



The State of Delaware Office of the Public Defender Records Retention Schedule

*Prepared by Delaware Public Archives
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Approved on January 15, 2015

*State of Delaware
Approved Records Retention Schedule*



*Issued by
Delaware Public Archives
For
The Public Defender*

Approved By: _____

A handwritten signature in blue ink, appearing to be "J. O. Neill", is written over the signature line.

(Please note that this section must be approved by the agency department head)

Approval Date: _____

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This records retention schedule governs retention and disposal of records created, used, and maintained by the **Office of the Public Defender**. In accordance with [Del. Code 29 §504\(b\)](#), records may only be disposed of with the approval of Delaware Public Archives.

The **Office of the Public Defender** should use this agency-specific schedule in combination with the *General Retention Schedule for State Agencies*. The *General Retention Schedule* applies to records common to several or all state agencies, such as accounting and financing, administration, personnel, and electronic records. *Agency-specific* retention schedules are unique or specific to a particular agency.

This retention schedule applies to all state agency records regardless of how they are created or stored. For example, information created electronically (e-mail, computers, computer software programs, etc.) is considered a public record just as records that are created and maintained in paper format. The [Delaware Public Records Law](#) defines public records as any document, book, photographic image, electronic data recording, paper, sound recording or other material regardless of physical form or characteristics, including electronic records created or maintained in electronic information systems, made, used, produced, composed, drafted or otherwise compiled or collected or received in connection with the transaction of public business or in any way related to public purposes by any officer or employee of this State or any political subdivision thereof. This means that records management standards and principles apply to all forms of recorded information, from creation to final disposition, regardless of the medium. Records Management is important in developing, using, and managing computer systems and other electronic devices. The benefits of proper records management include 1) efficient retrieval; 2) ensuring compliance with legal and regulatory recordkeeping requirements, thereby avoiding costly fines and other penalties; 3) reducing risks in litigation, government investigations, and the legal discovery process; 4) reducing labor requirements for the creation, organization, retrieval, and dissemination of recorded information.

All state government employees are responsible for maintaining records according to their retention schedule, regardless of the format (paper or electronic). Records must be accessible to the appropriate individuals until all legal, fiscal, and administrative retention periods are met.

This retention schedule covers the content of records created by the **Office of the Public Defender**, including records created or stored using computers and computer systems. The General Retention Schedule (Electronic Records Section) applies to records related to computers or computer systems, including but not limited to back up files, system usage files, website records, social media, etc.

Audits

Agencies may have records that are subject to state, federal, and/or internal audits. Audits are the means by which an independent auditor examines and expresses an opinion on financial statements and, as applicable, report on public agencies' compliance with laws, regulations, and internal controls.

There are various types of audits. Performance audits examine the economy and efficiency and/or effectiveness of applicable programs, activities, or functions and financial audits include an examination of financial statements to determine their accuracy.

Delaware Public Archives does not maintain information on which audits apply to which records in each agency; however, retention schedules are written to make agencies aware that certain records may be required for audit purposes. Different agencies are subject to different types of audits at different times. As a result, each agency is responsible for knowing the audits that may be conducted and retaining the needed records for that purpose. For example, some agencies may be subject to the Federal Audit, while others are not. In general, records relating to finances or financial transactions are subject to an audit.

Independent public accountants, or other state and federal auditors, as well as grant funding agencies and national or statewide professional accreditation or certification groups may conduct audits. Your finance office, legal office and State Auditor's Office are good sources of information as to which specific records are subject to an audit.

Agencies may not destroy records subject to an audit until the audit is completed and retention periods have been met.

Legal

Records may also be essential in legal or investigative actions, such as claims, litigations, administrative hearings, or Freedom of Information Act (F.O.I.A.) matters. All records related to that cause must be retained until all legal or investigative matters have been resolved, regardless of the retention period.

Vital Records

Vital records are essential to the continued operations of an agency during and after an emergency or disaster. Vital records are also essential to protecting the legal and financial rights and interests of an agency and of the individuals directly affected by its activities. Each agency's operational responsibilities and business needs are unique; therefore, an agency must decide which records are vital.

The primary protection method for Vital Records is through duplication and dispersal of records. This entails the physical duplication of information and the transfer/dispersal of these duplicated records to an on/off site storage location.

Confidential Records

Although, all records created, used, and maintained by government agency personnel are public records, not all of those records are open to public inspection. State or federal statutes and regulations determine whether a record is open to public inspection. Restriction of public inspection of confidential records may apply to the record as a whole or to portions of information enclosed in the record.

A record is considered open for public inspection, unless it is exempt under a specific law or regulation. Agency personnel who believe certain records are confidential should submit and/or site the proper authority ([F.O.I.A.](#), administrative directives, statutes, regulations, etc.). State and Local Government agency heads are responsible for knowing all applicable confidentiality laws, statutes, and regulations that apply to the records maintained by their agency. Although a records series may or may not be reflected as confidential on a retention schedule, conflicting laws or regulations that are transpired after the schedule has been approved must be adhered to.

Revising the Retention Schedule

In accordance with [29 Del. Code, Chapter 5, § 521](#), each state agency is required to designate a Records Officer/Authorized Agent to serve as the liaison with the Delaware Public Archives. The Records Officer/Authorized Agent is responsible for assisting Delaware Public Archives in creating and modifying draft records retention schedules. Agencies should review their retention schedule on a regular basis and inform Delaware Public Archives of any additions, deletions, or revisions. Examples of revisions may include the creation of a new record series, changes in record keeping practices, changes in formats, and/or the reorganization of an agency or office. Agencies may request to have their records retention schedule revised by completing a records series inventory form and/or by contacting their assigned Records Analyst at Delaware Public Archives.

Destruction of Records

The destruction of all records must be documented so that agencies are able to validate when a record has been destroyed. In addition, proof of destruction may be required in legal proceedings or in response to Freedom of Information Act (F.O.I.A.) requests.

In accordance with the [29 Del. Code, §504 \(b\)](#), agencies must obtain approval from Delaware Public Archives prior to the destruction of any records, except in the case of “non-records”. A “non-record” is any document that is created or received that does not serve to document the organization, functions, policies, decisions, procedures, operations, or other activities. Non-records may include:

- Blank forms
- Catalogs, journals, and other similar publications or papers that require no action and are not part of a records series upon which action is taken.
- Draft reports and correspondence (*See note below*)
- Duplicate copies kept within the same Section/Unit of a Department or Division (*Please note that agencies must ensure that the official copy is retained.*)
- Reference publications

NOTE: Non-records should not be confused with “working papers”. Working papers are public records assembled or created in the preparation of other records, and are needed to trace actions, steps and decisions covered in final or master record. These may include rough notes or calculations used in the preparation of audits, budgets, studies, or reports that are not fully represented in the final product.

When it is difficult to determine the classification (records versus non-records), agencies should classify them as records. Additionally, agencies may consult with Delaware Public Archives for guidance.

Prior to the destruction of records, agencies must also ensure that:

- ✓ The records have met their required retention.
- ✓ That the records are not subject to any active or pending litigation, audit, Freedom of Information Act (F.O.I.A.) requests.
- ✓ The records are no longer required under any other legislation and all statutory and regulatory requirements are fulfilled
- ✓ The records no longer have administrative or business use to the agency
- ✓ A destruction notice (RM-5) has been completed and approved by Delaware Public Archives

NOTE: Agencies are required to retain their approved destruction notices in accordance with their state or local government retention schedule.

In accordance with [11 Del. Code, §876](#), a person who “knowingly removes, mutilates, destroys, conceals, makes a false entry in or falsely alters any records or other written instrument filed with, deposited in or otherwise constituting a records of a public office or public servant” is guilty of tampering with public records, a Class E felony.”

Office of the Public Defender

The Delaware Public Defender's Office was established by statute in 1964 as a statewide agency. The Public Defender's Office is charged with representing indigent people at every stage of the criminal process in both adult and juvenile courts. The Public Defender's Office is committed to the ideal of providing high quality legal services to its clients. The Public Defender's Office strives to achieve this ideal every day through the superior representation provided by its seventy-one licensed attorneys and dedicated support staff.

Delaware's first Public Defender was James F. Kelleher, who was appointed in 1964 by Governor Elbert N. Carvel. During the first year of operation, the Public Defender's Office handled 875 cases and Mr. Kelleher supervised a staff of three Assistant Public Defenders. Mr. Kelleher served from 1964-1970.

In 1970, Lawrence M. Sullivan was appointed as Delaware's second Public Defender by Governor Russell W. Peterson and served for nearly 40 years, under five different governors. Under his leadership, the Public Defender's Office grew from a small office in Wilmington, Delaware with eleven employees to a statewide agency with over 140 employees. During Mr. Sullivan's tenure, the Public Defender's Office received several national awards including: The Vision Award from the International Association of Forensic Nurses in 2005, the Charles H. Dorsey Jr. Award from the American Bar Association in 2006 and the Reginald Heber Smith Award from the National Legal Aid and Defender Association in 2006. Upon his retirement, Mr. Sullivan's achievements were honored in separate resolutions from the Delaware General Assembly and the New Castle County Council.

STATE OF DELAWARE
PUBLIC ARCHIVES

RECORD GROUP NUMBER: 1561

AGENCY: OFFICE OF THE PUBLIC DEFENDER

SERIES #	SERIES TITLE AND DESCRIPTION	CONFIDENTIAL / VITAL	RETENTION AND DISPOSITION INSTRUCTIONS	DATE APPROVED / REVISED
PDA-1A	<p>CASE FILES – LOWER COURTS</p> <p>This series documents the attorney’s preparation of material for litigation in Justice of the Peace Court, Alderman’s Court, Court of Common Pleas, and Family Court case files for clients represented by the Public Defender. This series may include, but is not limited to law enforcement records, motions, pleadings, decrees, petitions, transcripts of proceedings, depositions, affidavits, witness statements, copies of court correspondence, and other supportive documents relative to the case. The case file may also contain internal memos, attorney notes, research and working papers, copies of case law, copies of similar cases and other documentation pertinent to the case developed by the public defender and used in preparing the case for defense.</p>	<p>CONFIDENTIAL <u>29 Del. Code§ 10002(l)</u></p>	<p>Retain at agency 3 years after final disposition including resolution of any direct appeals; destroy.</p>	<p>01/15/2015</p>
PDA-1B	<p>CASE FILES – SUPERIOR COURT</p> <p>This series documents the attorney’s preparation of material for litigation in Superior Court case files for clients represented by the Public Defender. This series may include, but is not limited to law enforcement records, motions, pleadings, decrees, petitions, transcripts of proceedings, depositions, affidavits, witness statements, copies of court correspondence, and other supportive documents relative to the case. The case file may also contain internal memos, attorney notes, research and working papers, copies of case law, copies of similar cases and other documentation pertinent to the case developed by the public defender and used in preparing the case for defense.</p>	<p>CONFIDENTIAL <u>29 Del. Code§ 10002(l)</u></p>	<p>Retain at agency 7 years after final disposition including resolution of any direct appeals; destroy.</p>	<p>01/15/2015</p>

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PDA-1C	<p>PSYCHO FORENSIC FILES</p> <p>This series documents clients that are referred to the Psycho Forensic Unit. This series may contain mental health treatment records, school records, medical records, pay stubs, support letters, Delaware Psychiatric Center (DPC) evaluations, Psycho-Forensic (PFE) report, expert evaluations, family related treatment records, birth certificate, photos, client letters, substance abuse evaluation, correspondence, research material.</p>	<p>CONFIDENTIAL <u>29 Del. Code§ 10002(l)</u></p>	<p>Retain at agency 10 years after the release of the client from incarceration or upon death of client; destroy.</p>	<p>01/15/2015</p>
PDA-1D	<p>CASE FILES – LIFE AND DEATH SENTENCES</p> <p>This series documents the attorney’s preparation of material for litigation in Superior Court case files for clients represented by the Public Defender resulting in a life or death sentence. This series may include, but is not limited to law enforcement records, motions, pleadings, decrees, petitions, transcripts of proceedings, depositions, affidavits, witness statements, copies of court correspondence, and other supportive documents relative to the case. The case file may also contain internal memos, attorney notes, research and working papers, copies of case law, copies of similar cases and other documentation pertinent to the case developed by the public defender and used in preparing the case for defense.</p>	<p>CONFIDENTIAL <u>29 Del. Code§ 10002(l)</u></p>	<p>Retain at agency 2 years after the release of the client from incarceration or upon death of client; destroy.</p>	<p>01/15/2015</p>

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Retention Schedule Modification History

PDA-1A	Case Files – Lower Courts	This series title and description were amended. This records was previously referred to as <i>Client Files – Lower Courts</i> .	3 years after final disposition	01/2015
PDA-1B	Case Files – Superior Court	This series title and description were amended. This records was previously referred to as <i>Client Files – Superior Court</i> .	7 years after final disposition	01/2015
PDA-1C	Psycho Forensic Files	The series description was amended and the retention was reduced from 20 years after the release or death of client to 10 years.	10 years or death of client	01/2015
PDA-1D	Case Files – Life And Death Sentences	This series was previously listed under series number PDA-1B; however, due to differing retention periods, a new series for this record was created.	2 years after the release or death of client	01/2015

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Agency Appendix

1. [Delaware Public Records Law is Title 29, Chapter 5](#)
2. For electronic records or electronic systems consisting of multiple record series with differing retention periods, the records should be retained until the longest retention period has been met, unless the software permits selective deletion.
3. Delaware Public Archives may attempt to extract electronic records and/or publications from websites using a web crawler; however, this does not absolve any agency of the responsibility to identify, manage, and confirm the transfer of any archival content that is contained in, or integral to, an agency's website. (See [Delaware Documentation Procedures](#) and/or [29 Del. Code, §519](#))
4. An "Electronic Record" is defined as a public record that is stored, generated, received or communicated by electronic means for use by, or storage in, an information system or for transmission from one information system to another ([29 Del. Code §502](#) and [6 Del. Code §12A-102](#))
5. In accordance with [6 Del. Code, §12A-112](#), the retention of electronic records is satisfied by retaining an electronic document that accurately reflects that information set forth in the record after it was first generated in its final form as an electronic record and remain accessible for future reference. Unless a law enacted after July 14, 2000, specifically prohibits the use of an electronic record for the specified purpose, a record retained electronically satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes.