

Keeping records

Good record keeping assists in improving accountability and promotes transparent decision-making. This fact sheet has basic information to assist agencies. It is not comprehensive and agencies should ensure their record keeping meets any relevant legislative requirements.

What records should be kept?

Records demonstrate how an agency has responded to a reportable allegation or conviction against an employee. The Ombudsman will refer to these records when assessing an agency investigation or when auditing an agency. In our experience, agencies often overlook the need for adequate record-keeping.

When an allegation is made, it is important to document the following information:

- the allegation (an accurate and as close to verbatim account as possible of what has been said and by whom)
- the agency's initial response to the person making the allegation, the alleged victim(s) and the employee who is the subject of the allegation
- consideration of the need to notify the NSW Police Force of a suspected criminal offence; or a Child Wellbeing Unit of risk of harm; or Community Services of a child or young person who may be at risk of significant harm, and the outcome of any reports made
- a plan detailing how the investigation is to be carried out, including whether Community Services and/or police need to be notified
- the initial risk assessment, including what the identified risks are, the arrangements to manage those risks and decisions made about the employee and the action taken in relation to the child or employee (eg change in duties, support or counselling)
- all interviews, including details of the questions and responses. This should also include the location of the interview, who was present and the start and finish times of the interview. Where possible, records should be verbatim, verified, signed and dated by all involved
- any decisions made, both during and at the conclusion of the investigation, including their rationale, the position and name of the person making the decision and the date the decision was made

- any personal contact, discussions or emails with anyone about the matter. This should include the date, details of the discussions, questions, advice and outcome, the name of the person making the contact, details of their position and agency and where appropriate, the reason for the contact
- a summary report that details the allegation, the investigation process, the findings in relation to each allegation (including the rationale for the finding), the final risk assessment (which includes any final decision about the employee and the factors that have been considered) and any subsequent action that is to be or has been taken.

We will also expect that the agency will:

- advise the employee, in writing, of the findings in relation to each allegation and the action to be taken
- where appropriate, advise the alleged victim/s or their guardian/s in writing, in relation to the outcome of an investigation
- have an organised information management system. For example, all of the documents should be kept together in a file and be able to be readily located

Tip

If an agency wants to objectively examine its record keeping before we do, then consider:

If someone needed to read the investigation file in 10 years' time, would they be able to understand at a glance the process used in the investigation, what decisions were reached, the rationale and the action subsequently taken?

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We will also expect that the agency will:

- store information and records relating to the investigation of an allegation against an employee in a safe and secure place within the agency (records should not be stored at the head of agency's home)
- have a policy concerning access to these records.

General points to remember

- clearly record the initial and any subsequent allegation(s)
- document the planning process
- ensure all records are legible, signed and dated
- confirm accuracy and consistency
- avoid subjective language
- include all notes (however rough) in the file
- document all discussions and place on file (including copies of all emails sent and received)
- document all advice, both given and received
- document all decisions and their rationale
- issue clear guidelines for staff about record keeping
- be mindful of confidentiality and determine who should be able to access the records
- keep records in a safe and secure place for the required period.

Where should records be stored and for how long?

Heads of agencies must set up systems for keeping records concerning the handling of allegations against employees. Records relating to the allegation should be kept on a file that is separate to the employee's personnel file, and should be kept indefinitely. Some information, in relation to the investigation that may be pertinent to the care of the alleged victim or management of the employee, could be copied to their respective files. For example, a record of the critical incident,

and any ongoing action resulting from the investigation. All records should be kept confidentially and securely, with access granted to only those persons in the agency who have a need to know about that situation. Related files should be cross-linked to each other, for the purposes of future management.

In the case of notification to the Guardian by reporting bodies under s.24 of the *Child Protection (Working with Children) Regulation 2013*, those agencies or their successor must keep records of allegations, investigations and findings concerning the subject of any such notification for not less than 30 years, unless the records are given to the Guardian, such as when an agency ceases trading.

In addition, records kept by an agency regarding such proceedings are subject to the provisions of the *Government Information (Public Access) Act 2009* (GIPA Act). These provisions apply to government agencies and agencies in the private sector, whether or not the agency is ordinarily subject to the GIPA Act.

Further information regarding the storage of records can be obtained from State Records NSW (ph 02 9673 1788 or www.records.nsw.gov.au). Further information regarding the GIPA Act can be obtained from the Office of the Information Commissioner NSW (ph 1800 463 626 or www.oic.nsw.gov.au).

What does the Ombudsman do with the information provided by agencies?

The Ombudsman retains records relating to all notifications of reportable allegations, regardless of the results of the investigation. All information received is kept confidentially by the Ombudsman and is stored in accordance with the State Records Act. The Ombudsman's complaint handling, investigation and reporting records are not publicly accessible as they are exempt from disclosure under the GIPA Act and our records cannot be requested or subpoenaed as evidence in a court. We are obliged to provide some advice to Parliamentary review committees and to cooperate with hearings such as Royal Commissions. The Ombudsman may also release information that it considers to be relevant to the safety, welfare or wellbeing of a child or class of children.

Common faults in record keeping

The following information is sometimes not adequately recorded:

- the initial report or complaint containing the allegation(s)
- the process of planning prior to the investigation
- the assessment of risk posed by the employee who is the subject of the allegation and the action taken
- discussions or inquiries relating to the investigation
- any action taken with the child and the employee, eg counselling
- decisions made during the investigation (including decisions not to do something, such as a decision not to interview the child).

The standard of investigations undertaken by an organisation may be difficult for us to assess if:

- insufficient details about the planning and carrying out of the investigation are provided to us
- insufficient details regarding the interviews conducted with the child, employee or any other witness are provided to us
- records are illegible, missing key information, undated and/or unsigned
- insufficient or unclear information about the findings and their rationale are provided to us
- there is no letter to the employee stating the outcome of an investigation
- details about action/s to be taken are not clearly documented.

Good record keeping is essential for the Ombudsman to provide proper advice to agencies about their investigations.

If you have any queries or comments, we are here to assist you. Call the NSW Ombudsman's Employment Related Child Protection Division on 02 9286 1000.

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Contact us for more information

Our business hours are: Monday to Friday, 9am–5pm (*Inquiries section closes at 4pm*).

If you wish to visit us, we prefer you make an appointment. Please call us first to ensure your complaint is within our jurisdiction and our staff are available to see you.

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General inquiries 02 9286 1000

Facsimile 02 9283 2911

Toll free (outside Sydney metro) 1800 451 524

Tel. typewriter (TTY) 02 9264 8050

Telephone Interpreter Service (TIS): 131 450

We can arrange an interpreter through TIS or you can contact TIS yourself before speaking to us.

