



Trade & Investment

Office of the Director General

BN13/2904

Privileges Committee
Parliament House
Macquarie Street
Sydney NSW 2000
Attention: Stephen Frappell

Dear Mr Frappell

Inquiry into the 2009 Mt Penny return to order ("Inquiry")

I refer to my appearance before the Inquiry on 11 June 2013 and to those questions I took on notice.

I attach:

1. a schedule of those questions taken on notice and responses;
2. a bundle containing copies of documents the Privileges Committee requested, and also documents I believe will assist the Inquiry; and
3. corrections to errors contained in the transcript of the proceedings (tab 8).

As you will see from the responses set out in the attached schedule, there are certain questions which cannot be answered until after the Review by Maddocks Lawyers is finalised.

The Department expects to receive a report on the findings of the Review on 4 July 2013.

In relation to the Department's policy on responding to Standing Order 52 requests, I have emailed senior Departmental staff regarding the policy and will make the policy available to the entire Department in the near future. In my evidence I indicated that I had done this. My recollection was flawed. I have now done so. A copy of my message to senior Departmental staff is enclosed at tab 9.

In response to your letter of 19 June 2013, I wish to confirm that I have no concerns with the transcript being made public with the section highlighted redacted as proposed.

If you require any further information, please do not hesitate to contact me on
(02) 9338 6808.

Yours sincerely



Mark I Paterson AO
Director General

21.6.13



Questions taken on notice at Inquiry on 11 June 2013 and responses to those questions

Relevant documents are provided in the accompanying bundle at tabs referenced below

No	Question	Response	Documents
1.	Who commissioned the report by Clayton Utz dated 4 November 2011 ("Report")?	<ul style="list-style-type: none">In 2011 Minister Hartcher (Minister for Resources and Energy) requested an independent review be undertaken into the allocation processes for both the Doyles Creek and Mt Penny exploration projects. That request was directed to Mark Duffy, Deputy Director General of the Resources & Energy Division of NSW Trade & Investment ("Department").The Mineral Resources branch of the Resources & Energy Division of the Department sought quotes from 3 law firms to conduct the independent reviews and the Minister approved the Department's engagement of Clayton Utz to the Minister.Mark Duffy (former Director General of the Resources & Energy Division) was the Departmental contact for Clayton Utz and the Minister's Office in relation to the review. [REDACTED] is no longer with the Department.	<ul style="list-style-type: none">Undated letter from Minister Hartcher to Mark Duffy at tab 1
2.	What were the specific terms of reference for the Report?	<p>The terms of reference were:</p> <ul style="list-style-type: none">To investigate the efficacy and decision making in respect of the allocation of the Mt Penny Coal exploration/development area, including, but not limited to, the involvement of the ministers, ministerial staff and their offices in the process.To examine whether public trust was breached in terms of the allocation of the area.	<ul style="list-style-type: none">Undated letter from Minister Hartcher to Mark Duffy at tab 1

3.	What date were the terms of reference for the Mt Penny Report provided to Clayton Utz?	<ul style="list-style-type: none"> 27 June 2011 	<ul style="list-style-type: none"> Letter dated 27/6/11 from Brad Mullard to Clayton Utz at tab 2
4.	What documentation was provided to Clayton Utz for the purposes of preparing the Mt Penny Report?	<ul style="list-style-type: none"> 491 pages of documents were provided to Clayton Utz, grouped into the following categories: <ol style="list-style-type: none"> EOI Evaluation & Recommendation Cascade Coal EOI Cascade Coal papers EOI Breaksphere EOI Jain Natural Resources Australia Pty Ltd Monaro Mining NL – EOI Monaro Mining NL – Mining Potential Report Monaro Mining NL – Financing Monaro Mining NL – Capability Statement Monaro Mining NL – Review of Environmental Parameters Monaro Mining NL – Traffic and Transport Study Monaro Mining NL – Correspondence 	<ul style="list-style-type: none"> The documents produced to Clayton Utz can be provided if requested by the Privileges Committee.
5.	Who within the Department provided the documents to Clayton Utz?	<ul style="list-style-type: none"> The Mineral Resources branch of the Resources & Energy Division provided the documents to Clayton Utz on around 3 August 2011. 	
6.	The Report is titled "Preliminary Report". Is there a final report?	<ul style="list-style-type: none"> There is no "final" report. Clayton Utz has confirmed the Report is the final version. The Privileges Committee should note that the Mt Penny Report was published on the Department's website in response to a GIPA request. The Doyle's Creek report was tabled in Parliament by the Minister for Resources & Energy on 11 November 2011 and reaches substantially different conclusions to the Mt Penny Report. 	
7.	If so, provide a copy.	N/A	
8.	When did the Department receive the section 22 notice issued on 25/1/12 from ICAC ("Notice")?	<ul style="list-style-type: none"> The Department is unable to provide an exact date on which the Notice was received but it is believed it was received on 25 January 2012. 	<ul style="list-style-type: none"> A copy of the Notice is provided at tab 5.

9.	<p>What date was the first return to the Notice provided?</p>	<ul style="list-style-type: none"> In response to the Notice, ██████████ hand delivered a letter, a hard drive and 10 CDs to ICAC on 13 February 2012. ██████████ also emailed some documents to ICAC in response to the Notice on 2, 3 and 10 February 2012. See letter at tab 3. 	<ul style="list-style-type: none"> Letter dated 13/2/12 at tab 3
10.	<p>Regarding the Notice and the 55 documents produced in response, including document 41 (in the document comparison matrix):</p> <ul style="list-style-type: none"> Who did you call in? Who did you speak to? What did your staff do? How did they locate the documents? 	<ul style="list-style-type: none"> The letter at tab 3 sets out the categories of documents that were provided by the Department in response to the Notice, and provides information about the searches that were undertaken to locate those documents. Further to the searches that are summarised in the letter at tab 3, prior to responding to the Notice, ██████████ met with and spoke to Paul Grainger (ICAC Senior Investigator) and Tim Fox (ICAC Chief Investigator) to discuss and narrow exactly what documents ICAC sought in issuing the Notice. In addition to those documents sought in the Notice, Tim Fox and Paul Grainger of ICAC also requested copies of documents that had been provided to Clayton Utz in 2011, with an explanation of where those documents came from and complete copies of all files from which they were taken. 	
11.	<p>Recreate a timeline of what happened in response to the section 22 notice issued on 25/1/12.</p>	<ul style="list-style-type: none"> Without conducting a full review of the processes that were followed and steps that were taken in response to the Notice (which has not been possible within the 10 day timeframe required for this response) the Department is unable to provide a detailed timeline of exactly what searches were undertaken in responding to the Notice. A summary of the steps that were taken in response to the Notice is as follows. Between 30/1/12 and 10/2/12 ██████████ spoke to or met with various people within the Department (including IT and TRIM staff) regarding the Notice and searches to be undertaken in responding to the Notice, including: <ul style="list-style-type: none"> i) ██████████ (DDG Finance Strategy); ii) ██████████ (Mineral Resources); 	

		<ul style="list-style-type: none"> iii) [REDACTED] (DG, Department of Primary Industries); iv) [REDACTED] v) [REDACTED] (Mineral Resources); vi) [REDACTED] (Mineral Resources); vii) [REDACTED] (TRIM); viii) [REDACTED] (IT); ix) [REDACTED] (DDG) x) [REDACTED] (Mineral Resources). <ul style="list-style-type: none"> • [REDACTED] received documents in response to the Notice from the above people throughout the period 3/2/12- 10/2/12, and collated those documents in response to the Notice. • [REDACTED] produced some documents to ICAC by email on 2/2/12, 3/2/12 and 10/2/12. • On 13/2/12 [REDACTED] delivered a hard drive 10 CDs and interim response to Tim Fox at ICAC. • On 24/2/12 [REDACTED] delivered to Tim Fox: <ul style="list-style-type: none"> i) Folder containing documents covered by item (i) of the Second Notice (3/2/12) ii) Folder of documents provided to Clayton Utz in 2011. 	
12.	Examine the process by which Mark Paterson and staff were able to produce 55 documents in 2012, which his predecessors were unable to produce in 2009.	<ul style="list-style-type: none"> • The findings of the Maddocks Review should allow an analysis and comparison of the process undertaken when responding to the Notice and the process undertaken when responding to Standing Order 52 request dated 12/11/09 • It is noted that the Privileges Committee has identified 55 documents which were produced by the Department in response to the Notice. The response to the Notice that elicited those 55 documents included disclosure broad groups of documents, including, for example, all emails authored by or addressed to certain people and entities. • Because of the broad scope of what was produced in response to the Notice, the Department could not maintain lists of each and every document produced. The Department has requested that ICAC provide 	

		<p>a reconciliation of which notices to produce elicited each of the 124 documents which ICAC says should have been provided in 2009, but were not were produced by the Department.</p> <ul style="list-style-type: none"> Once the Department has a copy of such a reconciliation, it may be possible to undertaken an examination and provide further information regarding how searches in 2012 were able to produce documents which were not produced in 2009. 	
13.	What is [REDACTED] title?	<p>Currently: Manager, Governance and Information Requests</p> <p>In 2009: Manager Corporate Projects</p>	
14.	What sort of seniority does he hold in the Department? Classification?	<ul style="list-style-type: none"> Clerk Grade 12 Currently manages 2 staff members 	
15.	How long has [REDACTED] been doing the Governance and Information Requests job?	<ul style="list-style-type: none"> [REDACTED] has been a Grade 12 clerk since 1998. He has been involved in Freedom of Information/Government Information (Public Access) requests since 2005. The first time he dealt with a Standing Order 52 request was in June 2009 and the second time was the Mt Penny request in November 2009. 	
16.	What dates did the Department receive the section 22 notices from ICAC and what dates documents were returned to ICAC?	<ul style="list-style-type: none"> The Department received section 22 notices to produce documents and informal requests for documents regarding Mt Penny, on various dates. Those notices to produce and requests for information do not indicate the specific investigation for which the documents are sought (and it is noted that ICAC was undertaking investigations into separate mining exploration licences at the same time), however due to the documents requested, the Department has been able to identify those notices and requests as primarily relating to Mt Penny. See a schedule of notices to produce and email requests at tab 5. This schedule does not include notices issued to individuals, other informal requests and 5 additional notices that appear to relate primarily to the Doyles Creek ICAC investigation. 	<ul style="list-style-type: none"> Schedule of section 22 Notices to Produce and email requests primarily relating to Mt Penny at tab 4

		<ul style="list-style-type: none"> • While the Department has records of what documents were produced to ICAC, it does not have an exhaustive list of the dates each response was provided to ICAC. The Department has requested a reconciliation of the section 22 notices and documents provided to ICAC. This should assist the Department in being able to identify the dates on which documents were returned to ICAC in response to the notices to produce and email requests. • The reconciliation should also assist the Department and the Privileges Committee in determining which notices elicited each of the 124 documents identified as not having been produced in 2009. 	
17.	Can we provide copies of the section 22 notices?	<ul style="list-style-type: none"> • See section 22 notices to produce and email requests apparently relating to Mt Penny at tab 5. 	<ul style="list-style-type: none"> • Section 22 Notices and email requests apparently relating to Mt Penny at tab at tab 5
18.	Can you provide a copy of your departmental procedures and guidelines for dealings with Standing Order 52 requests?	<ul style="list-style-type: none"> • A copy of the policy is at tab 6. 	<ul style="list-style-type: none"> • Final version policy and procedure at tab 6
19.	Can we have a tracked version of the before and after so we are not trying to compare word for word?	<ul style="list-style-type: none"> • While there was a policy that applied to the former Department of Industry & Investment NSW regarding requests for information under the GIPA Act, prior to the new Standing Order 52 policy being approved by the Executive Committee on 4 June 2013, there was no written policy or procedure in place for responding to Standing Order 52 requests. • There has therefore been no change in the document and no marked up or comparison version of the policy can be provided. 	<ul style="list-style-type: none"> • Final version policy and procedure at tab 6
20.	There has been suggestion that the problem was caused by lack of effective handover during a	<ul style="list-style-type: none"> • The Director General is not aware of an obligation on a Director General to ensure the preservation of documents by an outgoing ministerial office, or of any guidelines in this regard. 	<ul style="list-style-type: none"> • Appendix A to the DPC's Ministers' Office Administration Handbook is at tab 7

	<p>ministerial reshuffle. What guidelines do you have as a director general in regards to the preservation of documents by an outgoing ministerial office?</p>	<ul style="list-style-type: none"> The Department does not have physical control over the documents held by the Minister's Office, nor can it be aware of all documents held by that office and therefore is it not possible for the Department to "preserve" documents when there is a change of Minister. Advice on retention/disposal of records held by a Minister's Office is set out in Appendix A to the DPC Ministers' Office Administration Handbook – (page 70 of the handbook). 	
21.	<p>Are documents that have previously been sent to State Records by the department provided in a return to order, and if not, why not?</p>	<ul style="list-style-type: none"> Whether State Records is approached to obtain documents depends on the terms of the specific order for papers or notice to produce. The individuals within the Department who are responsible for locating documents in response to orders or notices are in a position to determine whether documents may be held by State Records. Documents were not sought from State Records in relation to the 2009 Mt Penny Standing Order 52 request as no documents or groups of documents held by State Records were identified as falling within the scope of the order. 	
22.	<p>The Clayton Utz report states "<i>In response to our request to the Department to be provided with all relevant documentation relating to the Mount Penny EL, William Hughes, Director, Industry Coordination, provided us with a number of hard copy documents</i>". That seems to be a different process than you have outlined for the section 22. Why is there a different process for the section 22 when you compare that with this Clayton Utz report?</p>	<ul style="list-style-type: none"> The Resources & Energy Division of the Department provided instructions and documents to Clayton Utz in relation to the Report. The provision of documents to Clayton Utz was a different operational process to the Department responding to a request for documents via a section 22 notice to produce or Standing Order 52 request. There was no need for the Governance and Information Requests unit [REDACTED] to be involved in the process of locating and providing documents to Clayton Utz in this regard. [REDACTED] was not aware of the engagement of Clayton Utz in 2011, nor of the provision of documents to that firm. 	

23.	Section 5 of the report goes on to suggest a whole page of further investigations that the Department may want to undertake. Have any of those investigations been undertaken?	<ul style="list-style-type: none"> The Department did not undertake the further investigations set out in section 5 of the Report. 	
24.	Will witness statements taken in the Review be provided to the Committee?	<ul style="list-style-type: none"> It is understood that Maddocks Lawyers will be interviewing around 12 people who were involved in responding to the standing order 52 request in 2009. Maddocks Lawyers will not be taking formal witness statements nor preparing any written transcripts of interviews with witnesses. Maddocks Lawyers will make hand written notes of interviews with witnesses and any pertinent facts from witness interviews will be reported in the findings of the Review. 	
25.	What precise word searches were undertaken at the time to produce the documents that were produced in 2009?	<ul style="list-style-type: none"> It is envisaged that it will be possible to answer this question following the Review. 	
26.	How long will the Review take?	<ul style="list-style-type: none"> It is expected the Review will take 3 weeks commencing on 13 June 2013. The findings are due to be provided on 4 July 2013. 	
27.	What is the cost of the Review?	<ul style="list-style-type: none"> Maddocks Lawyers has estimated the Review will cost between \$55,000 and \$70,000 plus GST, and have agreed to cap the professional fees at \$70,000 plus GST. 	



Trade & Investment

Index to bundle of documents

1. Letter from Minister Hartcher to mark Duffy Department of Trade & Investment, Regional Infrastructure and Services
2. Letter dated June 2011 from Resources & Energy Division of Department of Trade & Investment, Regional Infrastructure and Services to Clayton Utz
3. Letter dated 13 February 2012 from Department of Trade & Investment, Regional Infrastructure and Services to ICAC
4. Schedule of Notices to Produce/email requests issued by ICAC to Department of Trade & Investment, Regional Infrastructure and Services
5. Notices to Produce issued by ICAC to Department of Trade & Investment, Regional Infrastructure and Services
6. Department of Trade & Investment, Regional Infrastructure and Services policy regarding Responding to Standing Order 52
7. Appendix A to Ministers' Office Administration Handbook
8. Corrections to errors contained in transcript
9. Message from the Director General to senior Departmental staff concerning the Department's Standing Order 52 policy.



**Trade &
Investment**

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TAB 1



The Hon Chris Hartcher MP
Minister for Resources and Energy
Special Minister of State and
Minister for the Central Coast

Mr Mark Duffy
Deputy Director General
Division of Resources and Energy
Department of Trade and Investment, Regional Infrastructure and Services
Level 17
227 Elizabeth Street
SYDNEY NSW 2000

Dear Mr Duffy

As you would be aware on 12 May 2011 the NSW Government gave approval for a two phase State wide audit of coal and coal seam gas exploration licences over a six month period.

This current audit of exploration titles is a compliance audit against the conditions of title and environmental performance in conducting exploration activities once the title has been granted. This audit involves departmental environmental and title compliance experts assessing a company's performance in conducting exploration once a title has been given.

Given significant public interest and concern surrounding the decision making process in respect of the allocation of the Doyles Creek and Mt Penny coal exploration projects, I am requesting that an independent review be undertaken into the allocation process for these two exploration projects.

The terms of reference for this review would be to investigate the efficacy and decision making in respect of the allocation of the Doyles Creek and Mt Penny Coal exploration/development areas, including but not limited to, the involvement of the ministers, ministerial staff and their offices in the process. The review should also examine whether public trust was breached in terms of the allocation of these areas.

I would be grateful if you would progress this as a matter of urgency utilising external legal expertise.

Please keep me advised on progress.

Yours sincerely

Chris Hartcher MP
Minister for Resources and Energy
Special Minister of State
Minister for the Central Coast

TAB 2



**Resources
& Energy**

OUT11/11282

Douglas Bishop
Clayton Utz
Email dbishop@claytonutz.com

SUBJECT: Review of the Doyles Creek and Mount Penny exploration licence allocation process

Dear Sir,

As discussed, I invite you to submit a quotation for a barrister to investigate the efficacy and decision making in respect of the allocation of the Doyles Creek and Mt Penny Coal exploration and development areas, and examine whether public trust was breached in terms of the allocation of these areas.

Officers of Resources and Energy division will support the review by supplying all relevant files and information.

Your quotation should be received by close of business 30 June 2011 and include details of the level of expertise your firm has to undertake the work and the process you will follow.

The successful legal firm will be chosen based on relevant expertise, independence and value for money.


BRAD MULLARD
EXECUTIVE DIRECTOR
MINERAL RESOURCES
27 June 2011

Mineral Resources – Office of the Executive Director
PO Box 344 Hunter Region Mail Centre NSW 2310
516 High St MAITLAND NSW 2320
Tel: 02 4931 6422 Fax: 02 4931 6793
www.industry.nsw.gov.au
ABN 72189919072

TAB 3



Trade & Investment

Ms T Hamilton
Assistant Commissioner
Independent Commission Against Corruption
Level 21/133 Castlereagh St
SYDNEY NSW 2000

Your Ref: E11/2085/25/1

Attn: Paul Grainger
BY HAND

Dear Ms Hamilton,

I refer to the ***Notice to Attend and Produce Statements of Information and Documents*** dated 25 January 2012. This Notice included two Schedules specifying the information and documents sought.

Schedule 1

Consisted on one item seeking details of the service history of specified staff members. These details were included in a series of emails to Mr Grainger 3 February 2012.

Schedule 2

Covered a range of information, some of which required intensive searches of the email and TRIM databases. Enclosed are a number of CDs and a 320GB hard drive containing the results of these searches.

The green CD labelled '*TRIM Electronic File Archive*' contains 2 files – *Search 1* and *Search 3*.

'*Search 1*' contains the results of a TRIM search for documents headed or containing the words '*Doyles Creek*' or '*EL 7270*'. In addition to electronic files, eleven records were identified as being physical files held at the Maitland Office. Nine of these were copied in their entirety and are enclosed – one file per CD.

File number T08-0168/2 was created within TRIM but exists in name only. A notation on the file cover of T08-0168/1 states that the file is closed and Part 2 of the file is at 10/6063, which is one of the files already copied onto the enclosed CDs.

The remaining file, 09/3524, was provided by pdf and separately emailed to Mr Grainger.

'*Search 3*' contains the results of a TRIM search of documents authored by or addressed to Alan Coutts, Brad Mullard; David Agnew, Melanie Brown or Tracey Godwin.

The 320GB hard drive contains the results of various email searches – a detailed explanation of the search criteria is attached. The results show the email component of the information sought at items 1, 4, 5, 6, 7 and 8 of Schedule 2. In conjunction with the TRIM search captured on the enclosed CDs this addresses the information requirement for those items in the Schedule.

The Department provides secretariat services to the Mine Safety Advisory Council (MSAC). The documents sought at items 2 and 3 of Schedule 2 have previously been provided in response to the separate Notice to Produce served upon Mr John Flint in his role as Executive Officer to the MSAC on 23 January 2012. Mr Flint is a Departmental staff member and the documents provided in response to that Notice were accessed from NSW Trade and Investment records. Accordingly, there are no further documents to add to those that have already been provided.

The current status of the various items are summarised as follows:

Schedule 1


Item 1 – Required information emailed to Mr Grainger 3.2.12

Schedule 2

- Item 1 – Required information captured on the enclosed hard drive and CDs
- Item 2 – Required information previously provided in response to MSAC Notice
- Item 3 – Required information previously provided in response to MSAC Notice
- Item 4 – Required information captured on the enclosed hard drive and CDs
- Item 5 – Required information captured on the enclosed hard drive
- Item 6 – Required information captured on the enclosed hard drive and CDs
- Item 7 – Required information captured on the enclosed hard drive and CDs
- Item 8 – Required information captured on the enclosed hard drive.
- Item 9 – Required information emailed to Mr Grainger 10.2.12
- Item 10 – Most of the required information emailed to Mr Grainger 10.2.12 – further information to be sought re Bayswater Colliery
- Item 11 – Most of the required information emailed to Mr Grainger 3.2.12. ServiceFirst has advised Mr Coutts personal file cannot be located - enquiries continuing.

It is anticipated a formal response to the Notice to Produce will be signed and issued by the Director General on or before Wednesday 15 February 2012.

If you require any further information or assistance in regard to the information provided in this interim response I am available on 8289 3947.


Ron Taylor
Manager Governance & Information Requests
13 February 2012

Search Request – explanation of provided information;

Schedule 2 – items 1 and 4

Copies of all TRIM records and email files (and attachments to email files) in the possession or control of the Department of Trade and Investment relating to the application for, allocation and granting of Doyles Creek Exploration Licence No 7270 for the period 1 January 2007 to 31 March 2010.

Searches conducted - of all current mail files, and archives on 4 Domino servers (dsomail1, dsmmail1, dsoarc1 and dsmarc1) for the words "Doyles Creek" the results (email messages) located through these searches have been copied to a Notes Database 'icac_dc_search.nsf' under folders for each Mail file or Archive database that it came from. Example. If the search revealed 2 email documents containing "Doyles Creek" in Darryl Wright's archive. A copy of these email documents are now in a folder called 'Darryl Wright' in the database 'icac_dc_search.nsf'

Note - This search has captured many email documents that may not directly relate to the Exploration Licence.. however the results database can be further searched to just provide a subset of all of the included email documents and attachments. It was decided better to supply more than miss an important email capture.

Schedule 2 – item 5

Copies of all email files (including attachments to email files) in the custody, possession or control of the Department for the period 1 January 2007 to 13 January 2012 of the following people;

The below mail files and archives have been copied, full text indexed and the default access (ACL) changed to Manager

Note - Alan Coutts has been terminated from the organisation however his Archive database has been restored from July 2010.

- | | | |
|-----------------|--------------------------|--------------------------|
| • Alan Coutts | Mail file = 10006096.nsf | Archive = a_10006096.nsf |
| • Brad Mullard | Mail file = 10006477.nsf | Archive = a_10006477.nsf |
| • David Agnew | Mail file = 10006160.nsf | Archive = a_10006160.nsf |
| • Melanie Brown | Mail file = 10006671.nsf | Archive = a_10006671.nsf |
| • Tracey Godwin | Mail file = 10008325.nsf | Archive = a_10008325.nsf |
| • Trish Madden | Mail file = 10007310.nsf | Archive = a_10007310.nsf |

Schedule 2 – items 6 and 7

Copies of all email files for the period 1 January 2007 to 31 March 2010

- John Maitland johnwilliammaitland@bigpond.com
- Craig Ransley craigr@resco.com.au
- ResCo Services Pty Ltd @resco.com.au
- Doyles Creek Mining Pty Ltd @nucoal.com.au (appear to use this domain)
- NuCoal Pty Ltd @nucoal.com.au

Searches have been conducted - of all current mail files, and archives on 4 Domino servers (dsomail1, dsomail1, dsoarc1 and dsomarc1) for the words

- @nucoal.com.au
- @resco.com.au
- johnwilliammaitland@bigpond.com

The email documents located from these searches have been copied to the corresponding folder names in the Notes database 'icac_dc_search.nsf'

Schedule 2 – item 8

4. Copies of all telephone and email contact staff lists for the Minerals Division for the period 1 January 2007 to 31 March 2010

Copies of the Lotus Notes personal address book for each of the following have been provided;

- Brad Mullard Address_Books\Brad Mullard\names.nsf
- David Agnew Address_Books\David Agnew\names.nsf
- Melanie Brown Address_Books\Melanie Brown\names.nsf
- Tracey Godwin Address_Books\Tracey Godwin\names.nsf
- Trish Madden Address_Books\Trish Madden\names.nsf

No copy of Alan Couffts Lotus Notes personal address book is available due to his termination from this organisation.

The files provided are a snapshot of the Lotus Notes personal address book for each user, at the time of fulfilling this request. Last modification dates of entries in those files show that data goes back to 2006, but this does not show any data that may have been deleted, or what may have changed since initial creation

A Lotus Notes client version 8.5.2 has also been copied to the portable Hard Disk drive as it may be required to open the supplied databases

TAB 4

Summary of section 22 Notices to Produce and email requests for document issued by ICAC to the Department of Trade & Investment

Notices to Produce/Email requests apparently relating to Mt Penny

No	Type	Date of Notice/Request	Date for compliance
1.	Notice to produce	25 January 2012	15 February 2012
2.	Notice to produce	2 February 2012	17 February 2012
3.	Notice to produce	22 February 2012	7 March 2012
4.	Notice to produce	20 March 2012	3 April 2012
5.	Notice to produce	13 April 2012	27 April 2012
6.	Notice to produce	7 May 2012	16 May 2012
7.	Notice to produce	16 May 2012	30 May 2012
8.	Email request	25 June 2012	9 July 2012
9.	Email request	6 July 2012	N/A
10.	Notice to produce	26 July 2012	9 August 2012
11.	Email request	6 August 2012	20 August 2012
12.	Email request	22 August 2012	N/A
13.	Email request	13 September 2012	18 September 2012
14.	Notice to produce	20 September 2012	27 September 2012
15.	Notice to produce	27 September 2012	4 October 2012
16.	Notice to produce	8 October 2012	16 October 2012
17.	Notice to produce	13 December 2012	21 December 2012
18.	Notice to produce	23 January 2013	4 February 2013
19.	Notice to produce	24 January 2013	8 February 2013
20.	Notice to produce	8 April 2013	22 April 2013
21.	Notice to produce	2 May 2013	6 May 2013
22.	Notice to produce	14 May 2013	22 May 2013

TAB 5

According to resolution of the Committee of 24 June 2013, Tab 5 made confidential

TAB 6

Standing order 52 - responses

NUMBER TI-G-147

VERSION 1.0

AUTHORISED BY Deputy Director General Finance Strategy & Operations AUTHOURISED DATE 04/06/2013

ISSUED BY Legal Services

EFFECTIVE DATE 04/06/2013

Policy statement

NSW Trade & Investment will respond to orders for the production of documents under the Legislative Council's Standing Order 52 within the specified timeframes and scope of the order. The department will

- use a rigorous and verifiable procedure for identifying documents for production
- prevent the inappropriate release of Cabinet documents
- ensure that, where appropriate, claims of privilege are made in relation to produced documents.

Scope

This policy applies to NSW Trade and Investment, the NSW Food Authority and the Office of the Rural Assistance Authority. It does not automatically apply to the Cultural Institutions, Catchment Management Authorities or other statutory authorities within the cluster but may be adopted by those bodies.

Requirements

1. All documents (other than Cabinet documents) within the scope of the Order must be provided.
2. Documents created for the dominant purpose of being submitted to Cabinet must not be produced (whether or not they were submitted to Cabinet).
3. Officers conducting the search must fully document who conducted the search and the scope of the search that was undertaken by completing the Branch Search Record form (Attachment A).
4. Division Heads must certify that appropriate searches have been conducted and all relevant information has been provided (Attachment B).
5. Appropriate claims for privilege must be made by the Division Head.
6. *Claims for privilege*

Documents provided are made publicly available without any restriction on access unless a claim for privilege is made. Claims for privilege may be made where it is considered against the public interest for documents to be available for public inspection. Privilege is most commonly sought to restrict the release of the personal information of individuals, commercial-in-confidence and commercially sensitive information of third parties and where legal or parliamentary privilege may apply. If a claim for privilege is made the documents must still be provided, but can only be inspected by members of the Legislative Council unless the claim is refused.

Claims of privilege may be in relation to an entire document or only to those portions of a document concerning the information for which privilege is claimed. Where privilege is claimed for parts of a document two versions are to be provided - a complete copy over which privilege is claimed, and an edited version from which the sensitive information has been redacted.

The Government Information (Public Access) Act 2009 (GIPA Act) is informative when determining public interest immunity considerations which potentially warrant a claim for privilege. At Section 14 and Schedule 1 of the GIPA Act these are specified as matters concerning:

- Responsible & Effective Government
- Law Enforcement & Security
- Individual Rights, Judicial Processes & Natural Justice
- Business Interests of Agencies & Other Persons
- Environment, Culture, Economy & Other Matters
- Secrecy Provisions of Acts or Statutory Rules
- Cabinet Information
- Executive Council Information
- Contempt of Court & Parliamentary Privilege
- Legal Professional Privilege

Information concerning Cabinet related material which is not actually a Cabinet document must be provided but may be subject to a separate claim for privilege. This would be appropriate where a document which was not created for the dominant purpose of being submitted to Cabinet includes material referring to Cabinet deliberations or the position taken by, or recommended to be taken by, a Minister in such deliberations and decisions.

To validate the search process and methodology, suitable records are to be kept of who was involved in the search for documents, the search parameters or criteria and what records were searched

Procedures

1. The Manager Governance & Information Requests (MGIR) emails the Order to all Division Heads with a date by which a response is required with a copy to the Director General. If any recipient is aware of an area that may hold relevant information that has not been included in this initial request for documents the MGIR is to be advised immediately.
2. Division Heads will identify the areas holding relevant documents, issue directions for searches to appropriate staff, and provide adequate resources to comply with the Order.
3. Staff must undertake a thorough search (including for example, TRIM, physical file holdings, individual and Branch computer drives, electronic or pocket diaries/notebooks, emails etc), record details of the search and provide electronic and hard copies of the documents and search records to the Division Head.
4. Division Heads are to review the search records and documents and certify that a suitable search has been undertaken and all relevant documents provided.
5. Division Heads provide an electronic copy of following documents to the MGIR: the identified documents, the Search Record forms, copies of all communications concerning the Order, and the completed Division Head Certification of Search Results.
6. If there has been a significant exchange of relevant documents with other agencies Staff must advise the MGIR and the MGIR will consult with those agencies to ensure all relevant documents are identified and discuss possible claims of privilege for common documents.
7. The MGIR prepares a draft Departmental response, based upon the documentation and advice provided by Division Heads.
8. The DDG Finance, Strategy & Operations reviews the proposed response to ensure compliance with this Policy and submits for endorsement and issue by the Director General.

Roles and responsibilities

- Division Heads are responsible for:
 - Ensuring a thorough search is undertaken within their area.
 - Advising MGIR of areas outside their portfolio which may hold relevant information.
 - Ensuring all relevant documents within the scope of the Order are identified, copied and referred to the MGIR within the specified timeframe, including: the identified documents, the Search Record forms, copies of all communications concerning the Order, and the completed Division Head Certification of Search Results.
 - Identifying and explaining the basis of any claims for privilege and where privilege is only claimed in relation to part of a document providing both a complete and a partially redacted copy to the MGIR.

- The MGIR liaises with Department of Premier & Cabinet (DPC) and Division Heads regarding actions required to comply with the Order and the preparation of draft responses.
- The DDG Finance, Strategy & Operations ensures compliance with the requirements of this Policy, including that all necessary certifications have been received.
- The Director General issues the response when satisfied it fully complies with the Order.
- The Director Media and Communications in the relevant Division/s will prepare a Rapid Response Note where appropriate after the date for the documents to be tabled in Parliament has passed.

Safety considerations

The safety and wellbeing of staff will be enhanced by being fully informed of their obligations and able to respond comprehensively to the orders.

Delegations

- Not applicable

Definitions

- Division Heads are:
 - Deputy Director General Industry, Innovation, Hospitality & the Arts
 - Deputy Director General Finance, Strategy & Operations
 - Deputy Director General Resources & Energy
 - Deputy Director General, Agriculture NSW
 - Deputy Director General, Catchments & Lands
 - Commissioner, NSW Office of Water
 - CEO, NSW Food Authority
 - Executive Director, Biosecurity NSW
 - Executive Director, Fisheries NSW
 - Executive Director Business Services - for the remaining areas of NSW DPI

Legislation

- None

Related policies

- None

Other related documents

- None

Superseded documents

- None

Revision history

Version	Date issued	Notes	By
1.0		New policy developed for NSW Trade & Investment	MGIR

Review date

30/06/2015

Contact

Manager Governance & Information Requests 9995 0911

**Attachment A
Search Record - BRANCH**

Notice/Order concerning:

Branch: _____

TRM - File searches	Time taken	Notes
- List key words and date ranges searched, and by whom		
- List file numbers of hard copy files manually searched, and by whom		
Electronic document searches (Unit/Branch servers)	Time taken	Notes
- List key words, date ranges, folders and drives searched, and by whom		
Email searches	Time taken	Notes
- List key words and date ranges searched and names and position titles of people whose inboxes have been searched, and by whom		

**Attachment A
Search Record - BRANCH**

Other searches	Time taken	Hours
- Please provide details of any other searches undertaken, and by whom:		

Certification

I have reviewed the attached search results and: *(please tick relevant box)*

- to the best of my knowledge appropriate searches have been conducted and no information within the scope of the Notice/Order is held by the*

_____ *(Branch)*

OR

- to the best of my knowledge appropriate searches have been conducted and all information within the scope of the Notice/Order held by*

_____ *has been provided.*

_____ *(Branch)*

Signature: _____

Name: _____

Position: _____

Date: _____

Attachment B
Division Head Certification – Search results

Certification

I have reviewed the attached search results and: *(please tick relevant box)*

- to the best of my knowledge appropriate searches have been conducted and no information within the scope of the Notice/Order is held by the*

Division

OR

- to the best of my knowledge appropriate searches have been conducted and all information within the scope of the Notice/Order held by the*

_____ *has been provided.*

Division

Signature: _____

Name: _____

Position: _____

Date: _____

TAB 7

APPENDIX A

General Retention and Disposal Authority - Records of a Minister's Office (GDA 13)

Issued January 2003

Table of Contents

Part 1: The General Retention and Disposal Authority

- 1.1 Statement of authority
- 1.2 Records authorised for disposal
- 1.3 Records not affected by this authority

Part 2: Understanding and using the Authority

- 2.1 Overview
- 2.2 Guidelines for implementation
- 2.3 What to do when a Minister retires or leaves office

Part 1: The General Retention and Disposal Authority

1.1. Statement of authority

GDA No	GDA 13
--------	--------

Public office	Offices of Ministers of the NSW Government, including the Premier, in respect of their responsibilities for the administration of government and which come within the meaning of public office as defined in the <i>State Records Act 1998</i> .
---------------	---

Scope	This general retention and disposal authority covers records relating to Ministers portfolio responsibilities.
-------	--

Authority	This general retention and disposal authority is issued under section 21(2)(c) of the <i>State Records Act</i> . It has been
-----------	--

	approved by the Board of the State Records Authority in accordance with section 21(3) of the <i>State Records Act 1998</i> .
--	--

Authorised	David Roberts Director State Records Authority of New South Wales 23 December 2002
------------	---

1.2 Records authorised for disposal

The following table describes classes of records and indicates the authorised disposal action applying to them.

No	Description	Disposal Action
1.0	RECORDS OF PORTFOLIO RESPONSIBILITIES	
1.1	<p>Records relating to the creation of new agencies, changes to the Minister's portfolio responsibilities or changes to the functions of an agency within the Minister's portfolio.</p> <p>This includes records documenting official assignments from the Premier which are outside the Minister's current portfolio but may be expected to lead to the creation of new agencies.</p>	Required as State archives
1.2	<p>Records relating to the development, implementation or review of government policy and legislation.</p> <p>This includes records relating to the preparation of Cabinet submissions including Cabinet Minutes and correspondence between the Minister and other members of Government, Parliament or other parties concerning matters relating to the portfolio responsibilities of the Minister. This also includes records that originated in a department or agency within the Minister's portfolio and which resulted in further action or were significantly annotated or added to.</p> <p>Note: All other agency files and correspondence should be returned to the appropriate agency.</p>	Required as State archives
1.3	Records relating to appointments made by or appeals to the Minister as part of their legislative responsibilities or to deliberations, decision making and actions on matters relating to their portfolio or other official responsibilities.	Required as State archives
1.4	Correspondence from members of the public or organisations concerning matters relating to the portfolio responsibilities of the Minister and receiving further action.	Required as State archives

1.5	Correspondence concerning matters of a routine nature or referred to another Minister for action and receiving no further action.	Retain until no longer required for administrative purposes, then destroy
1.6	Records relating to Committees, Royal Commissions or Commissions/Committees of Inquiry where the Minister has been a member, was required to give evidence or had any other association. Note: This does not include departmental, Parliamentary or Cabinet committees (where the main record is retained by the agency, Cabinet Office or Parliament).	Required as State archives
1.7	Briefing notes or papers maintained in the Premier's Office.	Required as State archives
1.8	Briefing notes or papers of other Ministers concerning portfolio specific or whole of government issues of significance, such as those attracting media attention, public controversy or debate or resulting in public inquiries. This may include briefings prepared for parliamentary question time or for meetings with stakeholder groups or their representatives.	Required as State archives
1.9	Other briefing notes or papers.	Retain until no longer required for administrative purposes, then destroy
1.10	Final transcripts of speeches, addresses and presentations delivered by the Minister in their capacity as Minister or as a representative of the Government. Note: This does not include party political speeches or speeches made in relation to the Minister's parliamentary responsibilities on constituency matters.	Required as State archives
1.11	Audio, video or other recordings of speeches or addresses delivered by the Minister.	Retain until no longer required for administrative purposes, then destroy

1.12	Records relating to functions, ceremonies and celebrations attended by the Minister, or their representative, of State significance or organised to mark major anniversaries of significant events or structures (eg the Centenary of Federation, opening of Sydney Harbour Bridge or the Sydney Opera House). This includes photographs, invitations, addresses etc.	Required as State archives
1.13	Records relating to all other functions, celebrations or ceremonies.	Retain until no longer required for administrative purposes, then destroy
1.14	Media releases or statements issued by the Minister.	Required as State archives
1.15	All other media or publicity material, including records relating to the organisation of interviews or general media access to the Minister.	Retain until no longer required for administrative purposes, then destroy
1.16	Originals or master copies of circulars and newsletters originating from the Minister's office. Note: Duplicate copies can be disposed of when reference ceases.	Required as State archives
1.17	Newspaper cuttings, journal articles, recordings or transcripts of media programs or broadcasts etc.	Retain until no longer required for administrative purposes, then destroy
1.18	Diaries or appointment books of the Premier.	Required as State archives
1.19	Diaries or appointment books of Ministers which have been used to record detailed information concerning significant matters that are not recorded elsewhere.	Required as State archives
1.20	Other diaries and appointment books.	Retain until no longer required for administrative purposes, then destroy
1.21	Records relating to routine enquiries or information requests concerning the portfolio responsibilities of the Minister.	Retain until no longer required for administrative purposes, then destroy

1.22	Material supplied to or obtained by the Minister for reference purposes.	Retain until no longer required for administrative purposes, then destroy
------	--	---

All entries apply to records in any format, including electronic media, unless otherwise specified.

1.3 Records not affected by this authority

The following table describes types of records created or received in a Minister's Office which are not affected by this Authority and provides guidance on their disposal.

Type of records	Description	Guidance
CABINET DOCUMENTS	<p>Cabinet documents are designated as belonging to The Cabinet Office records system. They are controlled and circulated under The Cabinet Office's direction and supervision to authorised recipients only (mainly Ministers and their immediate advisors).</p> <p>Cabinet documents can include:</p> <ul style="list-style-type: none"> Cabinet agendas Cabinet minutes Cabinet committee agendas Cabinet committee minutes Cabinet committee reports memoranda to the Cabinet draft bills records of Cabinet decisions, and advice, legal and other, relating to Cabinet matters. 	<p>When a Minister ceases to hold Cabinet office all Cabinet documents held by the Minister should be returned to The Cabinet Office.</p>
AGENCY RECORDS	<p>Agency records are records created and maintained by departments or agencies within the Minister's portfolio and forwarded to the Minister.</p>	
	<p>Agency records, such as registered files and correspondence, which have been passed to the Minister from an agency.</p>	<p>Return to the appropriate responsible agency</p>
	<p>Copies of records created by an agency and maintained by the Minister for reference purposes.</p>	<p>Retain until no longer required for administrative or reference purposes, then destroy</p>

CONSTITUENCY /PARTY POLITICAL RECORDS	Records relating to electoral or political party matters, including leadership, party organisation, caucus affairs and appointments. This includes records relating to the Minister's constituency business and role as an elected member of Parliament (but does not include records that are part of the records of Parliament and which are State records, such as Parliamentary committee records etc).	These are not State records and should be dealt with by the Minister or their representative
PERSONAL RECORDS	Records relating to the private life, personal interests and associations of the Minister.	These are not State records and should be dealt with by the Minister or their representative

Part 2: Understanding and Using the Authority

2.1 Overview

- Purpose of the Authority
- What records does the Authority cover?
- What records are not covered?
- How long is the Authority in force?
- Structure of the Authority
- Providing feedback and seeking further assistance

Purpose of the Authority

The purpose of issuing the General Retention and Disposal Authority Records of a Minister's Office (GDA 13) is to permit Ministerial and/or Departmental staff to destroy certain records relating to a Minister's portfolio responsibilities, after they are no longer required for administrative purposes, and to identify which records are required as State archives. The disposal actions in this Authority should enable Ministerial and/or Departmental staff to better manage records created in a Minister's office.

What records does the Authority cover?

This Authority authorises the disposal of records relating to a Minister's portfolio responsibilities. This includes electronic records such as email messages and word processed documents where they are the official record of the Minister's activities.

What records are not covered?

This Authority does not cover all records created or received in a Minister's Office. The following table indicates general rules for managing other records:

Type of records	General rule
Cabinet documents	Return to The Cabinet Office when no longer required (in accordance with Cabinet Office procedures)
Agency/Departmental records	Return to the responsible agency/department when no longer required
Constituency/Party political records	These are not State records and should be dealt with by the Minister

	or representative
Personal records	These are not State records and should be dealt with by the Minister or representative

How long is the Authority in force?

This Authority will remain in force until it is superseded or withdrawn from use by State Records.

Structure of the Authority

The structure of the Authority is a table of three columns comprising a number of information components.

Column	Information components
No.	Each disposal class has a unique number used to identify it.
Description	Each disposal class has a description which gives its scope. Additional information is sometimes included in a note.
Disposal action	This identifies what should happen to the records. In this Authority there are two disposal actions: 1) Required as State archives 2) Retain until no longer required for administrative purposes, then destroy

Providing feedback and seeking further assistance

To suggest amendments or alterations to this Authority, or to obtain assistance in the interpretation or implementation of the Authority, contact us.

2.2 Guidelines for implementation

- Introduction
- Identify records relating to portfolio responsibilities
- Electronic records
- Destroying records
- Transferring records required as State archives
- Transfer of ownership must be authorized
- Further guidance

Introduction

This document provides summary guidance on implementing the General Retention and Disposal Authority - Records of a Minister's Office (GDA 13).

Identify records relating to portfolio responsibilities

The Authority establishes rules for the management of records relating to a Minister's portfolio responsibilities. It is important that records relating to portfolio responsibilities are identified from the other records that may be found in a Minister's office.

Other rules and guidance exist for managing Cabinet documents, agency records, constituency/party political and personal records.

Electronic records

The disposal authority applies equally to electronic records, including email, word processed documents and database records. Electronic records relating to a Minister's portfolio responsibilities should be captured into official filing systems (either paper-based or electronic). Electronic records should also be protected and readily accessible for as long as they are required for administrative purposes. See *Future Proof: Ensuring the accessibility of equipment/technology dependent records* for information relating to managing the accessibility of technology dependent records.

Destroying records

When records are no longer required for administrative purposes (and they are not required as State archives) destruction of the records may be undertaken without further reference to State Records. Persons using the Authority should apply it with caution, bearing in mind that the authorisations for disposal are given in terms of the *State Records Act 1998* only. It is the responsibility of every public office to ensure that all legal and other requirements for retention of records have been met before disposing of any records.

Note that where copies exist of records that have been captured onto an official file, or into an electronic records or document management system, they may be destroyed as a normal administrative practice. This applies to copies of email and word processed documents that may have been printed and filed or captured electronically into a records system.

Transferring records required as State archives

Records required as State archives under the Authority should be clearly identified so that they can be transferred to State Record's custody when they are no longer required for administrative purposes or when the Minister retires or otherwise leaves office.

Transfer of ownership must be authorised

Regardless of whether a record has been authorised for destruction or is required as a State archive, ownership of a State record must not be transferred to any person or organisation without the explicit authorisation of State Records.

Further guidance

More comprehensive information about implementation of disposal authorities is found in State Records' guidelines Sentencing Records, Destruction of Records: A practical guide and Normal Administrative Practice and in the Procedures for Transferring Custody of Records as State Archives.

2.3 What to do when a Minister retires or leaves office

- Introduction
- Procedure for disposing of a Minister's records
- Further assistance

Introduction

When a Minister retires or otherwise leaves office all records held by the Ministerial office should be disposed of in accordance with appropriate guidelines applicable to the type of records.

Procedure for disposing of a Minister's records

The table below describes the steps to take to dispose of a Minister's records.

Step	Action						
1	<p>Determine whether the records belong to The Cabinet Office or a department or agency within the Minister's portfolio.</p> <table border="1"> <thead> <tr> <th>If the records are</th> <th>Then</th> </tr> </thead> <tbody> <tr> <td>Cabinet documents</td> <td>Return them to The Cabinet Office (in accordance with Cabinet Office procedures)</td> </tr> <tr> <td>Departmental or agency records</td> <td>Return them to the responsible department or agency</td> </tr> </tbody> </table> <p>Note: Records belong to The Cabinet Office, a department or agency if they originated or were registered in these offices and were passed to the Minister's office for action or information.</p>	If the records are	Then	Cabinet documents	Return them to The Cabinet Office (in accordance with Cabinet Office procedures)	Departmental or agency records	Return them to the responsible department or agency
If the records are	Then						
Cabinet documents	Return them to The Cabinet Office (in accordance with Cabinet Office procedures)						
Departmental or agency records	Return them to the responsible department or agency						
2	<p>Determine whether the records relate to the Minister's portfolio responsibilities</p> <p>If yes, go to Step 3</p> <p>If the records are constituency, party political or personal records of a Minister they are not State records and should be disposed of by the Minister or their representative</p>						
3	<p>Determine whether the records are required as State archives</p> <p>If yes, go to Step 4</p> <p>If no, go to Step 5</p>						

4	Prepare records required as State archives for transfer to the custody of State Records	
	If the format of the records is	Then
	Paper	Box and list the records
	Electronic	Copy the records to appropriate media (eg CD Rom, tape) and list the contents of the CD or tape
Note: Records should be boxed and listed in accordance with the guidelines contained in our publication Procedures for Transferring Custody of Records as State Archives		
5	Destroy paper and electronic records that are no longer required for administrative purposes	

Further Assistance

For further assistance with disposing of a Minister's records when they retire or otherwise leave office contact us:

State Records Authority of New South Wales
 Sydney, Australia
 January 2003

Telephone: (02) 9673 1788

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ISBN 0-9750563-0-1

Recordkeeping In Brief 25 – Disposing of Records of a Minister's Office

Overview

Records created or kept in a Minister's Office should be appropriately disposed of when a Minister retires or otherwise leaves office. Records relating to a Minister's portfolio responsibilities are authorised for disposal under a general retention and disposal authority. Records which are required as State archives under this disposal authority will need to be transferred to State Records when they are no longer required for administrative purposes by the Minister's office. These records must be boxed and listed prior to transfer to State Records. Directions regarding future access to these records must also be determined before the records are transferred.

Authorisation for Disposal

NSW Minister's Offices can use the General Retention and Disposal Authority: Records of a Minister's Office (GDA 13) for the disposal of records relating to a Minister's portfolio responsibilities. GDA 13 can be used in conjunction with the general retention and disposal authorities which cover financial, personnel and other administrative records.

Procedure for Disposing of Records

The table below describes the steps to take to dispose of a Minister's records.

Step	Action
1	<p>Determine whether the records belong to The Cabinet Office or a department or agency within the Minister's portfolio.</p> <p>If the records are Cabinet documents - return them to The Cabinet Office (in accordance with Cabinet Office rules).</p> <p>If the records are departmental or agency records - return them to the responsible department or agency.</p> <p>Note: Records belong to The Cabinet Office, a department or agency if they originated or were registered in these offices and were passed to the Minister's office for action or information.</p>
2	<p>Determine whether the records relate to the Minister's portfolio responsibilities.</p> <p>If yes, go to Step 3.</p> <p>If the records are constituency, party political or personal records of a Minister they are not State records and should be disposed of by the Minister or their representative.</p>
3	<p>Determine whether the records are required as State archives.</p> <p>If yes, go to Step 4.</p> <p>If <i>no</i>, go to Step 5.</p>
4	<p>Prepare records required as State archives for transfer to the custody of State Records.</p> <p>If the format is paper - box and list the records.</p> <p>If the format is electronic - copy the records to appropriate media (eg CD Rom, tape) and list the contents of the CD or tape.</p> <p>Note: Records should be boxed and listed in accordance with the guidelines below. Access decisions must also be made prior to transfer of the records (also discussed below).</p>
5	<p>Arrange collection or delivery of State archives.</p>
6	<p>Destroy paper and electronic records that are no longer required for administrative purposes.</p>

Determining Future Public Access to State Archives

Records required as State archives need to be assessed for future public access. While most records are open to public access after 30 years some records, such as those containing sensitive personal information, should be closed longer than 30 years.

Access Directions

Access decisions are implemented by making access directions. Access directions either open the records after 30 years or close them for a longer specified period. Access directions are required when transferring records as State archives.

Forms for making access directions

To obtain access direction forms email the Access Policy Officer at accpol@records.nsw.gov.au or telephone (02) 8247 8616.

Authorising access directions

Access directions will need to be authorised by the Minister.

Obtaining boxes and templates for listing

State Records supplies boxes for transferring records as State archives. The table below indicates the two standard types of box available and what they are generally suitable for.

Box type	Dimensions	Suitable for
Type 1	18w x 25h x 40d	foolscap and A4 files
Type 2	43w x 25h x 40d	computer printout and lever arch files

Contacts

To obtain standard boxes contact:

Control Support Officer
Telephone: (02) 9673 1788
Fax: (02) 9673 1760
Email: controlso@records.nsw.gov.au

Note: Please try and estimate how many boxes are required before contacting us.

To discuss alternative packaging arrangements contact:

Senior Archivist Transfer and Custody
Telephone: (02) 9673 1788
Fax: (02) 9673 1760
Email: transfer@records.nsw.gov.au

Note: Large packing boxes should not be used, as they can be an OH&S issue.

To obtain a template for listing the records contact:

The Senior Archivist Transfer and Custody (see above).

How to Box and List State Archives

Putting the records in order

The records should be boxed and listed in the order in which they were created and used, that is arranged according to the system by which they were used or stored when they were in active use. With numbered files, for example, this will be in file number order.

Filling boxes

Fill boxes so that there is space for your hand between the contents and one side of the box. Boxes should not be over-filled as records may be damaged and the box lids will not close properly.

Numbering boxes

Each box should be initially numbered in a simple sequence starting with one and continuing in number order. Letters of the alphabet should not be used as part of a number (for example, 16A). Making sure all records to be boxed and listed are put into order before boxing starts should help to avoid this.

Listing the records

Each file or record added to a box must be listed on a consignment list. A consignment list is a detailed list of all the records to be transferred to State Records in one group (or consignment) at the one time. The list should show the order in which the records are physically placed in the boxes. There is a template for consignment lists or you can create a Word table or Excel spreadsheet which has the information required.

Information required in a consignment list

The information required about records in a consignment list is:

- **Container number:** usually the box number as discussed above.
- **Item number or control symbol:** usually an item number, such as a file number, but may be another kind of control symbol, depending on the system of arrangement and control for the records.
- **Item title or description:** the file title or some other description that clearly indicates the content of the record, do not use abbreviations or acronyms.
- **Start date:** the date the record was created such as the date the file was started or the earliest date in the folder.
- **End date:** the date the record stopped being created such as the date the file was closed or finished or the last date in the folder.
- **Access direction number:** the number of the access direction, which covers the record.

Consignment lists must be supplied in electronic form.

Adding State Records numbers to the boxes and list

When the transfer is approved and State Records has agreed to take the records a unique two part number will be assigned. This number, in conjunction with the box number, will be the way these records will be identified in future. Together the numbers look like this:

NRS17065/1/4

This number would be used to identify the fourth box of the first consignment of New South Wales Record Series 17065.

Before collection or delivery, each box should be labelled with the relevant State Records numbers. The consignment list should also include the series and consignment numbers provided by State Records as well as the name of the Minister. If you are not using the consignment list template this information can be included in a header on the first page of the list.

Arranging Collection or Delivery of State Archives

When all requirements for transferring State archives have been met and

State Records has agreed to take the records, arrangements for the delivery or collection of the records will be negotiated with your contact person.

State of New South Wales through the State Records Authority, 2003.
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ISSN 1440-3978

Quick Tips for the Retention and Disposal of Records in a Minister's Office

This document, prepared by State Records NSW, provides some quick tips to help with sentencing common types of records created in a Minister's office. This guidance is based on the decisions in the **General Disposal Authority - Records in a Minister's Office** (GDA13). Please refer to State Records web site for the full authority.

Records that need to be kept as State archives:

Portfolio legislation - Records maintained in the Minister's office relating to the development of new legislation, or the review of current legislation. Also includes records maintained by the Minister that relate to implementation of legislation.

(GDA 13, class 1.2)

Portfolio policy - Records maintained in the Minister's office relating to the development of policy, implementation of policy and review of current policy.

(GDA 13, class 1.2)

Portfolio responsibilities - Records maintained in the Minister's office that relate to the management of portfolio responsibilities, including:

- Records relating to the creation of new agencies or changes to the functions of an agency within the Minister's portfolio. *(GDA 13, class 1.1)*
- Records relating to appointments made by the Minister as part of their statutory responsibilities (e.g. appointments to Boards, Ministerial advisory committee). *(GDA 13, class 1.3)*
- Records relating to changes to the Minister's portfolio responsibilities. *(GDA 13, class 1.1)*
- Correspondence from the Premier, other Ministers and members of Parliament to the Minister concerning the Minister's portfolio responsibilities. *(GDA 13, class 1.2)*
- Correspondence from members of the public or organisations concerning matters relevant to the portfolio responsibilities of the Minister and which receive further action. *(GDA 13, class 1.4)*

Premier's briefing notes – briefing notes and papers prepared for the Premier. *(GDA 13, class 1.7)*

Briefing notes of Ministers – briefing notes and papers concerning portfolio specific or whole of government issues of significance, such as attracting media attention, public controversy or debate or resulting in public enquiries. This may include briefings prepared for parliamentary questions time or for meetings with stakeholder groups or their representatives. *(GDA 13, 1.8)*

Inquiries - records that relate to Committees, Royal Commissions or Commissions of Inquiry etc. where the Minister has been a member, was required to give evidence or had any association. *Note this does not include departmental, Parliamentary or Cabinet Committees where the main record is retained by the agency, Cabinet or Parliament. (GDA 13, class 1.6)*

Media releases - final versions of media releases, statements issued by the Minister, newsletters or circulars. *(GDA 13, class 1.14, class 1.16)*

Addresses - final transcripts or versions of speeches, addresses and presentations delivered by the Minister in their capacity as Minister or representative of the Government. *(GDA 13, class 1.10)*

Premier's diaries - diaries and appointment books. *(GDA 13, class 1.18)*

Minister's diaries - diaries and appointment books of Minister's which have been used to record detailed information concerning significant matters that are not documented elsewhere. *(GDA 13, class 1.19)*

Records that can be deleted/destroyed when no longer required for administrative purposes:

Routine correspondence - Correspondence concerning matters of a routine nature or referred to another Minister for action and receiving no further action. *(GDA13, class 1.5)*

General brief notes - Briefing notes or papers prepared for the Minister not relating to significant matters or whole of government issues. *(GDA13, class 1.9)*

Routine enquires and information requests - Records maintained in a Minister's office relating to routine enquiries or information requests concerning portfolio responsibilities. *(GDA13, class 1.21)*

Reference material - Material supplied to or obtained by the Minister for reference purposes. *(GDA13, class 1.22)*

General publicity - General media or publicity material, including records relating to the organisation of interviews or general media access to the Minister. *(GDA13, class 1.11, 1.15)*

Media monitoring - Records relating to media monitoring, transcription services, transcripts of media programs and broadcasts *(GDA13, 1.17)*

Information flow between portfolio agency and Minister's office

A lot of recorded information flows between an agency and the Minister's office. Much of it represents a work flow as information, briefing documents, letters approvals and so on move between the two, but little of this will need to

be retained by the Minister **when** the agency is capturing the whole process on to its files and into its recordkeeping systems. The portfolio agency **should** retain any documents or records that it refers up to the Minister and subsequent approvals, emails, letters and documentation that are referred back to it (for action and/or filing).

Tip: This flow of information may mean that there may be copies of agency records held in the Minister's office that do not need to be retained after they have been used for reference or information purposes.

State Records Authority of New South Wales

Sample Letter

Mr Alan Ventress
Director
State Records
PO Box 516
Kingswood NSW 2747

[Date]

Dear Mr Ventress

In transferring the Ministerial records of my office to the State Records Authority as State archives, under General Retention and Disposal Authority 13, I authorise that they be made available for public access according to the following time frames.

1. Records publicly available at the time of transfer such as press releases, publications and speeches and records relating to functions, ceremonies and celebrations, including photographs – to be made available for public access on transfer under the early access provisions of s.57 of the *State Records Act 1998*.
2. All other records, including records relating to the development, implementation and review of government policy and legislation – Open to public access after 30 years under s.51 of the *State Records Act 1998*.

Yours sincerely,

[Name]
[Title]

TAB 8



Standing Order 52 Responses

Director General to:

Mark Paterson, jeannine.biviano, David Kennedy,
Bcc: lucinda.warren, Michelle Keygan, Katherine Tollner,
Christopher Martin, David Anderton, tim.holden,

21/06/2013 04:00 PM



I would like to clarify how we as an agency respond to Legislative Council orders to supply documents held by NSW Trade & Investment under Standing Order 52.

As you will be aware, Standing Order 52 enables the Legislative Council to compel the production of documents (other than Cabinet documents). The response to such orders is co-ordinated by the Department of Premier and Cabinet as multi-agency input may be required. Documents must be provided to Parliament within the specified timeframe. Failure to fully satisfy such an Order may constitute contempt of Parliament.

In providing the response to an Order I am required to certify that all documents covered by the terms of the Order held within NSW Trade & Investment have been provided.

To close the loop on the response process, we have reviewed our policy and procedures to ensure Division Heads provide a suitable level of confidence in the search process and results. Division Heads are required to provide detailed information about the searches performed. This ensures there is a verifiable record of what occurred if the adequacy of the search is subsequently questioned.

These search verification and certification procedures will also apply to searches undertaken in accordance with GIPA, ICAC and Ombudsman requirements. All staff will be informed of the new requirements through Max Express when those updated policies and procedures are available.

Internally, Standing Order 52 responses are coordinated by the Manager Governance & Information Requests, Ron Taylor (02) 9995 0911. Ron is responsible for liaising with Division Heads and coordinating our collective response.

Policy TI-G-147 Responding to Standing Order 52 and associated procedures are attached and will be available on the intranet shortly.

Please ensure relevant staff are briefed about our obligations and aware of internal response process.



Standing Order 52 - response policy.docxSearch record - Branch 13.5.2013.docx



Search Certification - Division Head 13.5.2013.docx

Mark I Paterson AO

Director General

Department of Trade & Investment, Regional Infrastructure & Services

Level 49 MLC Centre 19-29 Martin Place | Sydney NSW Australia 2000 | T: 61 2 9338 6696 | F: 61 2 9338 6809 | E: mark.paterson@industry.nsw.gov.au W: www.trade.nsw.gov.au



Standing order 52 - responses

NUMBER TI-G-147

VERSION 1.0

AUTHORISED BY Deputy Director General Finance Strategy & Operations AUTHORIZED DATE 04/06/2013

ISSUED BY Legal Services

EFFECTIVE DATE 04/06/2013

Policy statement

NSW Trade & Investment will respond to orders for the production of documents under the Legislative Council's Standing Order 52 within the specified timeframes and scope of the order. The department will

- use a rigorous and verifiable procedure for identifying documents for production
- prevent the inappropriate release of Cabinet documents
- ensure that, where appropriate, claims of privilege are made in relation to produced documents.

Scope

This policy applies to NSW Trade and Investment, the NSW Food Authority and the Office of the Rural Assistance Authority. It does not automatically apply to the Cultural Institutions, Catchment Management Authorities or other statutory authorities within the cluster but may be adopted by those bodies.

Requirements

1. All documents (other than Cabinet documents) within the scope of the Order must be provided.
2. Documents created for the dominant purpose of being submitted to Cabinet must not be produced (whether or not they were submitted to Cabinet).
3. Officers conducting the search must fully document who conducted the search and the scope of the search that was undertaken by completing the Branch Search Record form (Attachment A).
4. Division Heads must certify that appropriate searches have been conducted and all relevant information has been provided (Attachment B).
5. Appropriate claims for privilege must be made by the Division Head.
6. *Claims for privilege*

Documents provided are made publicly available without any restriction on access unless a claim for privilege is made. Claims for privilege may be made where it is considered against the public interest for documents to be available for public inspection. Privilege is most commonly sought to restrict the release of the personal information of individuals, commercial-in-confidence and commercially sensitive information of third parties and where legal or parliamentary privilege may apply. If a claim for privilege is made the documents must still be provided, but can only be inspected by members of the Legislative Council unless the claim is refused.

Claims of privilege may be in relation to an entire document or only to those portions of a document concerning the information for which privilege is claimed. Where privilege is claimed for parts of a document two versions are to be provided - a complete copy over which privilege is claimed, and an edited version from which the sensitive information has been redacted.

The Government Information (Public Access) Act 2009 (GIPA Act) is informative when determining public interest immunity considerations which potentially warrant a claim for privilege. At Section 14 and Schedule 1 of the GIPA Act these are specified as matters concerning:

- Responsible & Effective Government
- Law Enforcement & Security
- Individual Rights, Judicial Processes & Natural Justice
- Business Interests of Agencies & Other Persons
- Environment, Culture, Economy & Other Matters
- Secrecy Provisions of Acts or Statutory Rules
- Cabinet Information
- Executive Council Information
- Contempt of Court & Parliamentary Privilege
- Legal Professional Privilege

Information concerning Cabinet related material which is not actually a Cabinet document must be provided but may be subject to a separate claim for privilege. This would be appropriate where a document which was not created for the dominant purpose of being submitted to Cabinet includes material referring to Cabinet deliberations or the position taken by, or recommended to be taken by, a Minister in such deliberations and decisions.

To validate the search process and methodology, suitable records are to be kept of who was involved in the search for documents, the search parameters or criteria and what records were searched

Procedures

1. The Manager Governance & Information Requests (MGIR) emails the Order to all Division Heads with a date by which a response is required with a copy to the Director General. If any recipient is aware of an area that may hold relevant information that has not been included in this initial request for documents the MGIR is to be advised immediately.
2. Division Heads will identify the areas holding relevant documents, issue directions for searches to appropriate staff, and provide adequate resources to comply with the Order.
3. Staff must undertake a thorough search (including for example, TRIM, physical file holdings, individual and Branch computer drives, electronic or pocket diaries/notebooks, emails etc), record details of the search and provide electronic and hard copies of the documents and search records to the Division Head.
4. Division Heads are to review the search records and documents and certify that a suitable search has been undertaken and all relevant documents provided.
5. Division Heads provide an electronic copy of following documents to the MGIR: the identified documents, the Search Record forms, copies of all communications concerning the Order, and the completed Division Head Certification of Search Results.
6. If there has been a significant exchange of relevant documents with other agencies Staff must advise the MGIR and the MGIR will consult with those agencies to ensure all relevant documents are identified and discuss possible claims of privilege for common documents.
7. The MGIR prepares a draft Departmental response, based upon the documentation and advice provided by Division Heads.
8. The DDG Finance, Strategy & Operations reviews the proposed response to ensure compliance with this Policy and submits for endorsement and issue by the Director General.

Roles and responsibilities

- Division Heads are responsible for:
 - Ensuring a thorough search is undertaken within their area.
 - Advising MGIR of areas outside their portfolio which may hold relevant information.
 - Ensuring all relevant documents within the scope of the Order are identified, copied and referred to the MGIR within the specified timeframe, including: the identified documents, the Search Record forms, copies of all communications concerning the Order, and the completed Division Head Certification of Search Results.
 - Identifying and explaining the basis of any claims for privilege and where privilege is only claimed in relation to part of a document providing both a complete and a partially redacted copy to the MGIR.

- The MGIR liaises with Department of Premier & Cabinet (DPC) and Division Heads regarding actions required to comply with the Order and the preparation of draft responses.
- The DDG Finance, Strategy & Operations ensures compliance with the requirements of this Policy, including that all necessary certifications have been received.
- The Director General issues the response when satisfied it fully complies with the Order.
- The Director Media and Communications in the relevant Division/s will prepare a Rapid Response Note where appropriate after the date for the documents to be tabled in Parliament has passed.

Safety considerations

The safety and wellbeing of staff will be enhanced by being fully informed of their obligations and able to respond comprehensively to the orders.

Delegations

- Not applicable

Definitions

- Division Heads are:
 - Deputy Director General Industry, Innovation, Hospitality & the Arts
 - Deputy Director General Finance, Strategy & Operations
 - Deputy Director General Resources & Energy
 - Deputy Director General, Agriculture NSW
 - Deputy Director General, Catchments & Lands
 - Commissioner, NSW Office of Water
 - CEO, NSW Food Authority
 - Executive Director, Biosecurity NSW
 - Executive Director, Fisheries NSW
 - Executive Director Business Services - for the remaining areas of NSW DPI

Legislation

- None

Related policies

- None

Other related documents

- None

Superseded documents

- None

Revision history

Version	Date issued	Notes	By
1.0		New policy developed for NSW Trade & Investment	MGIR

Review date

30/06/2015

Contact

Manager Governance & Information Requests

9995 0911

Notice/Order concerning:

Branch: _____

TRIM - File Searches	Time taken: _____ hours
- List key words and date ranges searched, and by whom	
- List file numbers of hard copy files manually searched, and by whom	
Electronic document searches (Unit/Branch servers)	Time taken: _____ hours
- List key words, date ranges, folders and drives searched, and by whom	
Email searches	Time taken: _____ hours
- List key words and date ranges searched and names and position titles of people whose inboxes have been searched, and by whom	

Other searches	Time taken: _____ hours
- Please provide details of any other searches undertaken, and by whom:	

Certification

I have reviewed the attached search results and: *(please tick relevant box)*

- to the best of my knowledge appropriate searches have been conducted and no information within the scope of the Notice/Order is held by the*

(Branch)

OR

- to the best of my knowledge appropriate searches have been conducted and all information within the scope of the Notice/Order held by*

_____ *has been provided.*

(Branch)

Signature: _____
Name: _____
Position: _____
Date: _____

Certification

I have reviewed the attached search results and: *(please tick relevant box)*

- to the best of my knowledge appropriate searches have been conducted and no information within the scope of the Notice/Order is held by the*

Division

OR

- to the best of my knowledge appropriate searches have been conducted and all information within the scope of the Notice/Order held by the*

_____ *has been provided.*

Division

Signature:

Name:

Position:

Date:
