



Rutland County Council

RUTLAND COUNTY COUNCIL DATA RETENTION POLICY

Version & Policy Number	Version two
Guardian	Data Protection Officer
Date Produced	April 2024
Next Review Date	June 2025

V2 Approved by Cabinet	June 2024
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Summary of document

Rutland County Council has reviewed the way in which it manages its data. This Policy sets out the Council's commitment to record management and advises on the procedures to be adopted regarding document retention and disposals.

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1. INTRODUCTION

- 1.1 Rutland County Council recognises that its data is an important public asset and are a key resource for accountability and effective operation. It requires careful management, and this Policy sets out the Council's responsibilities and activities regarding the management and retention of its data.
- 1.2 In the course of carrying out its functions and activities, the Council collects information from individuals and external organisations and generates a wide range of data and information. This can be retained as hard copies or in electronic form.
- 1.3 Retention of specific data may be necessary to fulfil statutory or other regulatory requirements, evidence events in the case of a dispute and preserve documents of historic and other value.
- 1.4 The untimely destruction of documents could cause the Council to face difficulties in defending claims, meet operational requirements or fail to comply with Data protection legislation.
- 1.5 Conversely, the permanent retention of data is unfeasible and can be unlawful, disposal is necessary to allow for adequate storage space and compliance with Data Protection legislation.

There are various pieces of legislation which outline retention requirements. These include:

- Freedom of Information Act 2000 – including the Code of Practice Section 46 (FOIA)
- The UK General Data Protection Regulations (UK GDPR)
- Data Protection Act 2018 (DPA 18)
- Public Records Act 1958
- Limitation Act 1980
- Inquiries Act 2005

- 1.6 The effective management of records in all formats depends as much on their efficient disposal as well as their long-term preservation. As a Local Authority we must be consistent in the way we handle and dispose of our data. These guidelines will assist the Council in meeting local needs whilst providing a consistent approach to record keeping across the organisation.

2. SCOPE AND PURPOSE

- 2.1 The purpose of this Policy is to provide a corporate framework to govern how data should be:
 - Retained – and if so, in what format, and for what period; or
 - Disposed of – and if so, when and by what method.

This Policy also seeks to clarify the roles and responsibilities of designated officers in the decision-making process.

3. THE RETENTION/DISPOSAL PROTOCOL

- 3.1 Any decision whether to retain or dispose of data should be taken in accordance with the retention/disposal protocol. This Policy consists of the key disposal/retention considerations criteria checklist, set out in Appendix 1. No document should be disposed of unless considered against this criterion.
- This Policy should be used in conjunction with the Retention Schedules (taken from the Asset Register). These provide guidance on recommended and mandatory minimum retention periods for specific classes of documents/records.

4. ROLES AND RESPONSIBILITIES

- 4.1 Responsibility for determining (in accordance with the Retention/Disposal checklist and schedule) whether to retain or dispose of specific documents rests with the Head of Service.
- 4.2 The Data Protection Officer can advise on whether minimum retention periods are prescribed by law. However, they cannot be expected to possess the operational or background knowledge required to assess whether a particular document may be required by the department concerned for operational need. This is the responsibility of the relevant Head of Service. There are statutory requirements specifically relating to the retention of children's social care records, for which the Council has a separate procedure.
- 4.3 The Data Protection Officer is available to provide guidance on effective data management practices.
- 4.4 The Lead responsibility for data management has been assigned to the Data Protection Officer, who is also the Statutory Data Protection Officer for the Council. Heads of Service are responsible for the data management for their service.
- 4.5 Nominated Information Champions have been allocated within each area to act as a communication point and to support the implementation of the corporate data management programme in their respective areas.

5. DISPOSAL

- 5.1 Disposal can be achieved by a range of processes:
- Confidential waste;
 - Physical destruction onsite (shredding);
 - Deletion – where computer files are concerned;
 - Migration of documents to an external body.

5.2 Data disposal

Where third parties are engaged to dispose of (destroy by any means, including incineration) or archive personal data, there should be due diligence undertaken to satisfy the organisation that the third party is a responsible operator, with practices which comply with data protection legislation and that the appropriate legal documentation is in place.

5.3 The following considerations should be considered when selecting any method of disposal:

- Under no circumstances should paper documents containing personal data or confidential information be simply deposited in non-confidential bins.
- If steps are taken to make data impossible to retrieve, then this will be regarded as deletion.
- Migration of documents to a third party (other than for destruction or recycling) will be relevant where documents or records are of historic interest and/or have intrinsic value. Migration can include the transfer of data to a third-party service provider.

6. UK General Data Protection Regulations

6.1 All staff need to be aware that under the UK General Data Protection Regulations (UK GDPR) personal data processed for any purpose must not be kept for any longer than is necessary for that purpose. In other words, retaining documents or records that contain personal data beyond the length of time necessary for the purpose for which that data was obtained is unlawful. If legislation is silent on this provision; it is a matter for judgement as to how long personal data (which falls outside legislative guidance) should be retained.

7. FORMAT OF RECORDS

7.1 This Policy is relevant to records which are electronic, paper or record which have been transferred to another format such as microfiche.

8. REVIEWING THE SCHEDULE

8.1 These guidelines prescribe minimum and permanent retention periods. The guidance will be reviewed at regular intervals to ensure it is still fit for purpose.

Key Disposal/Retention Considerations

Introduction

No document should be earmarked for disposal unless due regard has been given to five Key Disposal/Retention considerations detailed in this Appendix and with reference to the Retention Schedule Document.

KEY CONSIDERATION 1

Has the document been appraised?

1. 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. As far as existing documents are concerned it follows that the above can only be achieved by the carrying out of physical inspection and appraisal. The process may only take a few minutes – 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 the sufficient operational knowledge to enable them to identify the document concerned and its function within both the individual Department 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 documents.
2. The above is common-sense, and hardly needs to be stated. However, if appraisal is inadvertently overlooked or carried out negligently, or by an employee who lacks the necessary background operational knowledge, the Council runs the risk of important documents being destroyed in error.

Key Consideration 2

Is retention required to fulfil statutory or other regulatory requirements?

There is, in fact, 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 periods for certain financial records are imposed by statutes such as the VAT Act 1994, and the Taxes Management Act 1970. The relevant retention periods are identified in the Retention Schedules Document.

Statutory Register: Various Local Government statutes require to be kept of certain events, notifications, or transactions. It is implicit with 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 purpose of carrying out the auditor's function 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.

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 Consideration 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. Conversely, the Council may wish to institute legal proceedings against an individual or organisation e.g. to recover an unpaid debt, or in respect of faulty workmanship. 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 such, there is the danger that the Council's position will be compromised, and the possibility that an unmeritorious claim might succeed, or that the Council may be unable to assert legal entitlements.

The Limitation Act 1980 specifies time limits for commencing litigation. The starting point, therefore, is that the retention period is the length of time that must elapse before a claim is barred.

The six-year retention period and risk assessment: As stated above most 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.

Heads of Service (or designated officers) 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 year period.

Key Consideration 4

Is retention required to meet the operational needs of the department?

In some cases, retention may be desirable (whether permanent or otherwise) even though no minimum retention period applies. Heads of Service (or designated officers) should be open to the danger of discarding documents or records that might be useful for future reference purposes (e.g. training), as precedence, 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.

Key Consideration 5

Is retention required because the document or record is of historical 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 WWII. These records may well be of interest to museums and local history societies.

Where it is suspected that the document falls within this description, appropriate enquires should always be made before taking any further action.

Even if the document is of historical or monetary value, disposal rather than retention by the Council may well be the appropriate option.



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