

**Retention and Disposal Authority for Records of the Office of the
Special Investigator**

Authority number: PROS 24/02



PROS 24/02

**Retention and Disposal
Authority for Records of the
Office of the Special
Investigator**

Status Date: 22/01/2024

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INTRODUCTION

Governing Legislation

Legislation

Special Investigator Act 2021

The main purposes of this Act are:

(a) to establish the Office of the Special Investigator to investigate potential criminal conduct and breaches of discipline relating to the recruitment, management and use by Victoria Police of Nicola Maree Gobbo as a human source; and

(b) to enable access to all records held by the Royal Commission into the Management of Police Informants by the Office of the Special Investigator and the Independent Broad-based Anti-corruption Commission; and

(c) to confer on the Victorian Inspectorate oversight functions in respect of the Office of the Special Investigator; and

(d) to make related amendments to other Acts.

Special Investigator Repeal Act 2023

The main purposes of this Act are:

(a) to repeal the Special Investigator Act 2021; and

(b) to abolish the Office of the Special Investigator; and

(c) to make necessary transitional arrangements; and

(d) to continue in operation certain offences; and

(e) to make consequential and related amendments to other Acts.

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Scope	Records created by the Office of the Special Investigator established by the Special Investigator Act 2021 to meet recommendations of the Royal Commission into the Management of Police Informants
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Status	Issued by Keeper
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Issue Date	22 January 2024
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Introduction

Purpose of this Authority

The purpose of this Authority is to provide a mechanism for the disposal of public records in accordance with the *Public Records Act 1973*.

The Authority:

- identifies records which are worth preserving permanently as part of Victoria's archival heritage
- prevents the premature destruction of records which need to be retained for a specified period to satisfy legal, financial and other requirements of public administration, and
- authorises the destruction of those records not required permanently.

Context of this Authority

Public Record Office Victoria Standards

This Authority should be used in conjunction with the Standards issued by the Keeper of Public Records under Section 12 of the *Public Records Act 1973*. Copies of all relevant PROV standards, specifications and regulatory advice can be downloaded from www.prov.vic.gov.au. These documents set out the procedures that must be followed by Victorian public offices.

Disposal of records identified in the Authority

Disposal of public records identified in this Authority must be undertaken in accordance with the requirements of Public Record Office Standard - *Disposal*.

It is a criminal offence to unlawfully destroy a public record under s 19(1) of the *Public Records Act 1973*.

The destruction of a public record is not unlawful if done in accordance with a Standard established under s 12 of the *Public Records Act 1973*.

This Standard (also known as an Authority) authorises the disposal of public records as described within its provisions. However, disposal is **not** authorised under this Standard if it is reasonably likely that the public record will be required in evidence in a current or future legal proceeding.

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For the purposes of this Retention and Disposal Authority, a 'legal proceeding' has the same meaning as the *Evidence (Miscellaneous Provisions) Act 1958*, and includes any civil, criminal or mixed proceeding and any inquiry in which evidence is or may be given before any court or person acting judicially, including a Royal Commission or Board of Inquiry under the *Inquiries Act 2014*.

Under PROS 22/04 Disposal Standard, authorisation to destroy public records is WITHDRAWN and NOT GIVEN (even if specified in an RDA or other authorised disposal instrument) if:

- it is reasonably likely that they will be needed in a current or future legal proceeding. This includes any civil or criminal proceeding or an inquiry where evidence may be given before a court or person acting judicially such as a Royal Commission or Board of Inquiry
- they are required for meeting any Freedom of Information (FOI) applications which are not finalised
- they are required for audits or investigations which are not yet finalised; and/or
- they are subject to disposal freezes applied by government or by the organisation.

If the public office identifies that public records must be retained under other applicable legislation for a period that exceeds the retention period specified under the Standards, then the longer retention period must apply.

Normal Administrative Practice

PROS 22/04 Disposal Standard authorises the destruction of some public records under Normal Administrative Practice (NAP) principles. Low value facilitative records described below are authorised for destruction by *PROS 22/04* under NAP principles:

- working documents, such as notes or calculations, used to assist in the preparation of other records
- minor drafts and transitory documents, where the content is reproduced elsewhere, and the information will not be needed to show how the work has progressed or actions approved
- minor updates of content, such as those in databases, which will not be needed to show actions, decisions, or approvals
- communications for the purpose of making minor arrangements
- duplicate copies
- periodic backups of records, information, data, software and settings for recovery in case of technical failure and/or catastrophe and are duplicate copies of official business records/data that is held elsewhere on a managed system.

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Transfer of records to Public Record Office Victoria

Contact Public Record Office Victoria for further information on procedures for transferring permanent records to archival custody.

Use of Other Authorities

In applying the disposal sentences set out in this Authority, reference should be made to other current Authorities where applicable. Where there is a conflict between two Authorities (for instance this Authority and the General Retention and Disposal Authority for Records of Common Administrative Functions), consult the Public Record Office Victoria for advice.

Explanation of Authority Headings

Class Number

The class number or entry reference number provides citation and ease of reference.

Description

The description of each record class is specified in this entry. A record class is a group of records that relate to the same activity, function or subject and require the same disposal action.

Status

This entry provides the archival status of each class - either permanent or temporary.

Custody

This entry specifies whether the records are to be retained by the public office or transferred to the Public Record Office Victoria. Permanent records must be managed and transferred in accordance with PROV Standards.

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Establishment of Standard

Pursuant to Section 12 of the *Public Records Act 1973*, I hereby establish these provisions as a Standard (also known as a Retention and Disposal Authority) applying to Office of the Special Investigator. This standard as varied or amended from time to time, shall have effect from the date of issue unless revoked.

Justine Heazlewood, Keeper of Public Records
Date of Issue: 22 January 2024

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No	Function/Description	Status	Disposal Action
1.0	<p>Establishment and Administration</p> <p>The appointment of the Special Investigator, the establishment and administration of the Office of the Special Investigator.</p> <p><i>See PROS 07/01 General Disposal Authority for Common Administrative Records 7.4 Cabinet Business Management</i> for Cabinet-in-confidence records concerning the establishment and closure of the Office, legislation development, budget bids.</p>		
1.1	<p>Permanent records</p> <p>Records of continuing value documenting:</p> <p>The source of authority for the Special Investigator, the scope of legislative responsibilities and those persons appointed including;</p> <ul style="list-style-type: none"> • Orders in Council appointing a Special Investigator • Agreements and memoranda of understanding • Internal Policies • Legal advice on powers and protections. 	Permanent	Retain as State Archives, Transfer to PROV
1.2	<p>Temporary records</p> <p>Records documenting:</p> <ul style="list-style-type: none"> • Correspondence on routine or administrative matters. 	Temporary	Destroy 10 years after action completed.

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No	Function/Description	Status	Disposal Action
<i>Investigations Conduct</i>			
2.0	<p>Investigations Conduct</p> <p>Conduct of investigations including, Public Interest Complaints referred to or received by the Special Investigator for investigation, and criminal and disciplinary investigations.</p> <p>The function includes the planning and undertaking of investigations, collection of evidence, reporting on outcomes, findings and recommendations.</p> <p>Original records of the Royal Commission into the Management of Police Informants must be returned to the Department of Premier of Cabinet for Permanent retention in accordance with PROS 17/01 RDA for Records of Royal Commissions, Boards of Inquiry and Formal Reviews</p>		
2.1	<p>Permanent records</p> <p>Records of continuing value, relating to investigations conduct of the Office of the Special Investigator, documenting:</p> <ul style="list-style-type: none"> • intelligence reports and assessments • decisions to investigate • investigation planning • collection of evidence including arrangements for affidavits and warrants • investigator notes, data collation, recommendations and reports • internal briefings to the Special Investigator and meeting notes relating to investigations • emails and correspondence (internal and external) directly connected to investigations • file notes that form part of an investigation record • evidentiary material received by the Office of the Special Investigator in its investigations which has had its substantive content altered, 	Permanent	Retain as State Archives, Transfer to PROV

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No	Function/Description	Status	Disposal Action
<i>Investigations Conduct</i>			
	<p>annotated, or modified by the Office of the Special Investigator</p> <ul style="list-style-type: none"> • evidentiary material received by the Office of the Special Investigator which has been relied upon or used as part of an investigation file or brief of evidence. • witness statements • documents pertaining to legal proceedings to which the Office of the Special Investigator was a party, for example, applications for search warrants under section 31 of <i>Special Investigator Act 2021</i> • referrals to other bodies, for example, notifications of Public Interest Disclosures to the Independent Broad-based Anti-corruption Commission • referrals from other bodies, for example, referrals of Public Interest Complaints from the Independent Broad-based Anti-corruption Commission 		
2.2	<p>Temporary records (medium term retention)</p> <p>Records documenting the following operational tasks:</p> <ul style="list-style-type: none"> • Appointments of investigating officers of the Office of the Special Investigator under section 27 of the <i>Special Investigator Act 2021</i> • Delegations of authority by the Special Investigator to officers of the Office of the Special Investigator • Management of warrants to search and seize material and arrest warrants • Return or attempted return of evidence or exhibits to their owners • Receipt and response to general enquiries from stakeholders and the public <p><i>See the Office of the Special Investigator</i> 2.Investigations Conduct--2.1.Permanent records</p>	Temporary	Destroy 10 years after action completed.

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No	Function/Description	Status	Disposal Action
<i>Investigations Conduct</i>			
	<p>for evidentiary material that has been relied upon or used by the Office of the Special Investigator.</p> <p><i>See the Office of the Special Investigator</i> 2. Investigations Conduct--2.3. Temporary records (received under Memorandum of Understanding) and</p> <p>2. Investigations Conduct--2.4. Temporary records (other) for evidentiary material that has not been relied upon or used by the Office of the Special Investigator.</p>		
2.3	<p>Temporary records (received under Memorandum of Understanding)</p> <p>Records provided in accordance with Memorandum of Understanding (MOU) with State and Commonwealth government agencies, including Victoria Police, the Office of the Chief Examiner, Department of Transport, Corrections Victoria, and the Independent Broad-based Anti-corruption Commission (IBAC).</p> <p>Refers to:</p> <ul style="list-style-type: none"> • versions of records which have not had their substantive content altered, annotated or modified by the Office of the Special Investigator, and • which are not relied upon or used as part of an investigation file or brief of evidence <p><i>See the Office of the Special Investigator</i> 2. Investigations Conduct--2.4. Temporary records (other) for records received that are not covered by a Memorandum of Understanding</p>	Temporary	Dispose in accordance with MoU or as agreed by parties to the MoU, in line with any legislative requirements
2.4	<p>Temporary records (other)</p> <ul style="list-style-type: none"> • Other records received by the Special Investigator not covered by a Memorandum of Understanding comprising: <ul style="list-style-type: none"> ○ versions of records which have not had their substantive content altered, annotated, or modified by the Office of the Special Investigator 	Temporary	Dispose in accordance with relevant legislative requirements or as agreed by the Office of the Special Investigator and the original owner of the record

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Investigations Conduct

	<ul style="list-style-type: none"> ○ records which are not relied upon or used as part of an investigation file or brief of evidence. • Duplicate copies of records of the Royal Commission into the Management of Police Informants • Duplicate copies of records otherwise received from State and Commonwealth Government agencies, including Victoria Police, the Office of the Chief Examiner, Department of Transport, Corrections Victoria, and the Independent Broad-based Anti-corruption Commission • Video and audio recordings of meetings used only to facilitate the compilation of transcripts • Administrative arrangements for interviews and meetings. <p>NB: Records in this class are not to be destroyed where they must be returned to the original owner under section 71 of the Special Investigator Act 2021 or section 9(3) of the Special Investigator Repeal Act 2023.</p> <p>Original records of the Royal Commission into the Management of Police Informants must be returned to the Department of Premier and Cabinet for Permanent retention in accordance with PROS 17/01 RDA for Records of Royal Commissions, Boards of Inquiry and Formal Reviews.</p> <p><i>See the Office of the Special Investigator</i> 2. Investigations Conduct--2.3. Temporary records (received under Memorandum of Understanding) for records received under a Memorandum of Understanding</p>		
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No	Function/Description	Status	Disposal Action
<i>Briefs of Evidence Compilation</i>			
3.0	<p>Briefs of Evidence Compilation</p> <p>Compilation of briefs of evidence for the Director of Public Prosecutions arising from the investigations conducted to determination whether any charges should be filed.</p>		
3.1	<p>Permanent records</p> <p>Records of continuing value documenting:</p> <p>Briefs of evidence including:</p> <ul style="list-style-type: none"> • Covering brief/memo summarising the case including a summary of facts, offences alleged, evidence, and witnesses • Supporting evidence including relevant records of the Royal Commission into the Management of Police Informants, law enforcement, witness statements and records provided by Victorian agencies and informants which are incorporated into the brief • Notifications that a record produced to the Royal Commission into the Management of Police Informants or the Independent Broad-based Anti-corruption Commission may be used in a brief of evidence under section 81 of the <i>Special Investigator Act 2021</i>. <p>Correspondence between the Office of the Special Investigator and the Office of Public Prosecutions in relation to:</p> <ul style="list-style-type: none"> • the provision of briefs to the Director of Public Prosecutions under section 40 of the <i>Special Investigator Act 2021</i> • any decisions made under section 41 of the <i>Special Investigator Act 2021</i> by the Director of Public Prosecutions • disclosure obligations arising from briefs provided to the Director of Public Prosecutions under section 40 of the <i>Special Investigator Act 2021</i>. 	Permanent	Retain as State Archives, Transfer to PROV

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No	Function/Description	Status	Disposal Action
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Reporting

4.0	<p>Reporting</p> <p>Provision of a formal reports on the operations and outcomes of the Office of the Special Investigator.</p>		
4.1	<p>Permanent records</p> <p>Records of continuing value documenting:</p> <ul style="list-style-type: none"> • Reports to the Victorian Inspectorate under section 39 and 45 of the <i>Special Investigator Act 2021</i> • Final material provided for annual reports under section 98 of the <i>Special Investigator Act 2021</i> and the <i>Financial Management Act 1994</i> • Reports to Parliament under section 99 of the <i>Special Investigator Act 2021</i> • Reports to the Implementation Monitor under section 97 of the <i>Special Investigator Act 2021</i> • Interim and substantive drafts of reports where stakeholder input is sought and documented • Final versions of internal and periodic reports • Media releases issued by the Office of the Special Investigator. 	Permanent	Retain as State Archives, Transfer to PROV
4.2	<p>Temporary records</p> <p>Records documenting:</p> <ul style="list-style-type: none"> • Drafts of reports that do <u>not</u> incorporate substantial changes to content or findings of external stakeholders • Requests for comment on draft reports and comments received from external stakeholders. 	Temporary	Destroy 10 years after action completed.