Deciding how long to keep personal data

This guide helps you to identify how long your authority should keep personal data and special category data.

Records management

UK GDPR Principle 5 describes the requirements for storage limitation, often called the Retention Principle. It says that personal data must be retained/kept for "no longer than is necessary for the purposes for which the personal data are processed.".

Your authority will have a Records Retention Schedule that lists the accepted retention periods for each activity. If your work does not appear or your activity or relevant legislation has changed, use this checklist and then speak to your Records Manager for advice.

Checklist

LOTI recommends working through this list in order.

1. Legislation

Many pieces of legislation include a requirement for how long data must be kept. Examples are the Public Records Act 1958, the Health and Safety at Work Act 1974, and The Fostering Services Regulations 2011.

All legislation can be found on legislation.gov.uk.

You need to identify the legislation that applies to your activity and check if any retention periods are stated. If you're not sure, check your authority's existing Retention Schedule and seek advice from the Records Manager and/or the council's legal team.

A legal hold, also known as a litigation hold, document hold, hold order or preservation order, is an instruction directing organisations to preserve (and

refrain from destroying or modifying) certain records and information (both paper and electronic) that may be relevant to a pending or anticipated lawsuit, investigation or inquiry. The Independent Inquiry into Child Sexual Abuse is an example that placed a legal hold on local authority records for several years, when the authority was unable to delete records that had met the end of their normal retention period.

2. Statutory guidance

Statutory guidance sits beneath a law and describes what you have to do to comply with all or parts of that law. It is not strictly mandatory, but you must "have regard" to it. If an organisation chooses to act differently than what the statutory guidance recommends, it must be able to justify its decision with a very good, objective reason.

Retention periods may be described in statutory guidance and they may be mandatory or best practice. The School Admissions Appeal Code and Working Together to Safeguard Children are examples.

3. Case law

Case law is the collection of legal rules and interpretations established by the written decisions of judges in past court cases.

It is rare that case law would set a retention period, but it may impact best practice for a retention period that is documented or recommended elsewhere.

4. Professional standards

Retention periods may be recommended through professional standards set for types of individuals like doctors, by regulators such as the General Medical Council.

5. Regulator guidance and best practice

Regulators and industry bodies may also issue best practice guidance, such as the NHS Records Management Code of Practice.

In this category, you may also include recommendations from public enquiries. For example, the Independent Inquiry into Child Sexual Abuse set a recommended retention period covering financial management records relating to abuse claims.

6. **Council ambitions and strategy**

Where none of the above apply, your authority might set a retention period for records, for example, relating to people who took part in a programme like a ‘Summer of Culture’ or similar.

7. **Business practices**

A good example for setting a retention period based on business practices is the length of time you keep records of FOI requests and responses. The law does not specify how long you keep these and as long as you provide a reasonable justification for your practices, you can set your own retention period. Three years, or two years + the current year (2 years +1) are reasonable examples. Business practices will also drive the retention periods you set for things like use of photographs of people for council publications.

Big Bucket Retention

Your authority may choose a ‘big bucket’ approach (also called flexible scheduling). This approach groups many different types of records into a few broad categories based on shared retention periods or business functions.

Instead of having hundreds of specific line items for every single type of file, you create larger, overarching groups, or ‘buckets’. The bucket retention must cover the minimum retention period for all data within it, but may extend a retention period for longer than required by law, where justifiable. This means that data that must by law be kept for three years, may be put into the five year bucket. Three years is the minimum and the extra two years are a reasonable extension.