



# Heybridge Parish Council

## Data Retention Policy

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### 1. Introduction

1.1 In the course of carrying out its various functions and activities, the Council collects information from individuals and external organisations and generates a wide range of data/information which is recorded. These records can take many different forms e.g.-

- Letters received from third parties
- Copy letters which have been sent out
- File attendance notes
- Invoices
- Completed application forms
- Financial records
- Registers
- Contracts/deeds
- E-mail communications (and any attachments)
- Photographs

1.2 Many of the above documents can be retained as 'hard' paper records or in electronic form.

1.3 Retention of specific documents may be necessary to:-

- Fulfil statutory or other regulatory requirements
- Evidence events/agreements in the case of disputes
- Meet operational needs
- Ensure the preservation of documents of historic or other value

1.4 The untimely destruction of documents could cause the Council:-

- Difficulty in defending litigious claims
- Operational problems
- Embarrassment
- Failure to comply with the Freedom of Information or Data Protection Acts

1.5 Conversely, the permanent retention of all documents is undesirable, and appropriate disposal is to be encouraged for the following reasons:-

- There is a shortage of new storage space
- Disposal of existing documents can free up space for more productive activities
- Indefinite retention of personal data may be unlawful
- Reduction of fire risk (in the case of paper records)
- There is evidence that the de-cluttering of office accommodation can be psychologically beneficial for many workers

1.6 Modern day records management philosophy emphasises the importance of organisations having in place systems 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 and 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 what period; or
- Disposed of – and if so when and by what method.

2.2 This policy is not concerned with the disposal/retention of unused materials (e.g. stocks of paper, unused forms, and duplicated documents).

## **3. The Retention/Disposal Protocol**

3.1 Any decision whether to retain or dispose of a document should be taken in accordance with the retention/disposal protocol. This protocol consists of:-

- 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.
- 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 a review should always be carried out before a final decision is made to dispose of that document. Such reviews need not necessarily be detailed or time consuming.

3.3 In the event that a decision is taken to dispose of a particular document or set of documents, the consideration should be given to the method of disposal.

## **4. Roles and Responsibilities**

4.1 Responsibility for determining whether to retain or dispose of specific documents rests with the Clerk.

## **5. Disposal**

5.1 Disposal can be achieved by a range of processes:-

- Physical destruction on site (paper records – shredding)
- Recycling
- Deletion – where computer files are concerned

5.2 Considerations when selecting any method of disposal:-

- Under no circumstances should paper documents containing personal data or confidential information be simply binned or deposited in recycling bins. 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 (shredded.)
  - 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.
  - Recycling – wherever practicable disposal should further recycling.
- 5.3 Disposal should be documented by keeping a record of the document disposed of, the date and the method of disposal, and the Clerk's authorisation. The documenting of disposal is particularly important due to the Freedom of Information Act.

## **6. Data Protection Act 1998**

6.1 Under the Data Protection Act 1998, personal data processed for any purpose must not be kept for 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.

The Data Protection Legislation contains no interpretive provisions on this provision. It is a matter for reasonable judgement and common sense as to how long personal data should be maintained.

Clearly, in many instances the retention of personal data will be necessary and thus justified for a very long period of time. In general provided there is adherence to this Policy few problems should arise.

## **Appendix 1 – Key Disposal/Retention Considerations**

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

### **KEY CONSIDERATION NO. 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 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 appraisal. 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 the Clerk. 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.
2. The above is largely 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 very real risk of important documents being destroyed in error.

### **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:-

1. 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.
2. 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.
3. 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.

4. 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.
5. 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 CONSIDERATIONS 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. 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 very real possibility that an unmeritorious claim 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 therefore, 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:-
  - The cause of action occurred (this will usually be the date when the incident causing the injury occurred; or
  - 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 document action 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 counterproductive. The Clerk will carry out a risk analysis, with a view to disposal of such documents within a shorter period of less than the 6 years time frame.

#### **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. The Clerk 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.

##### **Key Documents**

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

#### **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.

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 – but in the form of transfer to, say , the County Records Office, or even sale to an external body.

## **Appendix 2 – Document Retention Schedules (Records Management Society)**

Documents/records relating to Personnel 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 a claim being made against it under employment protection or anti-discrimination legislation. 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. Thus in some instances, the Council will be under a legal duty to destroy employment records, the Information Commissioner has stated, however, that in considering an employer’s compliance with this principle she will have regard 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.

Minutes of Parish Council Meetings, Committees and Sub-Committees – Permanent (offer to archivist)

Clerks hand-written notebooks – destroy after date of confirmation of the Minutes

Annual Financial reports (including audit report, budget) – permanent (offer to archivist)

Financial records (invoices, receipts, bank reconciliations, Hall bookings etc) – destroy after 6 years

Payroll, Pension for employees – destroy after 7 years

Accidents Books – Adults- destroy after 3 years of closure

Accidents Books – Children – destroy after 25 years of closure

Play Equipment Visual Safety Inspection Records – destroy after 20 years

Play Equipment Safety Inspections – destroy 6 years after equipment is decommissioned

Risk Assessments – destroy 3 years after last assessment

Employee Records

- Employee details – destroy 6 years from termination of employment
- Discipline – final warnings – destroy 18 months after warning
- Discipline – no warning given – destroy immediately
- Discipline – oral warnings – destroy 6 months after warning
- Discipline – written warnings – destroy 12 months after warning
- Employment conditions – destroy 2 years after employee ceases employment
- Grievances – destroy 6 years from termination of employment



- Individual training records – destroy 6 years from termination of employment
- Annual Leave – destroy 2 years after completed
- Medical assessments – destroy 75 years after birth
- Maternity/paternity – destroy 3 years from end of current tax year
- Termination – destroy 6 years from termination of employment
- Appraisals – destroy 5 years after action completed
- Occupational Health records – destroy 75 years after date of birth
- Major injuries – destroy 40 years after termination of employment

#### Recruitment

- Authorisation – destroy 5 years after recruitment finalised
- Job descriptions – destroy 2 years after superseded
- Unsuccessful applicants – destroy 6 months after recruitment finalised

Volunteers – destroy 6 years from termination

Training Course Materials – destroy 2 years after action completed

Freedom of Information requests – destroy 3 years after date of creation

Freedom of Information Publication Scheme – permanent – offer to archivist

Heybridge Heralds – permanent – sent to National Archives

Documents relating to planning and organising an event – destroy 7 years after use

Complaints – reports, registers – permanent – offer to archivist

- Stage 1 complaints – destroy 2 years after use is concluded
- Stage 2 complaints – destroy 6 years after use is concluded

Tenders – opening notice, tender envelopes – destroy 1 year after start of contract

- Unsuccessful tenders – destroy 1 year after start of contract

Tenders and Contracts – destroy 6 years after the term of the contract has expired

#### Insurance

- Claims records – destroy 7 years after all obligations and entitlements are concluded
- Insurance policies – destroy 7 years after the terms of the policy have expired
- Renewals – destroy 5 years after the policy has been renewed
- Summary arrangements – permanent – offer to archivist

#### Clerk

24 March 2015

Reviewed April 2016. Reviewed and agreed 18 May 2017. Council was aware that this policy will need to be reviewed subject to the new Data Protection Regulations which take effect May 2018.