility for the administration of the *State Records Act 1997*, *Freedom of Information Act 1991* and the Information Privacy Principles Instruction, under the Attorney-General. Together these legal and policy instruments establish the framework for the appropriate management of information across the South Australian public sector.

Public sector information is an important government asset, one that underpins evidence-based decision making and sound policy development. Whether in digital or paper form public sector information also supports citizens' rights and entitlements and their ability to engage with government in shaping their communities.

The potential value of public sector information can only be realised if it is trusted and accessible. The effective management of information and the ability to access and share it appropriately is therefore critical.

This publication outlines the responsibilities of agencies and public servants in managing public sector information in accordance with the State Records Act, Freedom of Information Act and Information Privacy Principles Instruction, and provides guidance on how this might be achieved.

State Records has also published a range of policy and guidance documents which assist agencies to appropriately manage their information. These are available from the State Records website.

## **Simon Froude**

Director and State Archivist  
State Records of South Australia

# State Records Act 1997

*The State Records Act 1997 (SR Act) sets out the requirements and responsibilities of agencies in the management of official records.*

The key objects of the SR Act, as set out in Section 5, are to ensure the preservation of official records of enduring value, to enable public and agency access to those official records and to promote the observance of best practices by agencies in the management of their official records.

The management of information, as evidence of government transactions and decisions, is critical in ensuring robust and transparent governance.

**Agency** *is defined to include all state government agencies (including Minister's Offices), local government authorities and universities.*

**Official records** *are records made or received in the conduct of business and can be in any format e.g. email, database, social media, briefings, reports, photographs.*

**Fact:** Parliament (Houses, committees and offices) are excluded from the SR Act as are the functions and responsibilities of electorate offices.

## State Records Act Responsibilities

The SR Act places specific responsibilities on agencies, and therefore, by default, public servants have certain obligations. These responsibilities and obligations are outlined below.

### Maintaining records in good order and condition

Agencies and public servants must maintain official records in good order and condition.

### Standards

State Records issues records management standards to assist agencies manage their official records, so that they are maintained in good order and condition. Any standards issued under the SR Act are binding for administrative units of the public service and agencies or instrumentalities of the Crown.

Public servants must follow agency specific policy developed in accordance with these standards.

**Fact:** Whilst Local Government authorities are encouraged to adhere to the standards issued by State Records, they are not bound by them.

### Disposal

Disposal is the process through which official records are destroyed or where custody or ownership of the record is transferred.

Official records must be disposed of in accordance with legislative and business requirements.

Disposal of official records must only occur following a determination made by the Manager [Director] of State Records with approval of the State Records Council. In South Australia a determination for the purposes of the SR Act is in the form of a disposal schedule.

State Records has developed general disposal schedules which apply to multiple agencies and cover a large proportion of official government records. These should be supplemented with an agency specific disposal schedule where necessary. Agency specific disposal schedules must be approved by the State Records Council prior to their adoption.

Public servants must not dispose of official records except in accordance with an approved disposal schedule.

**Fact:** It is an offence under the SR Act to intentionally damage, alter or dispose of an official record if the individual knows that they do not have proper authority to do so.

### Transfer

In accordance with the current transfer policy set out by State Records, agencies are required to transfer permanent value records (i.e. records that must be kept forever) to the custody of State Records.

At the time of transfer agencies should consult with State Records to determine whether the records should be openly accessible to the public or closed to public access for a set period of time.

Where an official record is determined to have a temporary value (i.e. it can be destroyed at a point in time), then the agency can store those records onsite or transfer the records to an Approved Service Provider (ASP) for them to be stored prior to their destruction.

**Fact:** The role of the archive is to preserve those records that need to be kept forever.

## Access

Agencies are able to temporarily loan records that have been transferred to State Records' custody, under conditions set by State Records to ensure the preservation of the record. Loaning a record in State Records' custody must be undertaken by an authorised officer of the agency.

State Records is able to provide public access to records that have been transferred to its custody if the records have an open access determination. Access to records with a closed access determination must be managed by the agency.

## State Records Act Guidance

As a public servant you should:

- create accurate and timely records of your work (eg emails, documents, reports, data), ensuring it is saved into your agency's business or records management systems
- handle records carefully so they are not damaged or destroyed without appropriate authority
- be aware of your agency's policies relating to the management of records and information.

**Fact:** The records you create today may include information that is of importance to future generations.

To ensure records are managed appropriately your agency should:

- identify what records should be created as evidence of business transactions, decisions and activities
- establish policies and procedures to manage records
- provide systems to keep records that facilitate and control access and disposal



- ensure confidential and sensitive information is managed in accordance with applicable security regimes
- migrate information across systems to ensure records are accessible for as long as needed
- establish a disposal program which ensures permanent value records are retained and temporary value records are destroyed in accordance with an approved determination.

**Fact:** Private email addresses should not be used to conduct or receive government related business.

# Freedom of Information Act 1991

The *Freedom of Information Act 1991* (FOI Act) gives individuals a legally enforceable right to access official documents and records that are held by agencies and also allows individuals to amend personal information that they believe is incomplete, incorrect, out of date or misleading.

The key objects under the FOI Act are to promote the openness and accountability of government, ensure that the public have the opportunity to effectively scrutinise, debate, discuss and participate in government law and policy making and enable individuals to have access to their own personal information; subject only to restrictions consistent with the public interest and the preservation of personal privacy.

**Agency** for the purposes of the FOI Act includes administrative units of the South Australian public service, ministers, local government authorities and universities.

**Fact:** Certain agencies may be exempt from the FOI Act. These are established in Schedule 2 of the FOI Act.

## Freedom of Information Act Responsibilities

Agencies have responsibilities to provide access to information to individuals. The FOI Act provides one avenue for the public to seek access to information held by government, but should not be the only option available to them. Agencies are encouraged to implement their own administrative access regimes.

### Publication of Information concerning agency

Agencies must publish an up-to-date information statement at least every 12 months.

The purpose of an information statement is to provide people wanting access to information held by an agency with an overview of what the agency does, the types of documents held and how a person can access this information.

### Accept and determine requests to access

Agencies must receive and process FOI applications for access to an agency's documents. After receiving an application, the agency's accredited FOI officer makes a determination based on whether access to the document will be given and if so, if any charge is payable. Access may be denied due to an exemption in Schedule 1 to the FOI Act.

**Accredited FOI Officer** *is a senior officer within an agency that meets the criteria of Section 4(1) of the FOI Act.*

### Accept and determine requests to amend

Agencies must also receive and process applications to amend personal information within their documents.

The accredited FOI officer must make a determination by either amending or annotating its records or refusing to amend its records.

### Sufficiency of search

When searching for documents, an agency must make reasonable attempts to locate all documents to which access has been requested. This may include searching through records delivered into the custody of State Records.

### Timeframes and extensions

An agency has 30 calendar days to deal with the application i.e. to supply the applicant with a determination. An agency can apply for an extension of time to deal with the application, however only the principal officer (chief executive) of the agency can grant such an extension and only in limited circumstances.

### Consultation

Certain documents require consultation before they can be considered for release. These are those documents:

- containing the affairs of the Government, Commonwealth or a council;
- affecting the personal affairs of other people;
- affecting business affairs; and
- affecting the conduct of research.

An agency must not give access to any documents that fall under the categories above until consultation has occurred or the agency has taken such steps as are reasonably practical to ascertain the views of the person / organisation concerned.

### Exemptions

Before releasing a document an agency must consider if any of the 19 exemptions apply to the document, either in part or in totality. Schedule 1 of the FOI Act outlines these exemptions.

### Review rights

Agencies may be required to process an application for internal review if the applicant is unhappy with the agency's decision.

A person may apply to the South Australian Ombudsman or South Australian Civil and Administrative Tribunal (SACAT). This is known as an external review.

## Release of information outside of FOI

An agency's documents and information may be released to the public via mechanisms other than the FOI Act. Any release should be done in accordance with government or agency policy, this could include publication or proactive release via an agency website.

**Fact:** FOI should be considered as the last mechanism for releasing information to the public.

## Freedom of Information Act Guidance

As a public officer you should:

- create and capture records in line with your agency's policies and systems
- ensure the records you create are factual and accurate
- (when asked) locate and provide any records you hold that are within the scope of an FOI application to the accredited FOI Officer.

**Fact:** All documents found that are within scope of an applications, no matter their confidentiality or sensitivity, must be provided to the FOI officer for processing.

# Information Privacy Principles Instruction

State government agencies collect and use personal information provided by the public. Where this occurs agencies have an obligation to manage this information in accordance with the Information Privacy Principles Instruction (IPPI), published as Premier and Cabinet Circular No. 12.

The IPPI establishes a set of Information Privacy Principles (IPP) that regulate how State government agencies collect, use, store and disclose personal information.

The IPPI is administered by the Privacy Committee of South Australia.

The principal officer, or chief executive, of each State government agency is required to ensure the IPPI is implemented, maintained and observed in respect to the personal information the agency collects or holds.

Agencies should publish or make available a privacy policy to advise individuals how personal information is collected, used, stored and disclosed within the agency.

**Agency** *for the purposes of the IPPI includes administrative units of the state government, public service and ministers.*

**Personal information** *is defined in the IPPI as information or an opinion, whether true or not, relating to a natural person or the affairs of a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion. This may include names, address, date of birth, medical or financial information.*

**Fact:** Local government authorities and South Australian universities are not covered by the IPPI.

# Information Privacy Principles Instruction

## Responsibilities

Agencies and public servants have a responsibility to ensure that the personal information they collect from members of the public is protected and used only for the purpose it was collected.

### Collection

Agencies and public servants should only collect personal information legally, fairly and where relevant. Personal information should not be collected unnecessarily.

Where personal information is collected individuals should be told the purpose for which their personal information is being collected, how it will be used, and to whom the agency usually discloses it.

### Storage

Personal information should be stored securely to prevent against loss, misuse or unauthorised access.

Agencies should have policies concerning the storage and classification of personal information in accordance with the requirements of the Government's Protective Security Management Framework (Premier and Cabinet Circular 30), the Information Security Management Framework, and Records Management Standards and Guidelines. Agency Security Advisors can provide further advice.

**Fact:** If a personal information data breach occurs, the agency must provide a report to the Privacy Committee of South Australia.

## Access and correction

Through FOI, individuals have a right to apply for access to their own personal information and can seek to have it amended or annotated under the FOI Act if they consider it to be incomplete, incorrect, out-of-date or misleading.

## Use and disclosure

Personal information should only be used for the purpose for which it was collected, and it should not be used for another purpose or disclosed to a third person for another purpose unless:

- the record-subject would reasonably expect it to be used or disclosed for that secondary purpose; or
- the record-subject has given consent; or
- it is required to prevent a serious threat to the life, health or safety of someone; or
- it is required by law; or
- it is required for enforcing a law, protecting public revenue, or protecting the interests of the government as an employer; or
- the agency suspects unlawful activity has been, is being or may be engaged in and the use or disclosure is necessary for its investigation of the matter or reporting its concerns to relevant persons or authorities; or
- the agency reasonably believes that the use or disclosure relates to information about an individual that suggests that the individual has engaged or may engage in illegal conduct or serious misconduct in relation to a person; and the use or disclosure is appropriate in the circumstances; and is made in accordance with guidelines issued by the minister.



## Information Privacy Principles Instruction Guidance

As a public officer, if you are aware that there is a public interest in sharing information, such as a serious threat to the life, health or safety of a child or any other person, you are required to do so.

Where an agency seeks to share information with another agency reference should be made to the *SA Public Sector Data Sharing Act 2016*, Information Sharing Guidelines as well as to IPPI.

If a State Government agency intends to undertake a program or action that does not comply with one or more of the IPPs it may apply to the Privacy Committee of South Australia for an exemption.

**Fact:** The IPPS do not prevent the disclosure of information where there is lawful reason to do so, for example mandatory reporting obligations under the Children's Protection Act 1993.

## Further Resources and Supporting Information

There are numerous standards, guidelines, policies and information sheets on the State Records website at [www.archives.sa.gov.au](http://www.archives.sa.gov.au).

## Notes

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## Need further assistance?

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