Records and Legal Proceedings

**Purpose**
This Records Advice provides ACT Government records managers and employees with guidance on retaining or destroying records that may be required for legal proceedings. This advice should be used in managing ACT Government records, and can also be applied to other government information and data holdings.

**Background**
The Director of Territory Records authorises the destruction of some ACT Government records after specified periods of time. That authorisation is set out in the various records disposal schedules issued by the Territory Records Office, and it is illegal to destroy an ACT Government record except in accordance with an approved records disposal schedule.

Records disposal schedules also contain a general provision that records may not be destroyed if they are, or may reasonably be, required in legal proceedings. This applies even if a records disposal schedule otherwise authorises the destruction of records and the records are due or overdue for destruction.

**Types of legal proceedings**
Legal proceedings may take a number of forms, which can include civil or criminal courts, the ACT Civil and Administrative Tribunal, audits or Ombudsman inquiries. For the purposes of this Advice, requests for access under the *Freedom of Information Act 1989* should also be considered as legal proceedings.

**Protecting records required for legal proceedings**
ACT Government organisations must take reasonable steps to ensure that records are not required for any foreseeable legal proceedings before they are destroyed. Organisations must have in place adequate destruction authorisation processes to ensure that proper checks have been made before records are destroyed. At a minimum, decisions to destroy individual or groups of records should be reviewed by the organisation’s records manager and a senior manager in the business unit responsible before destruction takes place. Depending on the risks and complexity of the organisation’s business it may also be appropriate to have legal or FOI officers review destruction decisions before they are actioned.

The Territory Records Office is also required to be notified before records are destroyed. The *Retain Principle* provides further information on destruction authorisation processes.

**Handling records that have been part of legal proceedings**
Once legal proceedings are completed, the sentencing of any records involved should be reviewed. If the records have previously been sentenced for destruction they may require resentencing if their significance and importance has changed due to the legal proceedings.
Records used in legal proceedings should be reviewed by a professional records manager before they are destroyed.

Destruction of the records may still be appropriate if the legal proceedings are adequately documented in other organisational files.

**Benefits of good records management**

Having strong records management processes in place can help organisations to respond effectively to legal proceedings. By understanding the content, location and significance of their records, organisations are able to more efficiently and confidently respond to discovery orders and subpoenas. By having responsible and accountable sentencing, destruction and archiving processes in place, organisations can reduce the risk of retaining records for longer than is necessary, and can also defend themselves against accusations of inappropriate destruction of records.

**For more information**

Please contact your organisation’s Records Manager for information on specific processes, or the [Territory Records Office](mailto:TRO@act.gov.au) for further information.