The Highland Council	Agenda Item **18**
Resources Committee – [date]	Report No **RES/ 16/14**

Records Retention Policy and Disposal Authority

Report by Depute Chief Executive and Director of Corporate Development

Summary

This report informs members on the review of the Records Retention Policy and Disposal Authority seeks approval of this updated Policy.

1.   Background

1.1   The Council's policy on records management is covered in two separate policies, The 'Records Management Policy' and the 'Records Retention Policy and Disposal Authority'.

1.2   The Records Management Policy was last reviewed in October 2013 and the updated policy was approved at Finance, Housing and Resources Committee. At the time the committee were made aware that there may be a requirement to further review Records Retention Policy and Disposal Authority in early 2014 to ensure that the council's records management policies met the requirements of the Public Records Scotland Act (PRSA).

1.3   The Records Retention Policy and Disposal Authority was last reviewed and approved by Resources Committee in August 2010.

1.4   Recent records management work being carried out through the MI Project has identified weaknesses in the record disposal process as set out in the Disposal Authority. As a result of this and on-going work to support compliance with PRSA a review has been carried out of the 'Records Retention Policy and Disposal Authority'.

2.   The current Records Retention Policy and Disposal Authority

2.1   The current Records Retention Policy and Disposal Authority sets out a process for the approval of record disposal. This requires that prior to disposal decisions a review is carried out and agreed by the relevant Head of Service, Legal Services, the Freedom of Information Officer and Records Manager.

2.2   The current policy states that at the end of a record's retention period the Service representative and Freedom of Information Officer are required to advise of any outstanding requests for information involving that record. Where

there are no such outstanding requests a representative of Legal Services is required to advise if destruction is appropriate. Where all requirements are met the Records Manager confirms that records can be destroyed.

2.3   This has been interpreted as requiring these decisions to be made for each group of records as they come up for disposal and is causing delays in destroying records that are no longer needed. This is a risk for the council as records are being kept for longer than is necessary and with the records store being full there are high risk records that are being kept in other buildings that could be moved to the records store if the process was more effectively undertaken.

3.   The Proposed Records Retention Policy and Disposal Authority

3.1   The reviewed policy includes changes to introduce a more effective process that focusses on the decisions being made at the point of retention periods being set. It will require more proactive intervention in the event of a legal requirement to stop the disposal actions.

3.2   The Policy sets out the roles and responsibilities of Information Asset Owners and supporting staff in making record retention and disposal decisions.

3.3   The main responsibility sits with the Information Asset Owner to follow the Corporate Retention Schedules and ensure there are no outstanding information requests relating to any records that are due to be destroyed.

3.4   Corporate resources such as advice from the Records Manager and Legal Services will be focused on the setting of appropriate retention periods to be included in the Corporate Retention Schedules. Support will also continue to be available to services and in particular Information Asset Owners to support them in their responsibility.

3.5   It provides information on how retention periods will be defined, setting out the factors that will be considered. This includes an additional factor of 'Financial / Resources' to allow for the possibility of records being retained for a shorter period to achieve savings in storage and management costs, whilst still maintaining compliance with this policy and the Records Management Policy.

3.6   It includes an outline process for the review of retention periods where an Information Asset Owner considers a retention period should be changed. This includes a role for the Information Management Governance Board in giving approval for this change and for approving exceptions to allow flexibility where this is needed for an overwhelming business need.

3.7 The role of IM Lead Officers is further clarified through the addition of a responsibility to ensure that their service contributes to the development of and complies with the Corporate Retention Schedules and Disposal Authority process.

4. Implications

4.2 **Legal & Risk:** By adopting this policy the Council is ensuring that it meets the necessary legislation highlighted in this paper and that it reduced the risk of non-compliance in the safeguarding of Council data.

4.3 **Resource:** Communication and Implementation will be carried out using existing resources. The changes ensure that professional resources are more effectively targeted and provide realistic and longer term should drive down and reduce storage costs.

4.4 **Finance:** There are no implications arising from the review of this policy.

4.5 **Equalities:** The review of this policy does not have a detrimental effect on any particular group.

4.6 **Climate Change / Carbon Clever:** There are no implications arising from the review of this policy.

4.7 **Gaelic:** There are no implications arising from the review of this policy.

Recommendation

Members are asked to:
Note the changes and approve the revised Records Retention Policy and Disposal Authority

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Date: 1/05/2014

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Background Papers: Records Retention Policy and Disposal Authority

Highland Council
Records Retention Policy & Disposal Authority

Contents

1.   Document Control

Version History

Version	Date	Author	Change
1	18/08/2010	Susan Beckley, Highland Council Archivist	Approved by Resources Committee
1.3 DRAFT	23/04/2014	Philip Mallard, Senior Information & Security Officer, Trevor Nicol, Records Manager	New approach to focus on defining retention periods in the corporate retention schedules and making the disposal process more effective and efficient.

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Distribution

Name	Role	Reason
	FHR Committee	Approval
Michelle Morris	Dupute Chief Executive	Review and acceptance
Vicki Nairn	Head of Digital Transformation & SIRO	Review and acceptance
	Information Management Governance Board (IMGB)	Review and acceptance
Ken Fox	ICT Operations Manager	Review and acceptance
Jill McAlpine	Project Manager, Managing Information Project, Corporate Improvement Programme	Review
Linda Johnstone	ICT Delivery Manager, ICT Services	Review
Jon Shepherd	ICT Strategy & Projects Manager, ICT Services	Review

2. Introduction

The Council's records are its corporate memory, supporting its core functions and providing evidence of actions and decisions. They are a vital corporate asset, enabling effective management and compliance with legal and regulatory obligations.

All records created and received by the Highland Council in the course of its business are Highland Council Information Assets and are owned by the Council and not by the individuals, teams, departments or services that create the records.

The Council's Records Management Policy supports compliance with the Public Records (Scotland) Act 2011 and the Code of Practice on Records Management under Section 61 of the Freedom of Information (Scotland) Act 2002.

Effective records management requires the management of records through their lifecycle from creation to disposal. The Records Retention Policy and Disposal Authority sets out the Council's approach to the retention and disposal of its records.

3. Purpose and Scope

This Records Retention Policy and Disposal Authority is part of the Information Management Policy Framework and supports the Records Management Policy through setting out the roles and responsibilities of Information Asset Owners and supporting staff in making record retention and disposal decisions.

The Policy applies to any person with access to Council records or any Council Information Asset. This includes staff, contractors, agency staff, members and those working on behalf of the Highland Council.

4. Related Policies

This policy is complementary to and should be read in conjunction with the following

- Records Management Policy
- Information Management Strategy
- Information Management Policy
- Data Protection Policy
- Information Security Policy

5. Policy Statement

The Council will ensure that records and information are not kept for longer than is necessary to carry out its statutory functions, service provision and community obligations whilst having due regard for legislative and evidential requirements.

5.1　Definition of a Record

The Records Management Policy sets out the Council's agreed definition of a record:

"Information created, received and maintained as evidence and information by an organisation or person, in pursuance of legal obligations, or in the transaction of business". (The international Records Management Standard ISO 15489-1:2001)

The Council recognises this as its definition of a record and that information includes all formats, whether paper or electronic. e.g. hand written notes, letters, word documents, spreadsheets, scanned images, photographs, audio, emails, etc

5.2　Records Management Processes and Record Keeping Systems

The Council's Records Management Policy sets a range of commitments for its processes and record keeping systems. The following commitments are particularly relevant to the Records Retention Policy and Disposal Authority:

- deliver consistency in the management of records across the Council

- ensure records keeping systems comply with the Council's Business Continuity Plan by identifying and preserving its vital records

- ensure the Council's Retention Schedules and Disposal Authority processes are observed to ensure records are retained for the appropriate and agreed period of time

- ensure records with long-term historical value are transferred to the custody of the Archive Service for permanent preservation

- ensure compliance with legal, audit and operational requirements affecting the retention of records, including the Public Records (Scotland) Act 2011, Data Protection Act, Freedom of Information (Scotland) Act and Environmental Information Regulations

5.3　Corporate Retention Schedules

A corporate retention schedule is the mechanism to ensure the Council is maintaining necessary records for the appropriate length of time. It determines the length of time records are required to be kept and provides an authority against which those records can be disposed of.

The Corporate Retention Schedules are an active management document designed to reflect the records for the Councils functions and is subject to continual monitoring and review. It promotes greater control over the Council's records, enabling Managers to dispose of records no longer needed, and ensuring the retention of

appropriate records consistent with effective service delivery and the Council's legal and regulatory obligations.

The periods of retention for each type of record, the tools to manage the process of declaring a record and the disposal of it, together form an important part of the Council's Information Architecture.

The retention periods set out in the Corporate Retention Schedules must be followed by all Council Services.

5.4   Setting the Corporate Retention Schedules' Retention Periods

In setting the retention periods for the Corporate Retention Schedules, the Council will consider the following factors.

Legislation / Regulations

- Is there any legislation or regulation affecting retention of the records?
- Is the type of information likely to be required for conducting legal proceedings in the event of legal action being taken by, or against the Council? Time limits for commencing litigation can be found in the Prescription and Limitation (Scotland) Act 1973.)
- Identify any particular regulatory agencies or statutes that may govern the business process generating the records.
- Identify any past/anticipated issues facing the Council from a litigation, regulatory or compliance perspective.

Operational / Business Need

- How long are the records likely to be needed to carry out the Council's functions?
- How long are the records required for evidential purposes in respect of business processes or decision making?
- How long do the records need to be kept for accountability/internal audit purposes?
- How serious would the consequences be if they were no longer available?

Archival Value

- Do the records have long term historical value? If so it may be appropriate to transfer them to the Highland Archive Centre.
- Do the records document the Council's policies, structures and processes so that its activities may be understood by future generations?

Risk Assessment / Data Protection and Freedom of Information Legislation

- What are the risks involved in keeping these records?

- Will they be liable for disclosure under the Data Protection or Freedom of Information (Scotland) Acts?
- If they contain personal data, have they served the purpose for which they were created?

Relationship with other records

- Are the records needed in order to understand or use other records? The retention periods of related records should be co-ordinated.

Financial / Resource

- Can the records be retained for a shorter period to achieve savings in storage and management costs, whilst still maintaining compliance with this policy and the Records Management Policy?

5.5   Reviewing the Corporate Retention Schedules' Retention Periods

Where an Information Asset Owner identifies a business or legal reason for a retention period to be changed, this must be brought to the attention of the Records Manager and a review will be carried out in accordance with the process set out below:

1) The Records Manager will review the case for a change and seek further information on the justification for the change.

2) If there is a legal basis for a retention period then this will be referred to legal services to provide advice on this.

3) If the retention period is based on best practice then this will be considered by the Records Manager and a recommendation produced. The recommendation will be based on the factors set out in 5.4.

4) The advice from both the Records Manager and Legal Services, combined with the business case for change from the service will be provided to the Information Management Governance Board (IMGB). The IMGB will review the information provided to them and take further advice from the Records Manager and Senior Information & Security Officer.

5) The IMGB will make a decision on the change and the Corporate Retention Schedules will be updated with immediate effect.

6) If a decision cannot be made due to the level of risk or where there is disagreement amongst IM Lead Officers then this will be referred to the Executive Leadership Team for final consideration.

5.6   Retention and Disposal Decisions

The Information Asset Owner responsible for a group of records is accountable and responsible for authorising the disposal of records. The authority to approve disposal actions may be delegated to a nominated person such as an Information Asset Manager (who has day to day responsibility for the management of the information). In the event of the decision being delegated then the Information Asset Owner will remain accountable for that decision.

Retention and Disposal decisions must follow the retention periods as set out in the Corporate Retention Schedules, unless the disposal authority process as set out below requires a period of further retention. If the records under consideration for disposal are not clearly identified in the Corporate Retention Schedules then advice must be sought from the Records Manager. If there is a gap in the Corporate Retention Schedules then the review process set out below must be followed in order to create an addition entry. No disposal of records must take place unless there is an appropriate entry in the Corporate Retention Schedules.

It is also important to consider whether documents are the Council record or whether they are a copy. Copies of documents where the Council record is held by another part of the Council should be destroyed as soon as the business requirement for them has ended. As these documents are not considered to be a record then the retention of them is not governed by the Corporate Retention Schedules. The Information Asset Owner must confirm which department holds the definitive versions/originals to ensure an appropriate decision is taken.

The corporate retention schedules set out the action that must be taken once a retention period has expired.

Disposal actions can be:

- Archive
- Destroy
- Review

5.7   Disposal Authority Process

Prior to any disposal of Council records the follwing steps must be undertaken.

1) **Review of outstanding Requests**
   At the end of a record's retention period the Information Asset Owner or delegated representative must ensure that there are no outstanding requests for information involving that record. In particular the IAO must consider whether any of the following requests have been received by the Council.
   a. FOI request
   b. Subject Access Request
   c. Legal Disclosure request

2) **Pending Legal Action Review**
   In addition to the above the Information Asset Owner must assess if the documents are expected to be relevant to a pending legal case. In this case

legal advice should be sought to ensure that the retention beyond the period set out in the Corporate Retetion Schedules is appropriate. All documents that are required for legal proceedings should be kept until the threat of proceedings has passed.

3) **Final Review**
The Information asset owner should consider if there is an overwhelming operational / business need to retain the records beyond the retention period identified in the Corporate Retention Schedules. In this event, advice must be sought from the Records Manager and records may only be retained with the approval of the Information Management Governance Board.

4) **Disposal**
Where there are no such outstanding requests the record(s) can be disposed of with the approval of the Information Asset Owner or delegated representative:

- o **Where the disposal action is to 'Archive':**
  The Information Asset Owner or delegated representative must arrange for the Archivist to review the record.

- o **Where the disposal action is to 'Destroy':**
  The records must be destroyed. Any destruction must be done securely and follow Council's Information Security Policy and staff guidance on appropriate destruction.

- o **Where the disposal action is to 'Review':**
  The Information asset owner should consider if there is an operational / business need to retain the records for a further period. The Records Manager will offer advice on this.

5) **Recording the Disposal**
The disposal action must be recorded in a Disposal Log.

6.   Records Retention and Disposal Governance

6.1   Information Management Governance Board (IMGB)

The IMGB has been created to oversee the management of the Highland Council Information Management Strategy and the implementation of this across the Council. There is an IM Lead Officer from each of the Services that will represent their Service on the Board. Each Service Director is required to identify a member of their senior management team to act as IM Lead Officer for their service.

The IMGB has a duty to consider and make recommendations to the Council's Senior Management Team about information and records management issues and to influence strategy and policy development.

The IMGB is responsible for the approval of changes to the Corporate Retention Schedules and for approving exceptions in the event of an overwhelming operational / business need. It is also responsible for the approval of records management guidance and processes to support delivery of the Records Management Policy and Records Retention and Disposal Policy.

7. Roles and responsibilities

This section sets out the responsibilities for Records Retention and Disposal.

7.1 All Staff and Any Person Handling Council Information

Records Management is everybody's responsibility and is something that should be considered as part of normal everyday working practice. This includes staff, contractors, suppliers, members and any person who handles Council Information Assets.

Staff and those handling Council information should understand the information that they create, receive and use and be able to identify information that is or may become a record. Records management processes that are in place must be followed and records keeping systems should be used in accordance with provided instructions and guidance.

Any person handling Highland Council Information must ensure that the records for which they are responsible are accurate and are created, maintained and disposed of in accordance with the this policy, the Records Management Policy and the Corporate Retention Schedules.

Records must not be disposed of unless this has been approved by the Information Asset Owner and is in accordance with the retention period as set out it the current Corporate Retention Schedules.

The inappropriate destruction or deletion of records could result in the Council being unable to prove that it has or has not acted in a particular way. This could, for example, have financial repercussions or leave the Council unable to prove its case in a court of law. The destruction of a record that is the subject of an on-going request for information is likely to result in the loss of trust in the Council, and leave it open to criticism from members of the public and the media. Furthermore, under Section 65 of the Freedom of Information (Scotland) Act 2002, any member of staff who alters, erases or conceals records with the intention of preventing them from being disclosed, could be found guilty of a criminal offence which carries a maximum fine of £5000.

7.2 Managers and Supervisors

Managers are responsible for information held within their area (both paper and electronic).

Managers and supervisors must ensure that all their staff have understood their obligations under this Policy and other information management policies. Managers should support their staff in this regard by highlighting relevant parts of policies that apply to the roles being performed by a member of staff.

Manager and supervisors must ensure that Records are not disposed of unless this has been approved by the Information Asset Owner and is in accordance with the retention period as set out it the current Corporate Retention Schedules.

7.3   Information Asset Owners & System Owners

An Information Asset Owner is a person who has been identified as being responsible for a Highland Council Information Asset. A System Owner is a person who has been identified as being responsible for a Highland Council ICT System.

Information Asset Owners and System Owners must ensure that the management of their Information Asset is consistent with this policy, the Records Management Policy and the other information management policies.

Information Asset Owners and System Owners must ensure they follow this policy when making a decision on the disposal of Council records.

7.4   Records Manager

This role is performed by the Records Manager based within the Records Management Service provided to the Council by High Life Highland. The Records Management function is overseen by the Highland Council via the Head of Digital Transformation.

The Records Manager is responsible for maintaining the Corporate Retention Schedules and ensuring effective records management guidance and processes are provided to staff to support compliance with this Policy.

7.5   Information Management Lead Officer

The IM Lead Officer is a senior representative from each Council Service that represents their Service on the Information Management Governance Board (IMGB) and provides a strategic lead for information management issues (including records management) within each Service.

This includes a requirement to liaise directly with the Records Manager and the Senior Information & Security Officer or to nominate representatives as the first point of contact for record keeping matters.

IM Lead Officers shall ensure that their service contributes to the development of and complies with the Corporate Retention Schedules and Disposal Authority process.

7.6   Information Management Link Officer

The IM Link Officer is a role that exists to provide support to the IM Lead Officer and the Corporate IM functions in the implementation of Information and Records Management.

7.7   Legal Services

Legal Services advise on whether retention periods are prescribed by law and to ensure that Corporate interests are met through the appropriate retention periods being set in the Corporate retention Schedules.

Advice will be provided to the Information Management Governance Board as required to support it in its role.

8.   Staff Communication & Training

This policy will be made available to staff through the Intranet and for others who are within the scope of the policy through the Highland Council website.

As part of the core training, staff and any person handling Council information are provided with an online learning module that provides an introduction to the expectations the Council places on those handling information. This includes the records management as well as the information security and data protection issues of which all staff should be aware.

All staff must complete the information management online learning module and managers must ensure that this has been completed by their staff and is part of the Personal Development Plan.

Any other person handling Highland Council information must also complete this training and the relevant Information Asset Owners and Manager within the Council responsible for the contract must ensure this takes place.

Further online learning modules related to records management may be provided to staff and these must be completed where they are relevant to their role. Staff will be informed when they must complete these additional training modules.

9.   Implementation & Review

The Highland Council's Information Management Strategy sets out the overall Information Management strategy for the Council and records management is an vital component of that.

The Information Management Strategy Implementation Plan sets out how the Records Management Policy requirements will be delivered through a Records Management Strategic Initiative. This is led by the Senior Information & Security Officer and the Records Manager.

This policy will be reviewed on a regular basis and adapted appropriately to ensure that it continues to meet the business and service delivery requirements of the Highland Council.