

# Key obligations – Public Records Act 2005

## 1 Regulatory framework for managing information

The *Public Records Act 2005* (the Act) establishes a regulatory framework for information and records management across the public sector.

Section 3 of the Act sets out the purpose and the relevant regulatory provisions from section 3 are included below.

### Section 3 – Purposes of Act

- (b) to provide for the role of the Chief Archivist in developing and supporting government recordkeeping, including making independent determinations on the disposal of public records and certain local authority archives; and
- (c) to enable the Government to be held accountable by –
  - (i) ensuring that full and accurate records of the affairs of central and local government are created and maintained; and
  - (ii) providing for the preservation of, and public access to, records of long-term value; and
- (d) to enhance public confidence in the integrity of public records and local authority records; and
- (e) to provide an appropriate framework within which public offices and local authorities create and maintain public records and local authority records, as the case may be.

You can view a copy of the [Public Records Act 2005](#) on the New Zealand Legislation website.

## 2 Public offices and local authorities are covered

Public offices and local authorities, as defined in section 4 (Interpretation) of the Act, are covered. Public offices are the agencies and instruments of the legislative, executive and judicial branches of central government. They include government departments, Crown entities, Crown research institutes, state enterprises, district health boards, tertiary institutions, and state and integrated schools. The definition of public office is broad and organisations should check with Te Rua Mahara o te Kāwanatanga Archives New Zealand (Archives) to clarify their status. Local authorities include all regional councils and territorial authorities, council-controlled organisations, local government organisations, and council-controlled trading organisations.

## 3 Archives' responsibilities

In relation to managing information, Archives' responsibilities include:

- authorising the disposal of information and records
- issuing mandatory and discretionary standards and instructions
- providing advice and issuing guidance on how to manage the information and records
- monitoring and reporting on compliance
- providing protocols and processes for deferring the transfer of information and records

- issuing criteria for the independent auditing of public offices' recordkeeping practices
- inspecting public office and local authority records
- controlling and administering public archives
- preserving and providing access to public archives.

## 4 Public offices and local authority obligations

The Act sets out obligations for public offices and local authorities in how they create, maintain, transfer, and dispose of records. The Act also covers access to information and records.

### **Requirement to create and maintain records (section 17)**

Every public office and local authority must create and maintain full and accurate records of its affairs, in line with normal prudent business practice. Records include the records of any task contracted to an independent contractor.

Every public office must maintain in an accessible form, so as to be able to use for subsequent reference, all public records that are in its control, until their disposal is authorised.

Every local authority must maintain in an accessible form, so as to be able to use for subsequent reference, all protected records that are in its control, until their disposal is authorised.

### **Authority required to dispose of public records and protected records (section 18)**

No person may dispose of, or authorise the disposal of, public records or protected records except with the authority of the Chief Archivist, unless disposal of a public record or protected record is required by or under another Act.

### **Mandatory transfer of public records (section 21)**

Every public office must transfer from its possession and control public records that have been in existence for 25 years, unless the public records are to be destroyed, transferred before the expiry of 25 years, or transfer is to be deferred.

### **Transfer of public records and local authority records (section 23)**

A public office that takes over responsibility for a function to which public records relate must give notice to the Chief Archivist of the transfer within 3 months. The same applies for local authority records.

### **Protected records of local authorities (section 40)**

A local authority must provide for the adequate protection and preservation of a protected record it holds, in accordance with any applicable standards or instructions, and must not dispose of a protected record unless notice has been given to the Chief Archivist of the intention to do so.

### **Requirement to classify access status (sections 43 and 44)**

When public records have been in existence for 25 years or are about to be transferred to the control of the Chief Archivist, the records must be classified as open access records or restricted access records.

In classifying the access status of a public record, the administrative head of the controlling public office must consider whether there are good reasons to restrict public access, or whether another enactment requires the public record to be withheld from public access.

**Requirement to classify the access status of local authority records (sections 45 and 46)**

When a local authority record becomes a local authority archive, it must be classified as either an open access record or a restricted access record.

In classifying the access status of a local authority record, the administrative head of the controlling local authority must consider whether there are good reasons to restrict public access, or whether another enactment requires the local authority record to be withheld from public access.

**Public inspection of open access record (section 47)**

Unless the Act provides otherwise, an open access record must be made available for inspection by members of the public free of charge as soon as is reasonably practicable after a request to inspect the record is made to the public office, the local authority, the approved repository, or Archives, whichever has possession of the open access record.